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Perpetual Peace Models: An Analysis of Their Inadequacies

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Abstract

The relativist nature, cultural specificity and a priori approach to Peace Models make them tumultuous in the perspective of international law. A legal positivist's understanding of peace implies that it is a status akin to war, and construing it in philosophical terms yields absurdity. An argument will be made that European thinkers have dominated the field of Perpetual Peace Models, thereby eclipsing Buddhist and Islamic ones. The claim of an alleged 'universal' peace is a European affair that undermines the complex and nuanced nature of peace. Apart from its unidimensional European perspective, peace models have various factual infirmities—they fail to consider the status of neutrality, a legal device used by European countries to restrict the theatre of war; and they are moral axioms that fail to account for the complex nature of peace treaties. Peace treaties, which are only peaceful in name, also fail to reflect the inequality among the State parties. As the victor usually positions itself as the dominant actor in peace treaties, it dwarfs the defeated party's negotiating capacity. For instance, the Covenant of the League of Nations, though a part of Wilson's foreign policy, contained clauses that institutionalised imperialism and rejected sovereign equality in the most blatant manner possible.

Historically, the Kantian Peace model, though popular, is inconsistent with the Charter of the United Nations. Medieval peace models fail to consider the organic nature of peace. Peace in the 21st century is not merely the absence of war, but also the defence of self-determination, the protection of refugee rights, the institutionalisation of transitional and post-conflict justice, the upholding of human rights, and the observance of laws related to war. These added dimensions of peace make perpetual Peace Models a minimalist device for settling disputes. A curious case of peace formation is Japan, which adopted a pacifist constitution in 1945 under the influence of the USA, which was its Occupying Power. Article 9 of the 1945 Constitution made it unconstitutional for the Japanese to maintain an army. To circumvent this rigid provision, the Japanese government formed the Special Defence Force, which can be considered a legislative manoeuvre, and the Japanese Courts have questioned its constitutionality. The Japanese Constitutional Peace process raises specific questions of interest. Was the Japanese Constitution of 1945 an exercise of free will, as it was drafted under the influence and supervision of the USA as an occupying power? Has Article 9 and the Special Defence Forces created a curious conundrum in which the nature of peace itself has become a battleground between the legislature and the judiciary? This article explores such questions.

***Keywords**: Perpetual peace models, unidimensional European perspective*

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I. Introduction

Perpetual Peace Models have functioned as popular cognitive devices that hypothesize a transition from belligerency to pacifism. Their nature, however, is that of a species of political thought experiments and imaginative devices used for philosophical rebuttal.[1] Thought experiments come into play once 'concept' and 'logic' fail.[2] Various terms have been used to describe their nature, including plan, model, sketch, hypothesis, imaginary assumption, analogy, and idealized experiments.[3] Sorenson has termed them a technique of controlled speculation.[4] As the philosopher's instruments of choice, these representational devices are provisional as actual tools later replace them.

If thought experiments help interpret the ontology of Peace Models, then their political context must be juxtaposed with the formation of Europe's political order. Andrew Mansfield argued that both international law and peace models were intellectual endeavors to restrict the belligerent tendencies of the European continent.[5] Interestingly, Peace Models were developed as a parallel to the just war theory.[6] But where just war theory refined the *ius ad bellum* regime, Peace Models aimed to promote the value of pacifism. The concept of peace thus needs to be examined in isolation. Peace is antithetical to war and exhibits the following characteristics:

(a) Peace is an orderly procedure.

(b) It upholds the independence of one nation against the other.

(c) It condemns hegemony and the system of the Empire.[7]

Peace models were a product of medieval European schools of thought, particularly the Scholastic tradition, which condemned war.[8] The pacifist nature of the New Testament is attributed to the narrative of Peace Models. Some of the leading exponents of the Peace Model were St. Augustine, Thomas Aquinas, William of Ockham, Vitoria, Domingo de Soto, Ferdinand Vasquez, Baldus de Ubaldis, Cardinal Pierre Dubois, Grotius, Vattel, Dante, Erasmus of Rotterdam, Theophrastus Paracelsus, Josse van Chlichthove, Sebastian Frank, Amos Comenius, and Immanuel Kant.[9] Pierre Dubois' work, 'Of Recovery of the Holy Land' (1306), is one of the earliest recorded accounts of Peace Models.[10] Dubois' vision was a defense of secularism, in which the Pope was to be deprived of

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1 Katerina Ierodiakonou, 'The Triple Life of Ancient Thought Experiments' in Michael T. Stuart, Yiftach Fehige & James Roberts Brown (eds), *The Routledge Companion to Thought Experiments*, Routledge, New York, 1st edition, 2018, p. 31.

2 Kenneth R. Westphal, 'Thought Experiments, Epistemology and Our Cognitive (In)Capacities' in Michael T. Stuart, Yiftach Fehige & James Roberts Brown (eds), *The Routledge Companion to Thought Experiments,* Routledge, New York, 1st edition, 2018, p. 128.

3 Ierodiakonou (n 1), p. 33.

4 Roy A. Sorensen, *Thought Experiments,* Oxford University Press, UK, 1st edition, 1992, p. 7.

5 Andrew Mansfield, 'Émeric Crucé's "Nouveau Cynée" (1623), Universal Peace and Free Trade', *Journal of Interdisciplinary History of Ideas* p. 2, volume 2:4, 2013, p. 2, available at https://doi.org/10.13135/2280-8574/170, accessed on 17 July 2025.

6 Ibid, p. 10.

7 Ibid, p. 19.

8 Ibid, p. 4, 11.

9 Hans-Ulrich Scupin, 'Historical Movement Towards Peace' in Rudolf Bernhardt et. al (eds), *Encyclopedia of Public International Law, 4: Use of Force, War, and Neutrality Peace Treaties (N-Z)*, North Holland Publishing Company, Amsterdam, 1st edition, 2014, p. 79.

