

**BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS**

**A Kantian Analysis of the Universal Declaration of Human Rights**

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Bergerová: A Kantian Analysis of the Universal Declaration of Human Rights

**BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS**

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## **Declaration of Originality**

I hereby declare that this Bachelor Thesis is my ownwork and has not been published in part or in whole elsewhere. All used literature and other sources are attributed and cited in references.

Bratislava, February 15, 2018

Jennifer Bergerová,

Signature: \_\_\_\_\_

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## **A Kantian Analysis of the Universal Declaration of Human Rights**

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### **Abstract**

The primary literature for this work is Kant, which is in second chapter correlate with Hannah Arendt and Jacques Derrida. The main focus of this work is to demonstrate the importance of The Universal Declaration of Human Right, and comprehension of each concepts which this document includes. These concept are described from the most general definition which are then implemented to particular aspects. Therefore, the analysis begin with defining a priori concepts as a conditions for experience, then it continues with definition of moral law and right in general. Subsequently are in the work described rights interpreted in Kan's *Perpetual Peace* and their interdependence, along which concept of universal hospitality. The universal hospitality is in second chapter specified by Jacques Derrida. The issues and possible solution related to aspects of universal hospitality and the right to asylum are explained by Kant, Derrida and Arendt. The general concepts of right and universality are complemented by definitions of human right in general. The third chapter describe the disputes between universalism and cultural relativism. The sum of all defined concepts is applied on the Universal declaration of Human Rights in order to increase the degree of comprehension of this document, and to indicate the necessity for acceptance of this document in every part of the globe.

## Kantova analýza Univerzálnej Deklarácie Ľudských práv

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### Abstrakt

Primárnou literatúrou pre túto prácu je Kant, ktorá je v druhej kapitole kolerovaná s Jacquesom Derridom a Hannou Aretd. Hlavným cieľom tejto práce je preukázať dôležitosť Univerzálnej Deklarácie Ľudských Práv a porozumieť konceptom, ktoré tento dokument zahŕňa. Tieto koncepty sú popísané od najvšeobecnejších definícií, ktoré sú neskôr implementované na konkrétne aspekty. Analýza začína definovaním a priori konceptov, ktoré sú podmienkou pre skúsenosť, pokračuje definovaním morálneho zákona a práva vo všeobecnosti. Následne sú v práci popísané všetky tri práva interpretované v kantovom diele *Večný mier* a ich vzájomná náveznosť, spolu s konceptom univerzálnej pohostinnosti. Univerzálna pohostinnosť je v druhej kapitole špecifikovaná Jacquesom Derridom. Zároveň sú v druhej kapitole diskutované aj problémy a možné riešenia týkajúce sa aspektov univerzálnej pohostinnosti a práva na azyl Kantom, Derridom a Aredt. Koncepty práva a univerzálnosti sú v tretej kapitole doplnené o definície ľudských práv vo všeobecnosti a o vysvetlenie sporu medzi univerzalitou a kultúrnym relativizmom v aspekte ľudských práv. Všetky definície konceptov sú následne uplatnené na Univerzálnu Deklaráciu Ľudských práv s cieľom zvýšiť úroveň pochopenia tohto dokumentu rovnako ako aj poukázať na potrebu akceptácie tohto dokumentu v každej časti sveta.

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## Introduction

“Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end” (Kant 7, 4:429). Since all individuals are principally humans and that they have gender, race or any ability, therefore the common denominator for all is humanity and so every human must be treated as a human and must treat others like that. The first time the fundamental human rights were set out for the sake of being universally protected was in 1948 through the Universal Declaration of Human Rights later in work called only as The Declaration. As the United Nations itself says The Declaration is "a milestone document in the history of human rights" (United Nations). Therefore it is essential to understand the importance of this document as well as its meaning. Since no declaration has a legal claim to restrict or enforce command it could be seen as possibly negligible. The Supreme Court in *Sosa v. Alvarez-Machain* conclude that The Declaration "does not of its own force impose obligations as a matter of international law" so it is only a part of domestic policy (*Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004)). Despite the fact that The Declaration, as well as any other declaration, is not legally enforceable it does not mean that the importance of this document is inferior to the domestic laws of the international community in terms of human rights. Human rights should be "applicable everywhere and at every time in the sense of being universal" (James Nickel, 2013, Human Rights). However, research conducted by Princeton concludes that "the current system of international human rights law corresponds well with protection human rights only in special circumstances" the exact opposite of what it means to be universal or equal (Hafner-Burton, 2013). Thus, it seems that even the International human rights law does not correspond with the universal fundamental human rights in full sense, therefore it is possible to claim that nations and the international community are not consistent with the terms of The Declaration.

There is an evidence that there have been many violations not only of human right in general but of each specific article in The Declaration. Probably the most publicly known violation of Article 5 from The Declaration which applies to the abolition of torture, is a case from 2008. US authorities continued to hold 270 prisoners in



Guantánamo Bay, Cuba, without pressing charges or bringing them to trial, subjecting them to “water-boarding,” a form of torture that simulates drowning (United for Human Rights). Moreover, a persisting violation of Article 19 – freedom of expression – happened in Russia. Since 2000, the murders of seventeen journalists, all critical of government policies and actions, remain unsolved. Another violation happened in Iraq, where at least thirty-seven Iraqi employees of media networks were killed in 2008, and a total of 235 since the invasion of March 2003, making Iraq the world's most dangerous place for journalists (United Human Rights). Last but not least, is an example of the violation of Article 3, the right to live free. In Uganda, 1,500 people die each week in the internally displaced person camps. According to the World Health Organization, 500,000 have died in these camps. Similarly in Vietnam, where authorities forced at least 75,000 drug addicts and prostitutes to go to “rehab” camps, but they were provided with no treatment (United Human Rights). Hence, the issue of violation of fundamental human rights does not happen only in “third world” in countries such as Africa, where these violations have often times become a daily routine, but it is an omnipresent issue for all countries in the world. It is omnipresent on a domestic level as well as on the international, and the universality of human rights is making no difference since human rights have to be respected on every level.

Most of the nations of the world recognize human rights at least in principle or include them in their constitutions. They are anchored in the International Human Rights Law and The Declaration. They are frequently used as a justification for state intervention but this is still not enough in order to comprehend the full extent of human rights and protect them. Therefore the focus of this work is the understanding of the full meaning of The Declaration and its necessary acceptance in every part of the globe without the need to conclude international treaties or agreements.

The primary literature for this work is Kant, i.e. the issue will be analyzed from a Kantian perspective. The analysis begins with an explanation of the fundamental forms of cognition a priori and a posteriori. The basic description of these a priori concepts is crucial for the work since the a priori concepts with three dimensions of space and time open the possibility for experience and that according to Kant “the things that we intuit are not in themselves what we intuit them to be” because it is possible for human beings to know a thing in its essence” (Kant, 1992, p. A42/B59–

60 ). Furthermore, Kant claim that "if we remove our own subject or even only the subjective constitution of the senses in general, then all constitution, all relations of objects in space and time, indeed space and time themselves would disappear, and as appearances they cannot exist in themselves, but only in us" (Kant, P. Guyer, 1992, p. A42/B59–60 ).So, if we cannot know the thing in itself by removing of our own subject from it, the thing would not appear and not exist for us. This than can be used to demonstrate the importance of perception of the Declaration. The concept of Right is an a priori concept, because all concepts in pure form are a priori and these concepts with perceptions open up the possibility for experience. So the Right is a priori concept which is not possible to know in full extend but it is possible to experience some part of it in particular space and time. Therefore Right cannot be removed as a priori concept, but our perception can be removed if we remove our own subject and therefore we choose to avoid experiencing of this concept in phenomena . Thus the ignoring of the Universal Declaration of Human Right can later cause that The Declaration would not have any meaning as well as the fundamental rights conducted in it, since it will not be experienced any more.

