

World Governance

World Governance:
Do We Need It, Is It Possible,
What Could It (All) Mean?

Edited by

Jovan Babić and Petar Bojanić

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P U B L I S H I N G

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FOREWORD

The process of globalization seems to be among one of the most intriguing issues in the modern world. The speed in transport, the computerization of society which, through the Internet, is making the world more transparent and information easier than ever to acquire, the global media which brings almost everything in front of everyone's eyes, the accumulation of capital and enormous production of goods, all this appears to have a very strong unifying impact, making the world seem to be *one* as never before. On the other side there are still many aspects of the dark side of human nature, conflicts, division, wars. In such a situation it seems natural to ask: *World governance, do we need it, is it possible, what could it (all) mean?* This was the title of a conference held at the Belgrade University in June 2008, within the project ILECS (International Law and Ethics Conference Series). The event triggered the invitation of *Cambridge Scholars Publishing* for editors to compile a volume devoted to this theme, and the book before us is the result. We would like to express our gratitude for the opportunity to organize this edited volume; Amanda Millar was the first who contacted us and Carol Koulikourdi did most of correspondence showing a lot of patience and understanding in the process leading to the final result.

Several papers from the Belgrade conference are included in this book in their revised form (Pavković, Narveson, Sharon Anderson-Gold, and Paul Gilbert), and some others come from a previous conference within the same project (Pauline Kleingeld and Ingeborg Maus, both of these articles appeared also in Luigi Caranti, ed. *Kant's Perpetual Peace: New Interpretive Essays*). Most chapters, however, are independently solicited articles, some of which are published here in this version for the first time (Richard Falk, Otfried Höffe, Jovan Babić, Alfred Rubin, and Petar Bojanić). Michael Walzer's text was published in *Dissent*, Fall 2000. Stanley Hoffmann's appeared under same title in *Daedalus*, 2003, 132(1). Cambell Craig's essay has previously been published in *Ethics & International Affairs*, Vol. 22(2), Summer 2008. Thomas Pogge's paper was originally published as "Kant's Vision, Europe, and a Global Federation" in Jean-Christophe Merle, ed.: *Globale Gerechtigkeit* (Stuttgart: Frommann-Holzboog 2005), 500-518, and in Luigi Caranti, ed.: *Kant's Perpetual Peace: New Interpretive Essays* (Rome: LUISS University Press

2006), before it appeared, in a revised version, as “Kant’s Vision of a Just World Order,” in *The Blackwell Guide to Kant’s Ethics* edited by Tom Hill in 2009. Allen Buchanan and Robert Keohane piece was published in *Ethics & International Affairs*, Volume 20(4), Winter 2006. Larry May’s text is a cut from his book-manuscript *Global Justice and Due Process*. Anthony Ellis’ article was partly published as “War Crimes, Punishment and the Burden of Proof” in *Res Publica*, vol. 16 for 2010. Virginia Held’s paper is partly based on her books, *The Ethics of Care: Personal, Political, and Global* (2006) and *How Terrorism Is Wrong: Morality and Political Violence* (2008) both published by Oxford University Press. Luis Cabrera’s paper appeared in *Journal of International Political Theory*, 4(1) published in April 2008.

We are very grateful to all of the authors who generously gave us the permission to include their pieces in the volume and helped us with the copyright issues. We would also like to thank Miloš Babić, Rastko Popović, Vojin Rakić and especially Julia MacKay for their help in proofreading some of the texts written by those whose native language is not English.

Our hope is that the volume will find its path to readers and be useful. It does not reflect a unifying standpoint, on the contrary it contains many divergent and contrasting opinions, and it does not offer any final theses or solutions. This is so not only because the topic of the book is vague and evolving, it is also because we believe that philosophers should keep a distance from any standpoint, be ready to listen, let the reasons do their work before taking any side, and be prepared to change their beliefs if the reasons command it.

—Jovan Babić and Petar Bojanić

INTRODUCTION

JOVAN BABIĆ

In the age of globalization and increased interdependence in the world that we face today, there is a question we have to raise: Do we need and could we attain a world government, capable of insuring peace and facilitating worldwide well-being in a just and efficient way.

We may think that the issue of world governance is something new, but it is not. Every era has its version of “globalization”. The “issue” of world governance has always existed. There are two main ways in which the authority of a state, or a country, can be territorially articulated: first, as a “kingdom” (in a sense) where *a people* claims a right to self-rule and independence, and then the jurisdiction should be defined as the territory that the people are inhabiting, and, second, as an “empire”, where the country is defined just as a territory on which there is a certain law accepted as a common rule of the social life. In the second case there is no space limitation of the territory, and the state might be as big as the central government could possibly extend its control and enforcement of its laws. In principle an empire could cover the whole world; there is nothing contradictory in that concept.