10 Don Scheid, 'Perpetual Peace': Kant in Deen K. Chaterjee (ed), *Encyclopedia of Global Justice*, Springer, New York, 1st edition, 2011, p. 827.

his temporal powers and the French King was to be empowered as the leader of the Christian faith.[11] The French King would preside over a Council to settle disputes among various kings. Dubois was the earliest thinker to suggest the institution of international arbitration.[12] Arbiters were to be appointed by the Council, and the award was to be binding on the parties. If the parties refused to abide by the terms of the arbitral award, such a delict would attract the sanctions of papal excommunication and military invasions.[13]

Dante Alighieri's '*De Monarchia*' was another monumental work that inspired young Hans Kelsen.[14] His Peace model, too, was a defense of secularism. Still, Dante was one of the earliest exponents of the theory of 'juridification of the State' that meant cognizing law through juridical relations. Dante was a Florentine diplomat who was exiled due to political upheaval and was unable to return to his home.[15] *De Monarchia* envisioned a world in which disputes between belligerent cities could be resolved through institutionalized peaceful means. Canning observes that Dante's first contribution to political philosophy was '*Convivio'*, in which he argued that sovereignty could derive only from God and should not be shared with the Church.[16] To achieve this, the Pope's powers would be diluted to strengthen the jurisdiction of the King.[17] The King was the judge (*iudex*) because he had jurisdiction (*iurisdictio*).[18] Here, Dante interprets the state in juridical terms, serving as a precursor to the concept of legal personality. Dante criticized the legal instrument of '*Donatio Constantini*' and said sovereignty was inalienable and not subject to waiver.[19] *Donatio* was the legal justification of the Church's temporal jurisdiction.[20] The origins of this document are, to say the least, controversial. The conventional narrative claims that Pope Sylvester cured Emperor Constantine's leprosy, and in a gesture of profound gratitude, Constantine ceded his sovereign realm to the Pope.[21] The ceremony involved Constantine presenting the Church with a spear, a cross, and a crown.[22] This event served as the basis for Walter von der Vagelweide's work.[23] The Church used the imperial insignia as a legitimate basis to assert its rule over the Western world.[24] The existence of this controversial document has been doubted throughout the centuries. Johannes Fried has termed it the 'most infamous forgery' in the world.[25] He further argues that certain legal impediments marred the instrument, as the concepts of inalienable imperial rights were yet to be invented.[26] Pope Gregory IX used the instrument to

11 Ibid.

12 Ibid.

13 Ibid.

14 Oliver Lespius, 'Hans Kelsen on Dante Alighieri's Political Philosophy', *European Journal of International Law* p. 1153, volume 27:4, 2016, p. 1154, available at https://doi.org/10.1093/ejil/chw060, accessed on 17 July 2025.

15 Ibid, p. 1156.

16 Joseph Canning, *Ideas of Power in the Late Middle Ages 1296-1417*, Cambridge University Press, UK, 1st edition, 2011, p. 61.

17 Scheid (n 10), p. 828.

18 John Jospeh Rolbiecki, *The Political Philosophy of Dante Alighieri,* Salve Regime Press, USA, 1921, p. 100.

19 Ibid, p. 123.

20 Canning (n 16), p. 159.

21 Rolbiecki (n 18), p. 123.

22 Ibid, p. 9.

23 Johannes Fried, *"Donation of Constantine" and "Constitutum Constantini": The Misinterpretation of a Fiction and its Original Meaning,* De Gruyter, Berlin, 1st edition, 2007, p. 7.

24 Ibid, p. 13.

25 Ibid, p. 1.

26 Ibid, p. 15.

assert his superior position over Frederick II.[27] The infamous forgery of the *Donatio* was perpetuated through frescoes.[28] These frescoes could be found in the *SS Quattro*. The legality of the *Donatio I* was disputed by medieval jurists Azo and Accursius.[29] The existence of this medieval instrument destabilised the base of the sovereign state. Through *Donatio*, the State could not have transferred sovereignty to the Church, as the indivisible nature of sovereignty was of utmost importance to Kings.[30] According to Biblical scriptures, the Church was not entitled to receive property.[31]

Crucé developed a Peace Model that is even more progressive than Kant's. '*Nouveau Cynée*' was the first Peace model to highlight the importance of international trade in establishing world peace.[32] Crucé innovated the Peace projects in various ways. Mansfield interprets Crucé to argue that a peaceful world could become a reality only if the Europeans could resist the invocation of the glorious war cry dating back to the Trojan War.[33] His model was the first to include all the world's civilizations, thus rejecting the Eurocentric nature of previous models.[34] The outstanding feature of his model was the emphasis on peace through commerce. This can be seen as a precursor to international trade and Doyle's Democratic Peace arguments.[35] The most well-known Peace Model is Immanuel Kant's. Kant, along with Christoph Wieland, represented the newly minted Prussian cosmopolitanism.[36] In the era of fervent, unconditional Prussian patriotism, these views of cosmopolitanism were considered radical. Wieland and Kant argued in favor of world citizenship.[37] Kantian morality transcends national boundaries, treating citizens and foreigners alike. Cosmopolitanism is imperative for every citizen, irrespective of nationality, to perform.[38] Kant's seminal essay, 'Toward Perpetual Peace', is a contractarian reimagination of the world polity. Here, Kant countered Hobbes' pessimistic views on international relations and argued that, as in the municipal sphere, states could escape anarchical conditions at the global level by entering into a voluntary moral contract. The origins of the Kantian peace model and international peace can be traced to his essay 'Idea for a Universal History from a Cosmopolitan Perspective.'[39] Unlike Toward Perpetual Peace, Kant's Idea for a Universal History from a Cosmopolitan Perspective favored a legalist defense of international peace backed by sanctions.[40] In 'Metaphysics of Morals,' Kant defines perpetual peace as the highest political good, condemns colonialism, briefly mentions the postbellum situation, assesses the right of neutrality and analyses collective security.[41] Kant further states that perpetual peace might be impossible, but the political principles that scaffold it have an aspirational value.[42] Towards Perpetual Peace is not Kant's best

27 Ibid, p. 21.

28 Ibid, p. 23.

29 Ibid, p. 30.

30 Rolbiecki (n 18), p. 123.

31 Ibid, p. 124.

32 Mansfield (n 5), p. 2.

33 Ibid, p. 9.

34 Schneid (n 10), p. 828.

35 See Michael W. Doyle, *Liberal Peace: Selected Essays,* Routledge, New York, 1st edition, 2011.

36 Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship,* Cambridge University Press, UK, 1st edition, 2011, pp. 13-14, 19.