The analysis continues with the definition of the Rights themselves and then each articular Right in Kant's perpetual peace. Kant in this book describes six Preliminary Articles, which are not going to be discussed here since they have no direct reference to the issue of Rights, and three Definitive Articles which describe each particular right in relation to perpetual peace. The First Definitive Article describes the Civil Constitution so Civil Rights, the Second Definitive Article describes the federation, therefore International Rights and the Third Definitive Article describes Cosmopolitical constitution, thus Cosmopolitan Rights. These rights include "the rights of men as Citizens of the world in a cosmo-political system, and they will be restricted to the conditions of universal Hospitality" (Kant, p.61, Perpetual Peace). Hospitality seems to be a possible measure for positive or negative reaction among individuals, nations and individual in relation to nation. The scale appears to be that as positive relations among each unit increase, so does hospitality grow among the units. Thus, if there is a friendly compact among individuals the rights of a foreigner are bigger and better accepted. Similarly, the friendly compact among nations can create a federation of states and allied relations can open the possibility for the migration of individuals

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between those states. On the other hand, negative or inimical relationships amongst states can negatively impact the process of receiving refugees who are in need from a hostile state even if those individuals have nothing to do with the decision of the head of that particular state. So, the hospitality is different in certain cases, which is the exact opposite of Universal Hospitality or at least it has to combine certain standards because of which it is possible for foreigners to claim rights as a guests. Therefore the hospitality will be defined not only as a restriction of the rights of a man as a Citizen of the world in a cosmos-political constitution by Kant but also as a concept described by Jacques Derrida supplemented by Hannah Arendt.

Each of these three authors disagree with international law and the idea of "world government" as a solution for issues such as right to asylum, perpetual peace, state of peace or hospitality. For Hannah Arendt the problem is that the international law still operates in reciprocal agreements amongst states, while Derrida claims that the international law is limited by those treaties. For, Kant there is a need for the completion of Cosmopolitan rights, which would restrict the rights of men to the conditions of universal hospitality (Kant 1, P:61). All of these issues are part of or closely related to the issue of human rights. Therefore the problem which is in the International law for Kant, Derrida and Arendt and is also the result of mentioned research in Princeton, seem to be crucial in order to increase the universality and relevance of Universal Declaration of Human Rights. (see Appendix)

## **1 Relationships amongst the three conditions of Kant's perpetual peace**

"Although all our cognition begins with experience, it does not follow that it arises from experience" (Kant 6, p.15). Therefore, according to Kant experience does not by itself open the possibility for cognition. Kant describes two main forms of cognition which are, a priori and a posteriori. The a priori cognition is transcendental, without any empirical conception, and so the "knowledge of a priori must be completely pure" (Kant 6, p. 18). A priori cognition is related to a priori concepts, which are without empirical basis thus, the object is noumenon i.e. the thing in itself impossible to understand for the human mind. A posteriori cognition is based on the contents of experience. According to Kant the first thought immediately related to every object is intuition. This intuition can only appear if the object is given to us, to our human senses, and "the capacity for receiving representation through the mode in which we are affected by object, is called sensibility" (Kant 6, p.21). The intuition combined with sensibility opens the possibility for creation of thought, which have to be "directly or indirectly, relate ultimately to intuitions and consequently to sensibility" otherwise objects cannot be given to us (Kant 6, p.21). The effects upon the representation of an object by which we are affected is sensation. "That sort of intuition which relates to an object by means of sensation, is called an empirical intuition" (Kant 6, p.21). This intuition is empirical because the effect of the object on us is an empirical effect to which the first thought about the sensation of the particular undetermined object is then related. This "undetermined object of an empirical intuition, is called phenomenon" (Kant 6, p.21). For Kant, "that which in phenomenon corresponds to sensation is matter and that which affects the content of phenomenon is form" (Kant 6, p.21). All phenomena, are given to us a posteriori but "the form must lie ready a priori for them in mind, and consequently can regard separately from all sensation" (Kant 6, p.21). Therefore, the a priori is the pure form of intuition from which all a posteriori known phenomena appear.

According to Kant the pure form of intuitions in general "all the manifold content of phenomena world is an arranged view under certain relations" (Kant 6, p.22). Hence, the

pure form of these intuitions, which are the immediately related thoughts are a priori concepts which are settled in the human mind. These concepts with intuition of the three dimensions of space and time together open the possibility for experience to appear. Without space – that is a priori form of sensibility, it is impossible to recognize object as an object – and time – which is necessary as a condition of our intuition – experience is impossible. All individuals seem to be born with these a priori concepts or pure intuitions, no matter if they do or do not realize that there is something before experience, and that they are necessary for experience of objects which appear. The explanation of these concepts and their existence is crucial in order to explain the concept experience, through which we create a knowledge about certain things.

The explanation of the basic terms from a Kantian perspective is more comprehensible with knowing that all discussed issues are not pure concepts but phenomena, which appear in certain ways under circumstances, and so it is possible that the representations of appearance are not in themselves what we intuit them to be and therefore if we "remove our own subject or even only the subjective constitution of the senses in general, then all constitution, all relations of objects in space and time, would disappear" (Kant, 1992, p. A42/B59–60 ). Therefore, the a priori concepts are used applied to perception in the process of experiencing, and the fact that the phenomenon appears is the presentation of creating parts of pure intuition. So it seem that these a priori concepts are all known concepts, which do not appear in pure form. Therefore, it is inevitable to try describe the Rights themselves, Unconditional Hospitality and other concepts in order to better comprehend the issue of the Universal Declaration of Human Rights since it contains all of the concepts mentioned in the work, hence better understanding the pure form of concepts, which conduct the issue.

## **1.1 Definition of Right**

For Kant, the "fundamental principle of morality is that each human being must do what he or she can, to preserve and promote free rational agency in both himself and others" (Kant 2, p. 410). From the fundamental principle of morality is derived the moral Law, which must "carry with it absolute necessity," so it is not modifiable according to any particularities or circumstances (Kant 7, 4:389).

Therefore the moral Law has a categorical imperative, since it cannot be affected by any particular desires as in Hypothetical imperatives, where individuals act according to personal wishes in order to achieve certain aims, which is profitable for them. The Categorical imperative has no particular wishes but rather strict conditional oughts. The categorical imperative has four forms described in four formulas. The first formula is the Formula of the Law of Nature: "Act only on that maxim by which you can at the same time will that it should become a universal law" (Kant 7, G 4:421). So, one should act as if he or she would want to have his or her actions as a form of universal law according to which others should act too. The second formula is: "The formula of the End in Itself: act in such a way that you always treat humanity, whether in your own person or in the person of any other, never as a means, but always at the same time as an end" (Kant 7, G 4:429). This formula was mentioned in the beginning of this work, and it is one of the most fundamental rules of human rights since this formula means that one should treat others as he would like to be treated as human and because he or she is human. The third formula is "the Formula of Autonomy: so act that your will can be considered at the same time as making universal law through its maxims" (Kant 7, G 4:431). Hence, one should act as if his or her behavior would be a process of the creation of universal law. Therefore, the last fourth formula is: "Formula of the Kingdom of Ends: so act as if you were through yours, maxims and a law-making member of a kingdom of ends" (Kant 7, G 4:439). Hence, according to categorical imperative one should always act as if their act would become a universal law, and never use any human being as a tool.