So, conceptually, a world government *is* possible. But many things are theoretically possible although not possible in reality. What would certainly prove that it is really “possible” would be to show an example of its factual occurrence. And indeed there are such examples. The Roman Empire was an almost realized world state. Similar in magnitude was the Christianization of the then known world accomplished in the first centuries of the new era. Colonialism is but another example, where the parts of the world outside of Europe, assumed to be uncivilized and uncultivated lawless territories, were put on the path of bringing to civilization in a world-wide process of cultivation and introduction of the progress of happiness and well-being to the whole world. The process of colonization was fast and impressive in magnitude. We now know that it ended in a collapse, in an even greater and faster process of “decolonization,” when the principles of self-determination and nationalism took the primacy, which is a social and political development with ongoing consequences. Let us

call the reasons for these kinds of globalization “the imperialist reasons.” These reasons might be ideological to a great extent, especially on the declaratory level, but at the same time they facilitate peace, commerce and expediency of the governance. They seem to be present in an efficient way in many periods of the history.

Now, we have again a very powerful process of globalization supported and facilitated strongly by enormous and fast-paced technological and economic developments. However, this process, it seems, is based partly on reasons which are not necessarily “imperialist” in the old sense, but in the sense of the ever-growing interdependence present in our world today. We are currently witnessing tremendous advancements in technology that are making the world truly interdependent in a way which might not have been the case in the past, like technology related to issues of climate change, or economical dependence. This interdependence is, or might be seen as a reason for a world government, a reason which cannot be reduced to the purpose of the mentioned tendency to make the world globalized for the sake of facilitating commerce and making politics more expedient, i.e. the imperialist reason. These new reasons seem to be even more powerful in support of the concept of world governance.

Technology has a strange ability to change some aspects of borders between states, and make some other aspects hard to sustain. Sometimes it looks as if national sovereignty is disappearing, and is being replaced by globalization in what are some of the most important aspects of life: which ends will be the ones we will value and choose, and what will the articulation and organization of our living together on the same planet look like? This has become almost the mainstream in contemporary social and political theory. The main part of the theory says that the laws which we should abide by are not freely set limits of our natural freedom, limits within which we can freely set all the aims whose realization makes the legitimate content of our life, but they, the laws, are something we should read out from the definition, or description, of what we consider to be “good”.

This might seem to be necessary if we wish to speak of a unified world—there has to be something uniting the world, and this has to be a shared common definition of what is “good.” What else could it be? However, globalization always was a process that was going parallel to another process of producing *changes* and *differences*, and *accumulating* them. This second process opposed to globalization, is what in essence makes the world so big and complex; globalization, on the other hand, is making the world more transparent, simpler and in a sense smaller; simplification of the world appears to be a price of globalization.

So, what is “World governance”? It should be an articulation of power that has authority above or superior to all other authority, and it should be *one*. This “oneness” is crucial, as we already know that the world *is* one (as the universe is one), so what might be wrong here? It is a fact that today’s world is not one in a political sense; it is rather an *international society*, which is a set or an aggregate of different parts living alongside each other. Different goals and values characterize those different parts, and their governing laws vary as well. The laws are of special interest—they presuppose a kind of consensual acceptance without which they cannot function: they have to be “our laws,” rules that we voluntarily accept and this fact of acceptance grants them their validity.

The international society contains all persons and all states. Therefore the expression “The whole world” can designate two radically different things: 1) humankind, or 2) international community of states or peoples (e.g. United Nations). In the second sense only, it is a set of all sources of valid laws, or the set of all legislatures and legislative wills that exist in the world. The first meaning, the humankind, is not a political term because it does not have, and perhaps cannot have an identity, a collective identity, which one political community that has the capacity and the authority to issue laws must have.

So, in a political sense the whole world is a community of states and not a universal world-nation. The community of states has not been taken as a surrogate for something else, as it would have been if we had conceived the world governance as the ideal state, the only one capable to secure true peace, but for some reason not yet existing by now, and what now must be considered as something that will, in the long run, be replaced by the genuine state of affairs in accordance with the ideal. In this picture the states have been perceived as valid holders of legislative wills capable of securing peace and justice within their borders. Guaranteeing such peace is the actual purpose of any state.

Peace is a valid articulation and distribution of social power; it is valid when it is accepted and when its acceptance is shown through laws. The purpose of laws is to provide predictability, the most desirable item in the context of living with others. Therefore, the purpose of the state is peace, and the purpose of peace is to control (our) future time, which has been made possible through the laws. We may say with Plato, or Socrates, that the purpose of the laws is to make us better and in fact this is literary true. Without laws we couldn’t afford to be “good” at all, as our whole energy and time would be spent obtaining security and survival. But laws, as sets of legal rules, have to be *accepted* in order to be valid, and this requires a

collective with a unifying identity strong enough to be able to make decisions about the content and character of the laws.

Therefore, the laws have to be “*our laws*.” Otherwise, they would not be obligatory for us. If not “ours,” they would be imposed by force and would not be considered as valid even if they were just or even perfect. Nor would they be “obligatory” in a proper sense, even if they were obeyed, as the obedience would be the result of fear or calculation, rather than consent. (If a group of angels, or for that matter extraterrestrials, came here to our planet and saw how imperfect and bad we are, and, therefore, used their overwhelming power to make us better, it would still constitute violence and usurpation, and the laws they would try to impose would not have validity.)