37 Ibid, p. 19.

38 Ibid.

39 Ibid, p. 45.

40 Ibid, p. 49.

41 Immanuel Kant, *The Metaphysics of Morlas*, Cambridge University Press, UK, 2017, p. 128; Ibid, p. 129.

42 Ibid, p. 130.

writing, as he does not write it using a typical abstract method of philosophy.[43]

Considering Kant's Prussian roots, it is vital to appreciate his views on peace. Since empiricism could never be grounded in Prussia, the State came to be eulogized in the most ardent manner possible.[44] War and preparation for war were the two time zones of Prussia. It is in this Prussian context that W.B. Gallie referred to Kant as the first internationalist.[45] Kant's political thought cannot be divorced from his conceptual understanding of reason. There are two taxonomies of Kant's reason: theoretical and practical. Kant's theoretical reason can be attributed to Newton's ideas.[46] Theoretical reason is responsible for ordering knowledge through space and time. It is scientific and deterministic.[47] Amidst the certainties of science, humans are endowed with the element of choice in the form of duty and justice. This is the practical aspect of reason.[48] Kant owes his views on political philosophy to Rousseau.[49] Kant's views on peace are an aspect of his practical reason. It is essential to categorize Kant's peace model into one category, as he was not a pacifist per se and did not believe in the sanctity of international law.[50] His views on peace are an extension of his moral axiom, the Categorical Imperative. The relationship between Kant's Categorical Imperative and Perpetual Peace has been constructed in myriad ways. Onora O'Neill considers Towards Perpetual Peace to be an extension of his arguments in 'Critique of Pure Reason'.[51] Critique of Pure Reason is a political metaphor.[52] If peace is an aspect of toleration, then toleration is deeply connected to morality, thus making the critical philosophy a critical enterprise.[53] Dewey considers Kant the first exponent of political philosophy to regard the State as a moral person.[54] Caygill associates the Categorical Imperative with Prussian disinterested obedience.[55] An imperative for Kant is the same as that of a command. These imperatives are a part of morality and constitute the Kantian aspect of critical reason.[56] A Categorical Imperative is not conditioned by any particular end and is pursued for the sake of an ought, non-derogatory duty.[57] An example of a Categorical Imperative is Kant's famous moral axiom, 'Act only on that maxim through which you can at the same time will that it should become a universal law.'[58] Categorical Imperative is applicable at the individual, municipal, and international levels.[59] Kant's

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43 W.B. Gallie, *Philosophers of Peace and War: Kant, Clausewitz Marx Engles and Tolstoy,* Cambridge University Press, UK, 1st edition, 1978, p. 12.

44 Mark Textor, *The Disappearance of the Soul and the Turn Against Metaphysics: Austrian Philosophy 1879-1914,* Oxford University Press, UK, 1st edition, 2021, p. 8.

45 Gallie (n 43), p. 21.

46 Ibid, p. 15.

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid, p. 26.

51 Onora O'Neill, *Construction of Reason: Exploration of Kant's Practical Philosophy*, Cambridge University Press, UK, 1st edition, 1989, p. 29.

52 Ibid.

53 Ibid.

54 John Dewey, *German Politics and Philosophy*, Henry Holt and Company, New York, 1st edition,1915, pp. 65-66.

55 Howard Caygill, *A Kant Dictionary*, Blackwell Publishing, Malden, 1st edition,1995, p. 99.

56 H.J. Paton, *The Categorical Imperative: A Study in Kant's Moral Philosophy*, University of Pennsylvania Press, Philadelphia, 1st edition, 1971, p. 114.

57 Ibid, p. 127

58 Ibid, p. 129.

59 Gordon P. Henderson, 'Idealism, Realism, and the Categorical Imperative in Kant's Perpetual Peace', *Commonwealth A Journal of Pennsylvania Politics and Policy* p. 1, volume 12:1, 2003, p. 5.

essay on Perpetual Peace comprises two sections, two supplements, and two appendices.[60] The First Section is composed of six preliminary articles, which can be interpreted as six actions that States ought not to perform in their international dealings:

(a) No conclusion of peace shall be considered valid if it was made with a secret reservation of the material for a future war.[61]

(b) No independently existing state, whether large or small, may be acquired by another state by inheritance, exchange, purchase or gift.[62]

(c) Standing armies (*miles perpetuus*) will gradually be abolished.[63]

(d) No national debt shall be contracted with the state's external affairs.[64]

(e) No State shall forcibly interfere in the constitution and government of another State.[65]

(f) No State at war with another shall permit such acts of hostility as would make confidence impossible during a future peace. Such acts would include the employment of assassins (*percussores*) or poisoners (*venefici*), breach of agreements, the instigation of treason (*perduellio*) within the enemy state, etc.[66]

The Second Section comprises three definitive articles, which can be called three favourable conditions that States ought to incorporate into their internal polity. Through these articles, Kant attempted to demonstrate how a state's internal conditions might contribute to promoting world peace:

(a) The civil constitution of every State shall be republican.[67]

(b) The right of nations shall be based on a Federation of Free States.[68]

(c) Cosmopolitan rights shall be limited to conditions of universal hospitality.[69]

The six preliminary articles relate to the principles of secret reservations to treaties, sovereign equality, non-use of force, and non-intervention. The three definitive articles are akin to the modern state-building measures prevalent in conflict management.[70] The European Perpetual Peace Models show the following common characteristics:

(a) They are the constructions of a thought experiment.