The maxims according to which one should act serve to seek or choose the maximum possible righteousness in their actions according to moral law, but these are not legally established as laws in general and the decision which is not in accordance with a maxims is not legally punishable. On the other hand, the consequences of such an action can have even higher impact on daily life of individuals as laws, which have to be respected but the individuals during their life usually do not make a decision about laws they obey or respect the law, but maxims are decision making process through which, one should choose the maximally possible right choice on daily basis. So one should act according to the respect of moral law, which is modifying absolute necessity and therefore it seems to be prior to other laws. Moral law is the only one that demands and inspires respect for the law, since no other law excludes all inclinations from the directness of their influence

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(Kant 3, p.80). So, the free rational agency, which is the fundamental principle of morality is the aspect of human being and forms of law which have to be unconditionally respected and protected without any inclination as well as moral law itself by all individuals in action. If this action "is objectively practical according to moral law, with exclusion of all determining basis from inclination, it is called duty" (Kant 3, p.80). The concept of duty in general "demands objectively - in the action - agreement with the law, and subjectively - in the maxim of the action- respect for the law, as the sole way of determining the will by the law" (Kant 3, p.81). Since duty demands not only objective but also subjective respect for the law, this respect should get along with subjective principle, or intension of particular individual, as in the maxims. Furthermore, "the fundamental principle of duties of right or justice is the obligation to maintain the external conditions necessary in order to preserve the maximally possible free exercise of rational agency" (Kant 2, p.411). While the fundamental principle of morality is preserving and promoting the free rational agency the principle of duties of right are maintaining the external condition for promoting the free rational agency, so the duties of right are opening the possibility for principle of morality to appear externally. Therefore, "Right is sum of the conditions under which the choice of one be united with the choice of another in accordance with a universal law of freedom" (Kant 2, p.411). So, Right is the unification of all choices combined in conditions, which require protection and securing of free exercise of rational agency and maximization of compossible spheres.

This requirement of Right then "requires not only the creation of laws to make determinate the boundaries of these spheres of free agency but also enforce the preservation of these boundaries" (Kant 2, p.411). According to Kant these "laws can be created only in civil condition, or a political state with a constitution committed to the principle of right, not in a State of Nature where claims to freedom are merely provisional" (Kant 2, p.411). Since, all humans live on the surface of the earth, but in different parts, there is always a possibility of accessing for each part. Therefore, "the condition of right in any region of the globe cannot be secure until conditions of right are obtained everywhere" (Kant 2, p.411). So, for the Right to appear it is essential that Right itself has to be universally accepted, if not there is no possibility to secure the Right. If the Right is established in every part of the Globe then the Right will appear also "in the relations among the individuals within a single state" (Kant 2, p.411). Moreover, the Right

itself appears from the duty to maintain the external conditions of morality to preserve free rational agency, which in order to be maintained have to be universally established by every state. According to this definition, it seems that every particular right, which should be secured should be also established universally as Right itself, since the Right itself gives the possibility to appear for every specific Right. Since Right itself requires the creation of laws and duty itself demands subjectively and objectively a respect for law, it seems that the creation of laws is inevitable and it is the duty of all to respect these laws from both perspectives in action, which is objectively practical according to moral law.

## 1.2 Description of Civil, International and Cosmopolitan Right.

In *Perpetual Peace*, Kant describes the conditions for establishing perpetual peace using three Definitive Articles. The first Definitive Article in the conditions is State of Peace, which comes from the Reason to Survive, since the State of Nature is a state of war and also to live as peacefully as possible for its citizens. Moreover, the idea of State of Peace does not come from an individual but "all men together must desire to attain this goal, only then can civil society exist as a whole" (Kant 4, p.117). This unifying process has to overrule all the different wishes of every individual in the society, "before a common will arise, and since no single individual can create it, the only conceivable way of executing the original idea in practice, and hence of inaugurating a state of right, is by force" (Kant 4, p.117). State of Peace has various form and these could be divided into two groups. The first group of various forms of State is *forma imperii* (Sovereignty) where one group or all can possess the governing power, thus it is Autocracy constituted by the power of the Monarch, Aristocracy power of nobles or Democracy constituted by the power of People (Kant 1, p.57). The second group of various forms of State is *forma regiminis*, (Governance) which sees the constitution as an act of "common will by which a number of men become people, so it is the State founded on constitution that makes use of its supreme power", and these are republican or despotic (Kant, p.57).

Kant claims that, "the Civil Constitution in every State shall be Republican" (Kant 1, p. 57). The Republican Constitution is "arising from the original source of the conception of Right" since the Right itself is a sum of conditions under which the choice of one can be



united with choice of others, and from the three "first principles, which are Liberty of the Members of a Society, secondly Dependence of all its members on a single common Legislation and according to the law of Equality of its Member as Citizens" (Kant 1, p.57). These principles will reasonably lead Citizens of Republican Constitution to reject a war, because it is not advantageous for them. Citizens of Republican Constitution in state of war will have to risk their own life, their own property and bear the burden of damage. In a Republican Constitution where all citizens are heads of a state are also Citizens, so they will be affected in the same way as the common Citizens, unlike the constitution where the subject is not a voting member therefore, the government has no need to bear the burden of damage and its decisions are made without any potential threat to the government. Hence, if these parameters, which conduct the Republican Constitution are in potentia possible then the first condition of perpetual peace can appear.

The Second Definitive Article in conditions, is the Federation of Free states in which the Right of Nation shall be founded (Kant 1, p.58). Since people are creating the possibility for the creation of a nation, it also opens the possibility for the existence of a State, which means then that the The Right of Nations arises from individual perspective, thus the states may be judged as individual men, because it is conducted by them. This means that the "relationship between States should be constituted similarly as the Civil Constitution to secure the right of each" (Kant 1, p.59). If the rights of each constitution will be secured it "would give rise to an International Federation of the Peoples" (Kant 1, p.59) Moreover, the states in a free Federation of a States unlike the Civil constitution would not be subordinated or inferior to any law giver as people are subject to their laws. (Kant 1, p.59). "States would never prosecute their Right in other way than the war, since they have by legal Constitution outgrown the coercive Right of others to bring them under to wider legal constitution scoring to conception of Right" (Kant 1, p.60). In order to maintain peace amongst states, which recognize no supreme legislative power, there have to be a union embodied in Civil Society, which will "secure Rights of "my" state and whose Right I will also secure" and this will create a free Federation of the States (Kant 1, p.60). So, the state among each other will respect the way of existence of one another and secure the rights of each other as well as their own. Therefore, in a free Federation of States the idea of a Right to go to war cannot be conceived in the Right of Nations and the treaty for peace should not be written as a general condition of war, because it could be

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always used as a pretext for finding of new enemies (Kant 1, p.60). If in the peace treaty will be written any possible circumstance when one state can go to the war with another, war will be justifiable. Moreover, if in the peace treaty there will be described circumstances of a possible war, it could be easily abused or there will be still present some kind of threat of a possible war so the perpetual peace will never be established. Hence, the free Federation of States has to combine these ideas with the inseparable truth that the majesty of nations is an absurd expression, and so each state will seek the preservation of itself, which will be by Reason connected with the ideas of the Right of Nation.

The Third Definitive Article in the conditions, is Cosmopolitan right, and so "universal Hospitality" (Kant 1, p. 60). This condition unifies The State of Peace and The Right of Nation under the unwritten code in which states and individuals are equal. The unwritten code of Cosmopolitan right, is unwritten since there is no existing cosmo-political constitution yet, and the code itself is pointing out the fact that the cosmopolitan right is not understood in full extend, since it is still unknown, therefore, it is necessary in order to decode it to act as if the code would be written and universally accepted.