(b) They are desirous of a Europe that is less belligerent.

(c) Disputes ought to be settled peacefully.

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60 H.S. Reiss (ed), *Kant: Political Writings*, Cambridge University Press, UK, 2nd edition, 2015, pp 99-130.

61 Ibid, p. 93.

62 Ibid, p. 94.

63 Ibid.

64 Ibid, p. 95.

65 Ibid, p. 96.

66 Ibid.

67 Ibid, p. 99.

68 Ibid, p. 100.

69 Ibid, p. 105.

70 Oliver Ramsbotham, Tom Woodhouse & Hugh Mall, *Contemporary Conflict Resolution,* Polity Press, UK, 1st edition, 2016, pp. 255-260.

(d) Peace can be attained if there is a movement from theocracy to secularism.

(e) The moral axiom is the foundation of European peace models.

(f) These thought experiments were not based on the Law of Treaties.

The article challenges the axiomatic, *a priori* approach of Peace Models. The models suffer from serious legal infirmities, which make them an anachronism in the contemporary legal world. One of the most serious conceptual drawbacks was the inability of peace theorists to interpret peace through the medium of a legal personality. As a perennial narrative of international law, peace desires legal solutions and structures. In the 20th century, peace became institutionalized as international organizations proliferated. International organizations are now a standard means of achieving peace. The peace project came under the influence of international organizations after the regime ratified the Covenant of the League of Nations. This can be turned into the process of legal institutionalization of Peace. Here, peace is no longer a moral axiom but a legal issue, with its contours and content shaped by treaty law. The Reparation Case conferred legal personality on international organizations for the first time.[71] Post-1945, international law conferred legal personality on individuals and international organizations through judicial decisions. Liberalization changed the contours of peace, as human rights and international treaties began to shape its content. The Peace models relied heavily on the state's grace. The 20th century changed this discourse by introducing new actors of legal personality and witnessed a shift in the concept of peace that older models could not have anticipated. The manifestation of peace through international organizations introduced an element of legality, as a moral project was condensed into a network of juridical relations. The term peace was incorporated into the Preambles of international organizations.[72] From the Kelsenian perspective, legal personality is an aspect of legal monism, in which States, individuals, and international organizations are brought under a single legal category.[73] The formal conception was the most inclusive approach to legal personality.[74] Through the formal approach, international organizations became legal actors entrusted with promoting peace. By incorporating international organizations, the State lost their monopoly over peace. Peace models have always deferred to the state in maintaining peace, but international organizations changed the narrative in a post-1945 world. They have transcended bilateral diplomacy and have a voice of their own.[75] States are now under a duty to dispute their disputes peacefully.[76] Kelsen's 'Peace Through Law' is the only peace model based on law, not moral axioms.[77]

II. A Critique of Peace Models

Peace Model theorists, as products of their time, could not capitalize on the concept of collective security. In the 20th century, collective security emerged as the most widely adopted method for maintaining peace. Tsagourias and White's analysis of collective security reflects the inadequate nature of state-centric peace advocated by the peace theorists, '…because individual states do not have the

71 Roland Portman, *Legal Personality in International Law,* Cambridge University Press, UK, 1st edition, 2010, p. 99.

72 *United Nations Charter*, 24 October 1945, 1 UNTS XVI, San Fransico, 26 June 1945, Preamble.

73 Portman (n 71), p. 175; Michael H. Ducey, *The Legal Positivism of Hans Kelsen,* Degree of Master of Arts, Loyola University, 1959, pp. 323-324.

74 Portman (n 71), p. 177.

75 Clive Archer, *International Organizations,* Routledge, UK, 1st edition, 2001, p. 74.

76 *UN Charter* (n 72), art. 33.

77 See Hans Kelsen, *Peace Through Law,* The Lawbook Exchange Ltd, USA, 1st edition, 2008.

ability and resources to constantly and indiscriminately secure international peace and security for the society of states, the intervention of a public authority is required.'[78]

They have further described the goal of collective security as the attainment of two public goods: peace and security.[79] The terms 'peace' and 'security' are used throughout the Covenant and the Charter. Collective security negates Kant's Third Preliminary Article, which advocates for the abolition of standing armies in their entirety. The concept of collective security is inherently linked to the preservation of states' territorial integrity.[80] This territorial integrity can be preserved through the collective security mechanism only with the help of the standing armies of the Member States.[81]

Peace models assume an *a priori*, universalist approach to peace, thereby circumventing its empirical existence. The paper argues that legally, peace is not a metaphysical phenomenon, but an aspect of positive law. Peace is a positive act, not available to the world in an absolute and ethical fashion. The content of peace may vary depending on its legal status and context. In positivist terms, statuses refer to legally defined social conditions that have been institutionalized.[82] From an analytical perspective of the law of treaties, peace manifests itself through the provisions on ceasefire and neutrality. Peace models do not adequately account for the diverse nature of peace. A positivist understanding of peace shows its varied form and content. In its purest positivist form, peace is not merely a value but a legal status that can be observed in collective security, neutrality, and ceasefire. The Max Planck Encyclopedia of International Law defines neutrality as the legal status of a state that refrains from participating in a war waged by other states.[83] Neutrality can be temporary or permanent. Since neutrality is a status, it becomes operative only when a war arises. Neutrality, being an aspect of status, was practiced by President Washington. The USA remained a neutral State till 1917.[84] The US government enacted the Neutrality Acts in 1935, 1936, 1937, and 1939, and remained neutral until 1941.[85] The concept of neutrality is employed during times of war. Therefore, an armed conflict is a presupposition of neutrality.[86] Neutrality is applicable in times of war and peace, but is redundant in a civil war.[87] It has been categorized as occasional, long-term, and permanent.[88] A declaration of neutrality was a safety valve that prevented colonization of Thailand, Japan, and Ethiopia for a considerable period of time.[89] The United States adopted a policy of neutrality as its foreign policy strategy. Its neutral policy was part of Enlightenment foreign policy, grounded in the principles of peace, liberty, and equality.[90] Unlike its European counterpart, the American neutral policy was idealistic and moralistic.[91] It allowed the USA to adopt the strategy of "splendid isolation." George

78 Nicholas Tsagourias & Nigel D. White, *Collective Security: Theory. Law and Practice*, Cambridge University Press, UK, 1st edition, 2013, p. 21.

79 Ibid.

80 *UN Charter* (n 72), art. 2(4).

81 *UN Charter* (n 72), arts. 39-51.

82 Adolf Berger, *Encyclopedic Dictionary of Roman Law,* The Law Book Exchange Limited, USA, 1980, p. 714

83 Rudolf L. Bindschedler, 'Neutrality, Concept and General Rules' in R. Bernhardt et al. (eds) (n 9), p. 9.

84 Leos Muller, *Neutrality in World History,* Routledge, USA, 1st edition, 2019, p. 1.

85 Ibid.

86 Ibid, p. 4.

87 Ibid, p. 5.

88 Ibid.

89 Ibid, p. 86.

90 Ibid.

91 Ibid.

Washington made neutrality a pertinent part of the American Grand strategy.[92] Woodrow Wilson holds the distinct honor of using neutrality and collective security in his political maneuverings.

Both neutrality and collective security are institutionalized methods of peace, but they differ conceptually. Collective Security is a cooperative, community-based strategy grounded in solidarity. It is a 'top-down' approach to peace. Permanent neutrality, on the other hand, is based on solitude. It aims at self-protection and is a direct approach to peacekeeping.[93] It is decentralized and, in stark contrast to collective security, a bottom-up approach to peace.[94] The institution of Neutrality is not dependent on an international organization.[95] Permanent neutrality was a crucial tool for conflict management.

Apart from neutrality and collective security, peace treaties condition the legal status of peace. They ended the war and reintegrated political relations. Despite being called 'Peace' treaties, they can be punitive. If peace treaties are concluded with an oblique motive, they tend to frustrate the very purpose of peace. According to Wilhelm, a frequent resort to punitive treaties will make peacekeeping a lost art.[96] Grewe states the following requisites of a peace treaty.

(a) It shall focus on establishing friendly, political, economic, and cultural relations.

(b) It may eliminate the future causes of war.

(c) There shall be no reversion to past conflicts.

(d) There shall be no scope for humiliation, punishment, or discrimination. [97]

Peace treaties have often been used to subvert pacifist relations. When represented through posited methods such as treaties, peace tends to create future causes of belligerency. Here, the posited methods of peace produce radically different results from the *a priori* Peace Models. The Treaty of Versailles was the first punitive peace treaty since the Middle Ages that dealt a blow to state sovereignty.[98] The framers of the treaty rejected the positivist tone of treaty-making and relied on the natural law method of just war.[99] Germany was required to pay an unreasonable number of reparations, was commercially discriminated against, and the Allies granted themselves the status of 'most favored nation'.[100]

Turkey was another site for an unjust peace treaty. The system of capitulations played a significant role in ushering in a regime of unequal treaties in the Ottoman Empire, which later became known as the Ottoman Empire, and subsequently, as Turkey. The '*ahidname*' granted by the Sultan of the Ottoman Empire conferred religious and commercial benefits on European citizens residing in the

92 William C. Martel, *Grand Strategy in Theory and Practice: The Need for an Effective American Foreign Policy,* Cambridge University Press, UK, 1st edition, 2015, p. 173.

93 Stephen C. Neff, 'A Tale of Two Strategies: Permanent Neutrality and Collective Security' in Herbert R. Reginbogin & Pascal Lottaz (eds), *Permanent Neutrality: A Model for Peace, Security, and Justice,* Lexington Books, Lanham, 2020, p. 16.

94 Ibid.

95 Ibid.

96 Wilhelm G. Grewe, 'Peace Treaties' in R. Bernhardt et al. (eds), (n 9), p. 109.

97 Ibid.

98 Randall Lesaffer, 'Introduction' in Randall Lesaffer (ed.), *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One,* Cambridge University Press, UK, 1st edition, 2004, p. 4.

99 Stephen Neff, 'Peace and Prosperity: Commercial Aspect of Peacemaking', in Randall Lesaffer (ed), (n 99), p. 375.

100 Ibid.

area.[101] This system, which came to be known as the capitulation regime, served as a precursor to the concept of extraterritoriality. The system continued from the 16th century to the outbreak of World War I. After the Great War, Turkey faced the humiliating treaties of Sèvres and Lausanne. All the European powers were determined to retain their extraterritorial privileges, while the Young Turks saw the end of the extraterritorial regime as the first step towards Turkish self-determination.[102] In the S.S. Lotus case, travaux preparatoires of the Treaty of Lausanne were used to argue that Turkey lacked the power to exercise its extraterritorial criminal jurisdiction over French citizens.[103]

Japan is a curious example of unequal treaties. Following the conclusion of the Second World War, the Potsdam Conference designated the United States as the occupying power of Japan. The Japanese instrument of surrender was unique in granting the USA unlimited jurisdictional powers as an occupying power. It was unconditional and prepared by the Supreme Commander of the Allied Forces with the help of the US State, War, and Navy Departments' Coordinating Committee.[104] The Supreme Commander of the Allied Forces created the International Military Tribunal for the Far East.[105] The Tribunal had jurisdiction over crimes against peace, war crimes, and crimes against humanity.[106] The post-bellum arrangement in the form of the Tokyo Tribunal represents the creation of political hegemony in the guise of a Peace project. The Tokyo trials are a unique contest between law and morality, where the ethnocentric behavior of the occupying powers subverted legality in favor of legitimacy.