This condition also includes "the rights of men as Citizens of the world in a cosmopolitical system, and they will be restricted to the conditions of universal Hospitalit." (Kant 1, p.61). Hospitality in this concept announces the right of a stranger but also limits his requirements. Hence, "Hospitality here indicate the Rights of a stranger in consequence of his arrival on the soil of another country, not to be treated by its citizens as an enemy" (Kant 1, p.61). The guests or stranger could be turned away only if this act will not cause his death. On the other hand, despite the fact that the stranger or guest could be turned away, there is no reason and natural right for anyone to do that. According to Kant no one has natural right to present themselves in a way of refusing hospitality because of "the Right to the common possession of the surface of the earth" (Kant 1, p.61). Thus, before the Civil Constitution established the terms of private property under which terms as ownership appear, the stranger had originally the same rights to occupy a land as the actual owner because no one is born with a greater right to posses a piece of land than another. Nevertheless, the stranger cannot be treated by the citizen of a state as an enemy, the stranger also cannot claim rights as a guest, i.e., the

right to be entertained, because in order to have a Right as a guest there "it would require a special friendly compact to make him for a certain time the member of household" (Kant, p.61). This special friendly compact is comparable with relations among states in Federation, since states in Federation have central government and independent internal affairs, the guest is part of the household as well as state is part of the federation, both have a central government so something, which cultivates the external affairs but they are both independent in internal affairs and have a right to claim no more than they need in order to survive. Therefore, the Right of Hospitality is not a right under which the stranger could claim the right to use or conquest a land occupied by others, it is not going further than it should to open the possibility of entering into the social intercourse. In order to secure the Right of Hospitality the possibility for a stranger to enter the social intercourse should be at least publicly regulated by law (Kant 1, p.62).

If all nations will at least establish the Right of Hospitality in constitution or in public discourse the world will be nearer to a Cosmo-political Constitution, and even the Nations with the largest distance may enter into peaceful relations. Moreover, the Cosmo-political Right should be universal that one may see the advantages, since "violation of the Right in one place of the earth, is felt all over it" (Kant, p.62). Along similar lines, Kant claims that the Right itself has to be accepted in every part of the globe in order to be secured, so this claim is also pointing out the augment that every specific Right appears from Right itself therefore it should be also treated in the same way. According to Kant "Cosmo-political Right of whole Human race is necessary completion of the unwritten code, which carries national and international Right to a consummation in the Public Right of Mankind" (Kant 1, p.62). Hence, the Right of Hospitality, which is contained in Cosmo-political Right should be regulated by each National constitution, which themselves should be republican. Doing so may bring the world closer to a Cosmo-political Constitution, so it can opening the possibility for a condition of perpetual peace.

### **1.3 Interdependence**

In relation to each particular Right, which appear in each particular Constitution in all three conditions, the Right in each is prior to the Constitutions, because each of them opens the possibility for each constitution or federation to appear. Therefore, the Civil

Right opens the possibility for Civil constitution to appear, the international Right or the Right of Nations opens the possibility for a free Federation of States to appear and Cosmopolitan Right opens the possibility for Cosmo-political Constitution to appear. These Rights will and do exist as priori concepts, even if they are not constituted as in case of Cosmo-Political Constitution. This means that even if the right is not fully constituted so it is not physically visible, it is a part of the duty of all to respect this Right and act as if the right would appear also in the physical sphere. Since these Rights give the possibility for the appearance of all three Constitutions they also have the same relationships among each other as these Constitutions. Moreover, these three Definitive Articles, which represent three conditions of perpetual peace, are co-foundational among each other and in themselves.

In order to explain the relationships among these conditions it is unavoidable to begin with the third condition, which is Cosmopolitan right considering that it is the most overarching. The third condition is founded by nature itself, *Natura Deodala rerum*, as well as the guarantee of Perpetual Peace itself. Whereas the surface of the earth is not created by any individual and has been there before the first and second condition. Furthermore, this all inclusive concept in the third condition is also founded by the first and the second condition. Without the first condition which represents the Civil Right there will be no possibility for possession of a piece of a land in terms of ownership, so there will no possibility to have a dispute about stranger or guest, and simultaneously without the first condition people will be in State of Nature, which is a state of war, so there will be no possibility for Cosmopolitan Right to appear. Therefore, the first condition, gives the cosmos-political system the possibility for appearance of definitions and identifications of each unit cosmos-political system comprises, and opens the possibility for the existence of this concept as such. Since the first condition, which is comprised of the Civil constitutions that are founded by individuals and represented as states or Nations, it necessarily gives the definitions in the Cosmopolitan Right International platform. Thus, as well as the first also the second condition gives to the third condition a possibility to appear, since the states are judged as individuals, there is need for territory, which gives the state identity and sovereignty and it has to be accepted and respected by other states as "my" territory for a particular state, and this gives a value to words like stranger, immigrant or guest. In fact the whole definition of the words

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stranger or guest is established by the society, by those particular individuals who by comparing "us" with "them", create the possibility for the appearance of words such as they, stranger, guest, someone different than "me".

All these comparisons are based on human dignity or state belongingness. The dignity of one appears in first place in the dignity of humanity, which is for Kant a "source of all duties" (Kant 2, p.410). So, from the dignity appears duty as a practical subjective and objective respect for a law, therefore in practice it is visible that each state seeks respect for its law from both the foreigners and from its citizens. It seems that the dignity of humanity is a wider concept because the common denominator of all humans is humanity. Therefore cosmopolitan right would comprise dignity of humanity as a concept, which belongs to the cosmo-political constitution. Dignity of humanity would not appear without Civil and International constitution or law, because there would be no distinguishing among personal dignity, dignity of humanity or national dignity so it would not be visible as well as cosmopolitan right. Therefore, the Right to possess a land in both, Civil and International rights, is foundational for the Right of universal hospitality, dignity of humanity and gives the possibility for Cosmopolitan right to appear.

Second, the co-foundational relationships appear amongst the first condition, which is comprised of the Civil Right and the Cosmopolitan Right, which is foundational for it. The third condition gives to the first condition the very first possibility for individuals to possess land and establish the ownership for a particular land, since it comprises the whole surface of the earth. The same is valid in case of International rights, because the Cosmopolitan right gives the same possibility for establishing of a territory in each particular state, as for the individuals within the state, which is represented internationally as sovereignty of a State. This seems to be the same process in case of national dignity, which is present in Civil Right and manifested in International Right. The dignity of humanity which as a concept seems to belong to Cosmopolitan right is fundamental for the existence of national dignity as well as the Cosmopolitan Right for Civil and International Right.

The third co-foundational relationship appears among the first and second conditions, which are Civil and International Rights. The first condition opens the possibility for the

second condition to appear. For the sake of International right, there is necessity for more than one represented Civil constitution, which means that there is a necessity for International Rights to have at least two Civil Constitution in existence in order to have a possibility to appear. On the other hand, there is no possibility for more than one represented Civil Constitution to not have International Right, because without it there will be no possibility for co-existence of these Constitutions, which is essential for them. If International Right appears, then it can also open the possibility for Civil Constitution to appear, since the International Right is the essence of international sovereignty, which means that it creates the possibility for the existence of a state that is recognized as a state by international community, which opens up also the possibility for claiming a territory by specific nation. Thus, the second condition is foundational for the first condition.