III. The curious case of the Pacific Polity of Japan

Japan is an interesting case in which the American occupation orchestrated peace; it is a testament to the thesis that peace in international law is a product of treaties, shaped by a post hoc positivist approach. The American Occupying powers diffused Japanese military prowess by incorporating international commitments in the new Japanese constitution. It was the laws of occupancy and treaty that engineered peace, rather than an *a priori* peace model. This narrative of peace emanating from an occupying power and incorporated into a state's constitution is an interesting strategy for achieving peace in a post-bellum context. The Japanese case is that peace, as a status, is shaped by treaties, and an a priori approach to Peace Models is of little significance. This claim is substantiated by the law of occupation and its nexus with peace. An occupation can be defined as a situation in which the territory of a belligerent state is placed under the authority of the opposing army.[107] The authority above needs to be established and exercised. The occupying powers must exercise physical control over any part of the country.[108] Takahashi enumerates the following categories of occupation:

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101 Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China,* Cambridge University Press, UK, 2010, p. 107.

102 Ibid, p. 137.

103 Douglas Guilfoyle, 'S.S. Lotus (France v Turkey) (1927)', in Eirik Bjorge & Cameron Miles (eds), *Landmark Cases in Public International Law,* Hart Publishing, Portland, 1st edition, 2017, p. 92.

104 Neil Boister & Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal,* Oxford University Press, UK, 1st edition, 2008, p. 21.

105 Ibid, p. 25.

106 Ibid, p. 95.

107 *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, 26 January 1910, 205 CTS 277, Hague, 18 October 1907, art. 42.

108 Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law,* Martinus Nijhoff Publishers, Leiden, 1st edition, 2009, p. 6.

(a) Post-armistice occupation.

(b) The Mixed occupation.

(c) Post-surrender Occupation.

(d) Post-Debellatio Occupation.

(e) Pacific Occupation.[109]

The Japanese situation is covered under point (c). The Japanese system differed from the German one because, unlike Germany, Japan had a functioning government when the occupation began.[110] The Japanese occupation happened after the cessation of the hostilities.[111] The Japanese surrender resulted from two treaties, namely the Instrument of Surrender and the Potsdam Declaration.[112] The occupation of Japan led to the democratization and demilitarization of Japan. This new wave of democratization and demilitarization questions the ontology of the European Peace Models. The question that is to be asked is whether the pacifist nature of Japan was a conscious decision of the Japanese or was it the imperative of an occupying power that deprived the Japanese of any conceivable political agency? The pacifist nature of the Constitution is intrinsically linked to the General Headquarters (GHQ), the Supreme Commander of the Allied Forces (SCAP), the Instrument of Surrender, and Article 43 of the Hague Regulations of 1907. Article 43 of the Hague Regulations, 1907, states that the occupying power shall have the power to take all measures to restore and ensure public order and safety and respect, unless absolutely prevented, the laws in force of that country. The injunction not to alter the local laws of the occupied State is related to the question of peace. The state practice of the occupying powers suggests that the language of Article 43 should not be interpreted in a manner that yields unreasonable results.[113] The rigorous requirement not to alter the laws of the occupied territory was waived in the case of Japan, as the Instrument of Surrender authorized GHQ and SCAP to radically change Japan's legal culture.[114]

The GHQ and SCAP induced the pacifist Constitution of Japan, which had traces of ethnocentrism. The postbellum political rearrangement of the Japanese Constitution reflected influences from the US Bill of Rights and New Deal social legislation.[115] The post-war Japanese political order has been referred to as an instance of 'subordinate independence' within the universalist narrative of 'Pax Americana'. The occupational reforms were aimed not only at political democratization but also at the economic democratization of Japan. Along with introducing popular sovereignty, pacifism, and human rights, the occupying forces demilitarized production and eliminated paternalism from the workplace.[116]

MacArthur had traces of imperialism in his professional design and equated the Japanese occupation with the Roman occupation of Gaul.[117] Takemae Eiji writes about MacArthur:

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109 Ibid, pp. 27-40.

110 Ibid, p. 31.

111 Ibid, p. 35.

112 Ibid, p. 36.

113 Ibid, p. 109.

114 Ibid, p. 112.

115 Takemae Eiji, *Inside GHQ The Allied Occupation of Japan and its Legacy,* Continuum, London, 1st edition, 2002, pp. xxviii, xxxix.

116 Ibid, p. xxxix.

117 Ibid, p. 5.

> MacArthur believed that America, with its 'advanced spirituality', had a civilizing mission to perform, a moral obligation to free the Japanese people from 'the enslavement of feudalism'. Japan was 'the world's excellent laboratory for an experiment in the liberation of a people from totalitarian military rule and the liberalization of government from within…[118]

At the Potsdam Declaration, the Japanese government expressed its desire not to dilute the status of the Emperor, but the Allied Powers firmly rejected the request and favored popular sovereignty.[119] MacArthur suggested to Prince Konoe Fumimaro that the Japanese government should lead Japan's democratization, and as a result, the Matsumoto Committee was established.[120] It has been observed that GHQ and SCAP were initially not keen on preparing their draft of the new Japanese constitution, despite the initiative being from the Japanese government.[121] The Matsumoto Committee, however, produced a relatively conservative plan that could be described as a touch-up of the Meiji Constitution.[122] The Matsumoto draft was based on four principles: the Emperor retained the right to sovereignty; the Diet had increased powers; ministers were responsible to the Diet and were not to be influenced by royal interventions; and the rights of citizens gained higher sanctity.[123] Tanaka Hideo notes that the Matsumoto draft was more concerned with the textual nature of law (a perhaps positivist tendency) and was less receptive to Japan's changing social conditions. General Whitney and the members of GHQ were not impressed and prepared a draft of their own.[124]

The Public Administrative Division of the Government Section based its work on McArthur's notes and on the State-War-Navy Coordinating Committee 228, and presented a draft of a model constitution on 11 February 1946. The final Constitution, which had popular sovereignty, pacifism, and the guarantee of fundamental human rights as its core principles, was promulgated on November 3, 1946, and took effect on May 3, 1947.[125]

At the forefront of the new Japanese Constitution is its pacifist clause, Article 9. The text of the Article states in its first paragraph:

> 'Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounced war as a sovereign right of the nation and the threat or use of force to settle international disputes.'

Paragraph 2 of Article 9 states:

> 'To accomplish the aims of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The Right of the belligerency of the state will not be recognized.'

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118 Ibid, p. 7.

119 Tanaka Hideo, 'The Conflict between Two Legal Traditions in Making the Constitution of Japan' in Robert E. Ward & Sakamoto Yoshikazu (eds), *Democratizing Japan: The Allied Occupation,* University of Hawaii Press, Honolulu, 1987, p. 76.

120 Ibid, p. 107.

121 Ibid, pp. 109-110.

122 Ibid, p. 110.

123 Ibid.

124 Ibid, p. 119.

125 Theodore McNelly, 'Disarmament and Civilian Control in Japan: A Constitutional Dilemma', *Occasional Papers/Reprint Series in Contemporary Asian Studies* p.1, volume 53:8, 1982, p. 98.

Theodore McNelly has offered his English translation of the first paragraph of Article 9:

> The Japanese people, aspiring sincerely to an international peace based on justice and order, renounced forever, as a means of settling international disputes, war as a sovereign right of the nation and the threat or use of force.[126]

The pacifist clause originated in constitutions that incorporated it after the conclusion of the Kellogg-Briand Pact in 1928. Some examples are the 1931 Constitution of Spain, the 1935 Constitution of Spain, the Burmese Constitution of 1947, and the Italian Constitution of 1947.[127]

The pacifist clause has been a contentious issue in Japanese politics. It is a curious case where the idea of peace does not come immediately from the Japanese people, but from a benevolent occupying power that tends to mould the world in its image. The Japanese experiment in peace questions the a priori approach of the Peace Models. In the contemporary world, the issue of peace is shaped by treaty-specific contexts, where the content of pacifism may vary depending on the problem the treaty seeks to address. The issue of peace has created another legal controversy in the Japanese legal tradition. The Japanese Courts have embroiled themselves in a bitter controversy by questioning the constitutionality of the Self-Defense Forces (SDF), thereby testing the extent of constitutional pacifism in the era of collective security. The National Police Reserve was the predecessor of the SDF.[128] The National Police Reserve was established by Douglas MacArthur in 1950, when a significant portion of the occupying forces was transferred to address the Korean crisis.[129] They were trained by the Americans and were rechristened as the SDF in 1954.[130] The presence of SDF has been criticized due to Article 9. So far, there has been an accumulation of three points of view regarding the legality of SDF:

(a) SDF or any defense force is unconstitutional due to the diktat of Article 9.

(b) Forces used for self-defense are constitutional.

(c) The legality of the defense forces can be clarified only through an amendment.

Option (c) is highly improbable because the amendment procedure requires a two-thirds majority in both houses of the Diet and a majority vote in the referendum.[131] The constitutionality of SDF has been challenged in a catena of cases that tend to show the unique nature of pacifism in Japan. What exactly is the status of peace? Is its extent so rigid that it is intolerant of a nation's inherent right of self-defense? Does the Japanese constitutional identity reflect its national identity? The questions demonstrate the complex relationship between international law, constitutional law, and conflict management studies.

Article 9 is to be shown as an extension of the enmity clauses of the Charter of the United Nations.[132] This 'dogmatic peace' has been labelled 'peace idiocy', thus transforming an object of pride into one

126 Ibid, p. 3.

127 Duc Tien Nguyen, 'Farewell to Pacifism the Changing Facet of Japan's Constitutional Identity', *KLRI Journal of Law and Legislation* p. 344, volume 10:2, 2020, p. 360.

128 Robert L. Seymour, 'Japan's Self-Defense: The Naganuma Case and Its Implications' *Pacific Affairs* p. 421, volume 47:4, 1974, p. 426.

129 Ibid.

130 Ibid.

131 *The Constitution of Japan*, 1947, art. 96.

132 *UN Charter* (n 72), arts. 53, 107.

of shame.[133] Until the 1940s, the Japanese government interpreted the constitution as implying that war, even in self-defense, was impermissible.[134] The attitude towards self-defense changed after the geopolitical ascension of China and North Korea.[135] The Japanese courts have been conferred the power of judicial review under Article 81. The courts have used this power to adjudicate the legality of the SDF and Japan's pacifist policy. In Sakata vs. Japan, the Courts had an opportunity to test the legality of the SDF. A Japanese radical group had encroached on an American air base in Japan, and the group justified their actions by stating that the U.S.-Japan treaty was unconstitutional.[136] The court held that self-defense was an inherent right of the states, but it declined to comment on the legality of the SDF.[137] The Naganuma case is the most famous case related to Article 9. The case concerned the construction of an air base for the Japanese SDF, which was to be used for the disposal of anti-aircraft missiles.[138] To facilitate the project, the Department of Agriculture lifted the ban on the use of the forest area, allowing residents to file a case. The residents said that the Department of Agriculture's act was unconstitutional and that the alliance between the US and Japan violated Article 9.[139] The trial judge, Shigeo Fukushima, agreed and held that the SDF had acted unconstitutionally, violating the citizens' right to live in peace.[140] The High Court overruled this case, and on appeal, the Supreme Court dismissed it for lack of *locus standi*.[141]