Hence, the Cosmopolitan Right is an all inclusive concept founded by nature, but also founded by Civil and the International Right. The Civil Right is founded by the Cosmopolitan and the International Right, and also foundational for the both of them. The International Right is founded by the Civil and the Cosmopolitan right and is foundational for them. Hence, all Rights are mutually inclusive and foundational for each other. Therefore there is a possibility to claim that the Cosmopolitan Right is prior to others since it is the only one, which has the possibility to appear in nature itself. However, it is a necessary to add that this possibility in nature is visible only if there are also present possibilities given by the Civil and the International Right. Even that the Cosmopolitan Right can be seen as a prior to other, the Civil Right open the possibility for law to appear, which is one of the fundamental requirements of the Right itself to determine the boundaries of spheres, which have to be secure, so the Civil Right gives the possibility for the appearance to the Right to be secured, and therefore to all specific rights to be established. Because laws are created in order to secure the Right, they are created by humans and it have to be respected by all. Therefore without civil society in every part of the globe, which will respect and secure the Right itself by creating the laws there will be no further necessity for securing even each particular Right. So, the concept of the Right as such is foundational for all specific rights. If any of these specific rights should be established in order to open the possibility for perpetual peace, they should be universally accepted as well as right itself and secured by laws, which all have to be respected according to their duty. Despite the fact that the Civil Right opens the possibility of

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determining the boundaries of compossible spheres and how to preserve them, it seems to be more important and essential for a Right that the condition of the right is obtained everywhere, which means that the Cosmopolitan Right opens the possibility for the Right to be obtained everywhere since it unifies the Civil and the International Right, and so it contains every part of the earth's surface. Therefore, the Cosmopolitan Right still seems to be prior to other rights.

## **2 Cosmopolitan Right**

The Cosmopolitan Right, seems to be the most overarching and the most comprehensible. This Right, which is described in Kant's third definitive article in Perpetual peace became a topic of consideration for many philosophers such as Hannah Arendt or Jacques Derrida. Since the Cosmopolitan Right is restricted to the right of men to the condition of universal hospitality it is necessary to define the concept of foreigner. It seems that for Kant a foreigner is everyone who is not a citizen of a particular state or member of a particular household. So everybody who arrives somewhere, which is not his or her home, but he or she is also not a friend of the household where he or she arrived, because a stranger cannot claim the right of a guest. For Derrida foreigner is "who has the right to hospitality in the cosmopolitan tradition, is someone with whom, to receive him, you begin by asking his name: you enjoin him to a state and to guarantee his identity, as you would a witness before a court" (Derrida 1, p.20). Therefore, for Derrida a foreigner is someone who has the legal status of having a name by which they represent their identity. Since the Civil Right opens the possibility for the Cosmopolitan Right to appear and vice versa, the influence of the Civil Right on the Cosmopolitan Right is most visible in cases such as ownerships as well as in the case of having a legal status as citizen or having a name by which individuals recognize each other. In some points of view it seems to be ridiculous that a name represents a human, since there is probably no individual whose name would be so unique that no other would have the same name, but it is also a significant indicator in the case of a country of origin or at least from which part of the globe the foreigner comes from.

### **2.1 Derrida on Hospitality**

Derrida develops the claim of hospitality in the cosmopolitan tradition represented by Kant, and defines two forms of Hospitality. The first form is unconditional or pure hospitality, which "consist in welcoming the arriving, the one who arrives, before laying down any conditions, before knowing or asking anything of him, whether this be a name or piece of identification" (Derrida 1, p.21). Derrida calls the law of unconditional hospitality a law, a singular law above all condition plural laws. Therefore, the



unconditional hospitality means hospitality without hospitality, because if there will be no conditions of hospitality, there will be also no conditions under which the hospitality would appear, or would be seen as hospitality. This form of hospitality is not possible but as Michael Naas claims in his work *Derrida From Now On*, it "is not some goal or telos either utopic ideal, it is what accounts for the very concept and experience of hospitality itself, and it is what drives all progress toward a more universal hospitality" (Michael Naas, p.24). So, this form of hospitality is not a platonic ideal, therefore we should not believe that it is actually possible to experience it, and even if than the world would probably change its nature in some aspects back to the state of nature where there no private property and no names, because the unconditional hospitality demands no conditions therefore there will be no need for identification such as having a name, or to be represented as an owner of a private property since it would have no meaning in terms of hospitality. It seems that from the Kantian perspective the unconditional hospitality is an a priori concept, according to which humans can experience hospitality. Since this first form of hospitality does not require any kind of condition it is the essence of hospitalit. Ttherefore it is a concept, which is not possible to experience in itself but with which is possible to experience some part in three dimensional time and space, as all a priori concepts.

The Second form of Hospitality is the conditional hospitality, "it always entails a relationship of exchange and reciprocity, a regime of norms, customs, laws, and proportion" (Derrida 1, p.24). The conditional hospitality is always offered by someone with sovereignty, some kind of power to select, which could be anyone who receives another human begin, the receiver has the power over the seeker since he or she can decide whether to accept or deny the one who asking for an asylum. Therefore, this concept can appear only in the civil and the international conditions, which create the conditions for this form of hospitality. In the international platforms these conditions are determined by relationships among each particular state. In the case of a federation these conditions for hospitality would be probably less restricted since they have a central government, while in a situation where states are completely separated or are in a hostile relationship. The conditional hospitality is the one, which is possible and also the one, which is questioned and measured by the unconditional hospitality, even despite of the fact that the unconditional is not an ideal or telos it still shows the quality of the

conditional form of hospitality. Furthermore, even so that unconditional hospitality is not possible, it is also fundamental for the existence of conditional hospitality, since the unconditional as a priori concept which open up the possibility for experience to appear. The criteria of the conditional hospitality make conditional hospitality actually possible. Thus, it seems that the conditional hospitality comes to be by establishing these conditions making itself less and less hospitable.

## 2.2 Derrida, Arendt, Kant

The dispute about conditional hospitality is most visible in the issue of the right to an asylum. The right to asylum is a part of the conditional hospitality, which is related to the cosmopolitan right, because it seems that the right to asylum and the decision making process whether the asylum seeker will have permission or not are conditions of the conditional hospitality. According to Hannah Arendt the "right to asylum is the only one, which had ever figured as a symbol of Human Rights in the domination of international relations" (Hannah Arendt, p. 280). This right is described in the Universal Declaration of Human Rights in the article 14 part 1, but despite these arguments and fact that there still are visible gaps and issues in human rights especially with regards to the right to an asylum. Hannah Arendt, Kant and Derrida all claim that the "world government" is not a solution even if there will be a possibility for the existence of such a situation. Derrida claims that "that nowadays international law is limited by treaties between sovereign states, and that not even "government of the world" would be capable of sorting things out" (Derrida 2, p.8). Hannah Arendt has a similar claim:

*"contrary to the best-intentioned humanitarian attempts to obtain a new declaration of human rights from international organizations, it should be understood that this idea transcended that present state of international law, which still operates in terms of reciprocal agreements and treaties between sovereign states, and, for the time being, a sphere that is above the nations does not exist." (Hannah Arendt, Origins of Totalitarianism)*

Therefore, according to Arendt the problem with The Declaration of human rights seems not to be not in The Declaration itself, but in the fact that there is nothing above the

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national government and these operate in the international framework. The Declaration of human rights should work in terms of humanity so it should be valid for all humans equally, regardless of their national interests, since there should not be a nation in whose interest is the violation of human rights. "Furthermore, this dilemma would not by no means be eliminated by the establishment of a world government " (Hannah Arendt, *Origins of Totalitarianism*).

Kant would probably agree since he describes the possible human affairs in order to create a perpetual peace, which is furnished by nature itself: *Natura Deadala rerum*, but he also claims that the Cosmo-political right of the whole human race is no phantasmic of overstrained but rather necessary completion of the Cosmopolitan Right (Kant 1, p.62). This means that Kant would probably not support the idea of a "world government," but rather a situation, where the cosmo-political constitution, which carries the universal right of hospitality would appear. Thus, there would be a sphere above sovereign states not in form of world government, but in a form of universally accepted rights, which will be secured by the law and respected as a duty by all human beings. Therefore, it means that using a "federation model" in other words, a central government with independent internal affairs, in order to solve the issue of the violation of human rights or hospitality, which is part of the declaration, would not be an effective solution.