IV. Conclusion

The peace models and their inadequacies are primarily based on Western legal theory, which is a contentious subject. The paper suggests that understanding peace requires an appreciation of cultural diversity. In Western legal philosophy, peace is interpreted as a public good that should be arranged among States through the binding force of treaties. This is a formalist understanding of peace. The Asian narrative of peace encompasses dimensions that are often overlooked by a formalist European perspective. The Buddhist views on international peace are such an example. Buddhist peace is not formalistic like its European counterpart, but spiritual and ritualistic. Buddhism, a study of cognition and human psychology, aims to eliminate the very root of conflicts by propagating the righteous path of morality. Buddha identifies craving, conceit, false views, greed, hatred, and delusion as the causes of all political conflicts.[142] Political peace can be established if these feelings of ill will are eliminated. Political leaders must practice '*rajadhamma*', which encompasses generosity, morality, self-sacrifice, honesty, kindness, austerity, non-anger, non-violence, patience, and conformity to the

133 Nguyen (n 127), p. 373.

134 Donald DeKieffer, 'Exercise of Force by the Japanese Self-Defense Force', *North Carolina Journal of International Law* p. 69, volume 16:1, 1991, p. 71.

135 Ibid.

136 James E. Auer, 'Article Nine of Japan's Constitution: From Renunciation of Armed Force "Forever" to the Third Largest Defense Budget in the World', *Law and Contemporary Problems* p. 171, volume 53:2, 1990, p. 181.

137 Ibid.

138 Yuichiro Tsuji, 'Independence of the Judiciary and Judges in Japan', *Revista Forumul Judecatorilor* p.88, volume 2, 2017, p. 94.

139 Ibid.

140 Ibid.

141 Auer (n 136), p. 182.

142 Dr. Kudeb Saikrachang, 'Buddhist Approach to Political Conflicts and Peace Development', *Buddhist Approach to Political Conflict and Peace Development,* International Association of Buddhist Universities, Thailand, 4-6 May 2009, p. 168, available at https://www.undv.org/books/program2010.pdf, accessed on 21 July 2025.

law.[143] If the Western view equates peace with security, then the Buddhist view considers peace and happiness synonyms. King Ashok's cultural-spiritual diplomacy was the successful application of the Buddhist peace model. The missionary interaction through trade routes was pivotal in spreading the Buddhist peace method.[144] The Buddhist peace model is inward-looking and espouses spreading peace through the moral purity of the political sovereign. The *Agganna-Sutta* and *Digha Nikaya* act as a moral compass for a political sovereign.[145]

The conceptual differences between Western and Buddhist models of peace are glaring. The peace models carrying a European flavor are based on a contractualist view of the polity. The basic unit of the social contract theory is the individual, whose characteristics are superimposed on the state through the device of hypostasis. The individual in the contractarian tendency is an entity possessing autonomy, agency, and personality. It is this sense of agency that enables an individual to develop a conceptual understanding of governments at both national and international levels. The desire for peace is an extension of the rationalist perspective of personality. A rationalist-utilitarian individual is the conceptual presupposition of the peace model thought experiment. This popular narrative has overshadowed the Buddhist theories of social contract governance.

The contractarian peace theory of Buddhism is inherently connected to the notion of 'no-self'. This theory counters the anthropocentrism view of the Enlightenment era. The Western understanding of the self is reflected in the concepts of autonomy, agency, personality, self, and rights. The idea of the self is a construct stemming from a long epistemic lineage that includes Roman Law, the Reformation, the Renaissance, the Enlightenment, and the Industrial Revolution. The contentious nature of the self makes possible the existence of the State and other special forces. The Western self is a physical metaphor of momentum that asserts itself through political choices in the face of external social forces.[146] The Buddhist 'no-self' doctrine, on the other hand, is based on the anatta doctrine that states that human existence is a composition of form, sensation, cognition, volition, and consciousness.[147] Humans have no volitional force over these essential constituents.[148] Therefore, there is no 'true self'. The self is merely a constituent of all the essential factors. Here, the notion of 'no-self' can be connected to the principle of compositionality. This hypothetical imperative can be used to understand the Buddhist political theory of governance.

The Buddhist theory of governance can be found in the *Agganna Sutta*, the *Cakkavatti Sutta*, the *Mahaparinibbana Sutta*, and the *Jataka tales*.[149] According to Buddhist political philosophy, the monarch would apply the non-egoist nature of the 'non-self' doctrine in addressing political issues. The wheel-turning monarch would encourage the people to progress towards moral purity. Temporal affairs are made subservient to spiritual powers. The sangha's moral voice made it the arbiter of the political dispute.[150] Ashoka's policy is the practical manifestation of Buddhist philosophy. Ashoka's imagined community of an international people was based on spirituality and 'dhamma'. '*Dhamma*'

143 Ibid.

144 Cory Michael Sukale, *A State of Impermanence: Buddhism, Liberalism, and the problem of Politics,* Doctor of Philosophy, Louisiana State University, 2019, pp. 49-51.

145 Matthew J. Moore, *Buddhism & Political Theory,* Oxford University Press, Oxford, 1st edition, 2016, p. 19.

146 Ibid, p. 141.

147 Ibid, p. 69.

148 Ibid.

149 Ibid, p. 17.

150 Ibid, p. 24.

was Ashoka's civil religion, designed to thrive in a multi-ethnic world.[151] The base of this civil religion was universal peace, harmony, and prosperity.[152]

The paper has tried to show the inadequacies of the European models' *a priori* methods. The Peace models inaccurately portray the polity by failing to consider formal treaty procedures and geopolitical contexts. Being products of their times, the Peace models must be informed by both the formalist understanding of international law and alternative cultural narratives.

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[151] Patrick Olivelle, *Ashoka: Portrait of a Philosopher King*, Harper Collins Press, New Delhi, 1st edition, 2023, pp. 284-285.

[152] Ibid, p. 285.