Even if the "world government" did exist, the internal affairs of such a government would probably look similar to current international relations, and so it would operate on the basis of agreements and disagreements between states, or would have to be focused only on the common denominator of all humans, which would be in favor of all, in order to avoid riots around the world. Since there would still be present such issues as nationality and state belongingness even if it would be in the form of "belongingness to a particular part" without calling it a state, the world government would necessarily have to look only at the unifying point of human nature in order to avoid other issues derived for example from the ex-nationalistic ideas. If this last option is to be oriented only on the possible common denominators, there would be no need for a "world government" since it would be universally accepted and respected without any kind of external force, as it is prescribed in *Perpetual Peace*.

Therefore it seems that the issue for all three authors is in fact in the international law, which still operates on terms of reciprocal agreements and treaties, which limit the right

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of an asylum and the Right of Universal hospitality. The international law and reciprocal agreements should not affect concepts, which should be universal such any kind of right, regardless of their national interest. Therefore, the universal Declaration of Human Rights, which is comprised of thirty articles about the general conditions of human rights should be accepted in the full sense by every national government in every part of the globe in order to solve the issues such as hospitality, refugees and then have the power to rely on the basic norms of humanity. Thus, the Human Rights would become fully rights in the wording of the Kant's definition of Right and would subsequently be protected by the laws.

### **3 The Universal Declaration of Human Rights**

The Cosmopolitan Right is an unwritten code, which unifies the Civil and the International Right. Since it is a code, it means that the full sense of the Cosmopolitan Right is not comprehensible currently but possible in future once it has been decoded, therefore it is also unwritten. If there is any kind of document, which can be seen as an attempt for writing down and decoding the Cosmopolitan Right it seems that it is The Declaration. The Declaration as well as the Cosmopolitan Right unifies individuals and states. The Declaration similarly as the Cosmopolitan Right carries individuals and states to a consumption in the Public Right of Mankind. The difference between The Declaration and the Cosmopolitan Right is that The Declaration is written, and that The Declaration does not restrict the rights of men to the condition of universal hospitality. The Declaration also contains article 14., which is the right to seek an asylum, but it is not restricted only to it and neither does it restrict anything or anyone in general. Since The Declaration only declares it is not a law, therefore it should not have any restrictions. On the other hand, it does not mean that it should be banalized or ignored since it is not a law, exactly the opposite, the law should serve to protect The Declaration since it is comprised of the fundamental Human Rights, which in accordance with Kant's definition of the Right requires the creation of law, and in fact they are protected by the international human right laws.

#### **3.1 Three Concepts**

In order to explain the issue of the banalization and the comprehension of The Declaration, which can possibly be one of the causes why human rights are violated, it is essential to define the three basic concepts, since The Declaration involve all of them. First is the Right itself, which is defined according to Kant in the first chapter, as a unification of all choices combined in conditions, which require the protection and securing of free exercise of rational agency and the maximization of compossible spheres. Which than

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require creation of laws in order to protect and enforce these boundaries. According to Jack Donnelly the rights seen in terms of righteousness, so it is the right thing not to steal or cheat, or it could be seen as a special entitlement, so having an ability by having or violating, exercising rights (J. Donnelly, 1998, p.19). These definitions are not mutually exclusive but mere of an additions to each other since the definition of rights by Kant is more general and conceptual than the definition of rights by Donnelly, which is more practical.

The second concept is the concept of being universal. The universality in terms of human rights seems to be similar to Derrida's definition of the unconditional, since the universal has only one condition – to be universal – but this seems to be more of a feature than a definition. Thus, according to Kant the concept is universal, created by some action, it is Kant's first formulation of the Categorical Imperative, the Formula of Universal Law, "act only according to that maxim, whereby you can at the same time become a universal law (Kant 7, G 4:421). So, by common action of all it is possible to create a universal law, which can then become applicable in all cases.

The third concept are Human Rights. "Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status" (OHCHR). According to Jack Donnelly the human rights "indicate both their nature and their source: they are rights that one has simply because one is human" (J. Donnelly, 1998, p.18). This means that all humans are born with human rights, and for this reason they are held by all human beings – they are universal and non alienable. "Rights empower, in addition to benefiting, their holders" (J. Donnelly, 1998, p.19). The holders of human rights are all humans with no exception, and all of these holders should have benefit from it, so they should have benefit from the fact that they are humans.

Despite the fact that human rights are universal and holders are born with them, the idea of human right as entirely universal and applicable at "all times in all places" is called radical universalism (J. Donnelly, p.33). This idea is radical since it skips cultural aspects, religion and nationalities, where human

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rights are seen differently. Ben Weston "asserts that proponents of the universality of human rights, cannot convincingly succeed without approaching cultural pluralism in a manner that is consistent with the core value of human rights: respect" (R.P.Claude, B.H.Weston, 2006, p.5). Thus, there is no simple answer to harmonization of these aspects but "it can be contended that cultural relativism and universalism are not incompatible with each other" (J. Rehman, 2010, p.9). From a Kantian perspective the middle-ground can be found in the argument that human rights are an a priori concept whose parts appear in different time and space, and to which the second formula of categorical imperative should be bound. These appearances and their understanding can be seen differently under different circumstances until the conditions of categorical imperative are met, and so human rights are not violated. This seems to be the middle-ground argument, which can be used as a practical possibility for the harmonization of cultural pluralism and universalism. According to Kant one should have an unconditional respect for the preserving of free rational agency, which is a fundamental principle of morality from which moral law is derived and human rights are "paramount of moral rights" (J. Donnelly, p.19). Even though the first principle of morality according to Kant, is to preserve free rational agency in both himself and others, (Kant 2, p.410) it seems that the human rights are the highest form of the moral law, which lead all individuals to act in accordance with human rights. Therefore, these concepts are mutually inclusive, the moral law opens the possibility for human rights to appear in practice as first-rate moral rights. "Human rights are widely considered to be those fundamental moral rights of a person that are necessary for a life with human dignity" (D.P. Forsythe, 2012 p.3). So, in order to have a human dignity there is a need for fundamental human rights to appear, and these appear in order to protect the human dignity, not to create it. The whole concept of human dignity and dignity of individual seem to appear from the dignity of humanity, which is the fundamental source of all duties, these are objectively practical actions according to moral law (Kant 3, p.80). According to Kant, the general definition of dignity is that "in the kingdom of ends everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all

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price and so admits of no equivalent, then it has a dignity (Kant 7, 4:443). So, accordingly since the human dignity on Forsythe's understanding has no price and cannot be replaced by any equivalent, it fulfills the general definition of dignity by Kant, it is also a source of duties, which is a fundamental principle in order to maintain the external conditions necessary to preserve the maximally possible free exercise of rational agency (Kant 2, p.411).

### **3.2 The Articles of the Universal Declaration of Human Rights**

The thirty articles which make up the Declaration should be respected without any conditions, since they describing the fundamental human rights of all humans, with no cultural exceptions. The articles describing these fundamental human rights regardless of whether it is an international or domestic situation in which they are applied. On one hand some of the articles seems to be more focused on domestic level of policy such as article 24 which describe that everyone has the right to rest, including reasonable limitation of working so it implementable to daily life of citizens and their jobs. Moreover. the article 25 which is describing the everyone has the right to a standard living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services etc. which also seems to be more focus on domestic level and securing of individual aspects of life by a state. On the other hand there are some article which seem to be more focused on international platform such as article 14 which describe right to asylum which should be respected by other state and citizens of another state. As well as according to article 13 everyone has the right to freedom of movement and residence within the borders of each State.

Notwithstanding that some of the articles can create the impression that they are more oriented on each platform, as the last article of The Declaration declare that nothing in this Declaration may be interpreted as implying for any set, group of person. Therefore, The Declaration itself do not imply any level or particular states or person where it should be applied, but it describe these



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rights which as a right itself have to be universal accepted and respected in order to be secured. So, the issue of limiting the Declaration and its impact by international and reciprocal agreements among states as Hannah Arendt claim, seems to be substantiated, since the Declaration do not imply any particular individuals or state. The Declaration and its articles should not be limited by a international agreements, and they should have no impact on the Declaration. Furthermore, the articles of the Declaration conduct the fundamental human rights which are, as well as all other rights, derived from the concept of Right itself so they have to be universally accepted in same fashion in order to secure those rights. Moreover, this issue would not be resolved by establishing of „world government“ since all nation states would be still claiming the cultural relativness, and if not there will be no need for having a „world government“ since all state will unanimously agree upon universality of human rights conducted in the Declaration and all rights will be secured. Thus, the Declaration seem to unify states and individual under written declaration of fundamental human rights as well as the Cosmopolitan Right.

## Conclusion

Nelson Mandela said that if somebody "denies to people their human rights is the challenge of their very humanity". Martin Luther King, Jr. said that "a right delayed is a right denied". Also the UN Women Executive Director Phumzile Mlambo-Ngcuka said "our hopes for a more just, safe and peaceful world can only be achieved when there is universal respect for the inherent dignity and equal rights of all members of the human family". All these people and many others claim that if human rights are denied, banalized, ignored, disrespected or in any way violated it is not only the issue of one state or particular individuals but it should be an issue for all human beings. In order to comprehend the concept of human rights as universal and inalienable which have to be respected it is inevitable to understand the full meaning of The Declaration and its necessary acceptance in every part of the globe without the need to conclude international treaties or agreements, which is the focus of this work.

Therefore, the first chapter describes the fundamental terms and concepts in order to better understand how human experience and each of these a priori concepts which are impossible to know in themselves. The experience is derived from these a priori concepts which with the intuition of the three dimensions of space and time together open the possibility for experience to appear. The collecting of these experiences creates a knowledge about experienced subjects, which then can be used in decision making process in particular situations. All humans should act in accordance with "the fundamental principle of morality which is that each human being must do what he or she can, to preserve and promote free rational agency in both himself and others" (Kant 2, p. 410). From the fundamental principle of morality the moral law is derived, which is not modifiable according to circumstances and carries an absolute necessity. Since the moral law is not modifiable it has a categorical imperative, which is articulated in the form of formulas. From these formulas is the second one most related to issue of human rights. It is the "the formula of the End in Itself: act in such a way that you always treat humanity, whether in your own person or in the person of any other, never as a mean, but always at the same time as an end" (Kant 7, G 4:429). Hence, one should act as if his or her behavior would be a process of the creation of

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universal law, and never treat any human as a mean. The categorical imperative conduct maxims according to which one should act serve to seek or choose the maximum possible righteousness in their actions according to moral law. Maxims are not laws since they are not legally established, so they are not legally punishable. On the other hand ignoring these maxims can have a higher impact on the daily life of individuals, than ignoring of the laws. Therefore all humans should act according to the maxim conducted in categorical imperative, which serves the moral law that has to be unconditionally respected by all individuals in action. If this action is objectively practical it is called duty, which objectively agreement with the law, and subjectively - in the maxim of the action- respect for the law.

While the fundamental principle of morality is preserving and promoting the free rational agency the principle of duties of rights are maintain the external condition for promoting the free rational agency. Hence, in general "Right is sum of the conditions under which the choice of one be united with the choice of another in accordance with a universal law of freedom" (Kant 2, p.411).The right subsequently require the creation of law to "determinate the boundaries of these spheres of free agency but also enforce the preservation of these boundaries" (Kant 2, p.411). In order to secure right it have to be accepted in every part of the globe, so it have to universally accepted. So, this a process which begins in the human mind in a priori concepts through experience with the moral law and the definition of right in general. These are fundamental concepts which have to be defined in order to comprehend the conditions, which are linked to particular rights which.

Kant in *Perpetual Peace* describes three rights in three Definitive articles as a conditions for perpetual peace. The First definitive article is a State of Peace, whose civil constitution should be republican because it is "arising from the original source of the conception of Right" (Kant 1, p.57). The possibility for this condition to appear opens up the Civil right. The Second condition is the Federation of Free states in which the Right of Nation shall be founded (Kant 1, p.58). The possibility for this condition to appear opens up the International right. The last, third definitive article in conditions, is Cosmopolitan right, and so "Universal Hospitality" (Kant 1, p. 60). This condition unifies The State of Peace and The Right of Nation under the unwritten code in which states and individuals are equal. This condition also includes "the rights

of men as Citizens of the world in a cosmo-political system, and they will be restricted to the conditions of universal Hospitality" (Kant 1, p.61). In relation to each particular Right, which appears in each particular Constitution across all three conditions, the Right in each is prior to the Constitutions. These three Definitive Articles, which represent three conditions of perpetual peace, are co-foundational among each other and in themselves, as it is describe in first chapter.

The second chapter describes Derrida's development of the claim about hospitality in the cosmopolitan tradition represented by Kant, and the definitions of two forms of Hospitality. The first form is unconditional or pure, impossible, hospitality, and the second form is possible conditional hospitality. Derrida calls the law of unconditional hospitality a law, a singular law above all conditional plural laws, but it is not a platonic ideal but rather an a priori concept, which opens up the possibility of experiencing any kind of hospitality but not hospitality in itself. The second form is a conditional hospitality which "always entails a relationship of exchange and reciprocity, a regime of norms, customs, laws, and proportion" (Derrida 1, p.24). Therefore, this concept can appear only in the civil and the international conditions, which establish the conditions for hospitality. The conditions established by a state are closely related to the right to an asylum. Therefore, the work then describes the attitudes of Hannah Arendt, Jacques Derrida and Immanuel Kant, in order to conclude that it seems then that the issue for is in in the international law, which still operates on terms of reciprocal agreements and treaties, which limit the right of an asylum and the Right of Universal hospitality. According to Arendt the problem is that there is nothing above the states, which operated in old structures of international framework, but this does not mean for her that a "world government" would be a solution for this issue. According to Derrida those treaties among states limit the international law, but also claim that the "world government" would not solve the issue. In accordance with Kant, the agreement among states would not be an issue but rather the fact that there has to be cosmo-political constitution which would combine the rights of a men as a citizens of the world, but not a "world government". So it will not be a political structure with overarching power beyond all nations, but the common aspect of all constitutions in every part of the globe which would identically agree and therefore create a Cosmo-political constitution established in every civil constitution. These

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claims seem to be supported by research conducted at Princeton concludes that "the current system of international human rights law corresponds well with protection human rights only in special circumstances" therefore it does not work really well.

The first concept is described in the first chapter and it is the Right itself, the second concept of being universal is complemented and defined in second chapter and the third chapter complements work on the third concept of human right which are the main focus of The Declaration. These concepts all together create the full extent of The Declaration. The right itself is a foundational concept for all particular rights therefore also for human rights, and they should be secured and protected in the same way as the Right it self, as well as be universally accepted. The mailing of being universal is demonstrated on issue of universal hospitality which is written in The Declaration as the 14th article. Universality seems to be one of the most important aspects of securing rights but it is also perceived as a extreme idea of radical universalism which is ignoring the cultural relativism. These concepts are opposite of each other but this does not have to mean that they are mutually exclusive. Ben Weston "asserts that proponents of the universality of human rights, cannot convincingly succeed without approaching cultural pluralism in a manner that is consistent with the core value of human rights: respect" (R.P.Claude, B.H.Weston, 2006, p.5). On the other hand respect does not mean implementation or acceptance, and if the human rights as well as The Declaration will be respected by all but accepted by some, it will not mean that The Declaration and rights which it contains will be secured.

As well as the right itself also fundamental human rights conducted in the Declaration have to be universally accepted in every part of the globe in order to be secured. As well a the Right itself also human rights unify all humans and their choices towards other humans combined in conditions, which require protection, securing and maximization of its compossible spheres. So The Declaration should be accepted in every part of the globe in each Civil constitutions in order to secure the fundamental human rights. This could then bring the world closer to harmony among states, since all of them would have The Declaration as a part of their constitutions and so, respect for the fundamental human rights and doing so would begin to create the cosmopolitical constitution as a possible condition for perpetual peace.

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## Resumé

Táto práca predstavuje analýzu Univerzálnej Deklarácie Ľudských práv z Kantovej perspektívy, ktorá je neskôr rozvinutá Hannou Arendt and Jacquesom Derridom. Hlavným cieľom tejto práce je preukázať dôležitosť Univerzálnej Deklarácie Ľudských Práv a porozumieť konceptom, ktoré tento dokument zahŕňa.

Prvá kapitola definuje základné koncepty počínajúc tými, ktoré sú obsiahnuté v ľudskej mysli ako a priori koncepty, ktoré umožňujú ľuďom nadobudnúť skúsenosť v troch dimenziách času a priestoru voči objektu, ktorý je vnímaný zmyslami. Analýza v prvej kapitole ďalej pokračuje definovaním fundamentálneho princípu morality a morálneho zákona, ktorý je nemenný a teda využíva kategorický imperatív a jeho maximy. V práci sú definované všetky štyri kantove formulácie kategorického imperatívu, z ktorých druhá formulácia je najviac viazaná na koncept ľudských práv keďže jej znenie je: konaj tak, aby si používal ľudstvo ako vo svojej osobe, tak v osobe druhého vždy zároveň ako účel a nikdy len ako prostriedok (Kant 7, G 4:429). V záujme predchádzaniu možných nedorozumení je v práci porovnaný zákon a maximy ktoré sa nachádzajú v kategorickom imperatíve, keďže maximy nie sú zákonom a nemajú legálnu formuláciu, no mali by však ovplyvňovať každodenný proces rozhodovania sa u jednotlivcov. Morálne právo, ktoré využíva imperatív kôli svojej nemennosti a tomu, že modifikuje absolútnu nevyhnutnosť, nepredstavuje zákon no vyžaduje rešpekt voči zákonu. Následne je zadaný koncept povinností, ktoré rovnako vyžadujú objektívne -čiže v konaní- súhlas so zákonom a subjektívne -čiže za použitia maxím- rešpekt voči zákonu (Kant 3, p.81). Koncept povinností úzko súvisí s konceptom práva, keďže základným princípom povinností je udržiavať a propagovať vonkajšie podmienky pre zachovanie maximálneho možného slobodného výkonu racionálneho vplyvu a základným princípom práva je tieto externé podmienky udržať. Právo následne vyžaduje vytvorenie zákona na určenie hraníc sfér slobodného vplyvu rovnako ako aj presadzovanie zachovania týchto hraníc. Kant tvrdí, že podmienky práva v ktoromkoľvek regióne sveta nebudú zabezpečené pokiaľ nebudú splnené podmienky tohto práva v každom regióne sveta. Čiže právo samo vyžaduje univerzálnu akceptáciu so zámerom chrániť právo a jeho podmienky.



V ďalšej časti prvej kapitoly sú popísané jednotlivé druhy práv ktoré Kant opisuje v troch definitívny článkoch ako nevyhnuté kondície pre večný mier. Prvý definitívny článok opisuje Štát mieru, ktorého ústava by mala byť republikánska keďže táto konkrétna ústava vychádza priamo z konceptu práva. Tento článok obsahuje občianske právo keďže ono samo otvára možnosť pre existenciu občianskej ústavy. Druhý definitívny článok opisuje Federáciu slobodných štátov, v ktorej je založené právo národa. Podmienkou pre existenciu takejto federácie alebo akejkoľvek interakcie je medzinárodné právo. Tretím definitívnym článkom je Kozmopolitné právo, ktoré zjednocuje občianske právo a medzinárodné právo pod jednotný nepísaný kód. Toto právo zároveň reštriktuje práva ľudstva ako občanov sveta v kozmo-politickom systéme na podienky univerzálnej pohostinnosti.

Každé z práv, ktoré sa objavuje v jednotlivých konštitúciách alebo podmienkach, je to dané právo prednostné, keďže právo otvára možnosť pre existenciu týchto konštitúcií či federácie. Tieto práva majú medzi sebou vzájomnú závislosť a vzájomne sa jedno na druhom zakladajú.

Koncept univerzálnej pohostinnosti je v duhej kapitole vysvetlený Jacquesom Derridom a problémy a dišputy súvisiace s týmto konceptom a konceptom práva na azyl reprezentovaným rovnako aj v 14. Článku Deklarácie ľudských práv je posudzovaný z pohľadu Hannah Aredt, Kanta a Derridu. Je možné sa domievať, že všetci traja autori spolu súhlasia v argumente, že svetová vláda nieje riešením problému banalizácie ľudských práv a teda aj Deklarácie ľudských práv. Hannah Arendt tvrdí, že problém je v starých štruktúrach medzinárodného práva, ktoré je založené na recipročných zmluvách a nieje nič čo by stálo nad národnými vládami, a Jacques Derrida tvrdí, že toto medzinárodné právo je limitované práve týmito zmluvami. Vzhľadom na to, že Kant vníma štát ako absolútne vyjadrenie národa, je možné sa domnievať, že by reprezentovaný záujem štátu v medzinárodnom práve nemusel byť problém rovnako ako Derrida a Arendt svetová vláda nieje pre Kanta riešením pre večný mier, skôr zhoda v národných konštitúciách, ktorá by viedla k neskoršiemu vytvoreniu kozmo-politickej konštitúcie.

Tretia kapitola dopĺňa zafinované koncepty o definíciu konceptu ľudských práv ako univerzálneho a neodcudziteľného. Ďalej analýza pokračuje opisom problematiky

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medzi univerzalitou a kultúrnym relativizmom v aspekte ľudských práv. Keďže úplná univerzalita ľudských práv je vnímaná ako radikálna myšlienka z dôvodu ignorovania kultúrne relatívnych aspektov. Zlatá stredná cesta medzi týmito extrémami môže byť reprezentovaná aj ideou, že ľudské práva by mali byť rešpektované z pohľadu kulturálnej relativity no nie nevyhnutne implementované. Tretia kapitola ďalej opisuje niektoré z článkov, ktoré zahŕňa univerzálna deklarácia ľudských práv s tvrdením, že ani jeden z týchto článkov neopisuje žiadny konkrétny štát, osobu alebo skupinu ako sa píše v článku 30.

Na základe analýzy jednotlivých konceptov a aspektov, ktoré Univerzálna Deklarácia ľudských práv zahŕňa bolo možné dospieť k záveru, že ľudské práva popísané v tomto dokument by mali byť rovnako ako právo samotné akceptované univerzálne aby boli chránené, a v prípade, že by bola Deklarácia implementovaná do každej štátnej konštitúcie na svete, by to mohlo svet priviesť o krok bližšie ku kozmo-politnej konštitúcii ako možnému predpokladu na večný mier.

## **Appendix**

### **Universal Declaration of Human Rights**

#### **Preamble**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every

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individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### **Article I**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **Article 3**

Everyone has the right to life, liberty and security of person.

### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or

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correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

### **Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

### **Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### **Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### **Article 17**

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1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### **Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

### **Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance

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with the organization and resources of each State, of the economic, social and cultural  
rights indispensable for his dignity and the free development of his personality.

### **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

### **Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

### **Article 25**

1. Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.



Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### **Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

#### **Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.