“Our laws” presuppose that there is a “we” capable of having laws of our own, and for our topic the question is: Can that “we” be the (whole) humankind, and not only a part of it? This is very close to the idea of a world state and world government, a government that would administer the laws of the world state.

The advantage of such a state is obvious: the conflicts and wars which characterize our past and present would be prevented and avoided. These conflicts cause most of the misery we experience, and it certainly would be good to eradicate them. And their eradication would be complete: even the possibility of a war would not be present if we had a world state and world government. The aggressive potential of human nature would be controlled. There would be no more conflicts, or they would be effectively prevented.

However, it is not clear what the real results would be. British philosopher Bertrand Russell in his Reith Lectures (Russell, 1949) believes that it is uncertain whether it is possible to convert human competition—which is the source of all or most of our conflicts—into a scheme of benevolence and cooperation. We know that cooperation is beneficial, but as a means to a greater good, not as the original source of human motivation; cooperation has to be derived from and justified by the goal to which it leads. But a great part of our motivation comes from stimulation such as fear or negative feelings like envy, and other competitive feelings which should be replaced by something that provides the same cohesive force which now works by creating schemes of caring based on the fear of dangers and risks which may threaten existent laws. This is the main energy of patriotism, and there is a question as to what would be a replacement for this in world state? What patriotism could we expect to find there? In the absence of a *possible* foreign enemy, what nature of cohesion could there be? A tyranny, a dictatorship? How stable would such a construction be? What

could prevent some new Christians from mobilizing human desire for a tangible meaning of the life and converting it into a destructive force which would destroy the state by enjoying being thrown to the lions in some new kind of a circus?

The purpose of the world government would be lasting world peace. Conflicts would not be tolerated, and all perpetrators involved in a conflict would be treated like criminals. The specificity of criminals is that they are a concern of the police, so the police would regulate the peace. There would be no need for an army. But this could only be a conceptual issue. We have the elements of this already, in the widespread practice of intervening: military interventions, often designated as “humanitarian,” contain all the characteristics of a police action. These are not conceived as “wars.” The consequences are far-reaching: the other side has been designated as criminal in its nature, as per supposition weaker, and the “action” as an act of punishment. The distribution of power is determined in advance, and the whole issue is only an internal disturbance as if it exists within the scope of the same legal order. It is known in advance who the “good guys” and who the “bad guys” are. There is something Manichean in this picture, a kind of dualism, very much at odds with our previous world-view. It is strange: a hypothesis of a unified world order implies dualism, a theory of two worlds, world of good which has the authority and entitlement to govern all worldly issues, and the world of evil, which is devoid of any such entitlement but seems to be ineradicable despite renewed defeats.

The laws in such a structure would not be “international” (as being ratified by sovereign interested parties) but real laws with all the instruments of enforcement and, by hypothesis, based on presumed consent of all members of the human race. In a way, it would be everyone’s law. In this picture, there would be only one state—the world state. This also means that there won’t be any borders.

Does this look like a viable state of affairs, or only as a utopia? Most utopias were called “negative utopias” (dystopias), but could this be a “positive utopia”?

Furthermore, does this mean that the laws of such a state should or could not be defended (i.e. defended from change to the point of making a different legal and political order)? What would be a constitutional and legal arrangement for such a purpose? Or should it be supposed that it would function as a kind of a frozen, eternal, system of governance?

There are several other issues of some interest here:

In the time of globalization national sovereignty might look like something that is “overcome,” something that doesn’t fit in the historical

scheme of today, and national states, countries, should be phased out and replaced by “multinational” agencies and corporations with the rules that articulate the game of the balance of power. Contemporary capitalism shows a great power of accommodation. It is possible that it will, through the principle of maximizing happiness and the need to cultivate the world for that purpose, realize a form of this scheme. In this scheme we might have an illusion that nothing has really changed, that all of the old cultural diversity and all of our collective rights had been preserved, while in fact there won’t be any really “living” collective identity, instead of which there will be only a simulacrum and decor without any cohesion and without any real decision-making power. To some extent, the world already looks like this.

There is another point of interest here, and this is the size or magnitude of the world state: it would be, we may presume, sizable. However, it is not clear what is the meaning of that, and which size is the best for a country; for example, one of the arguments used by opponents of Italian unification in the mid 19th century clearly favoured maintaining small principalities: in case you get into a dispute or a conflict with your prince or master, it would be impossible to jump on the nearest horse and gallop out of the country if the country were too big. This means that really big countries may have an increased, not diminished—as we might suppose—power of control over their citizens. Contrary to what we might presume at a first glance, a chase is more efficient if the country is bigger: there is a greater chance for a chase to end successfully, i.e. to catch a fugitive before he succeeds in running away.

However, the notion of a world state is not at all conceptually connected to the magnitude of the state, but to the normative presupposition that there should be no other states. The question of size and magnitude would then be a matter of factual size of the world, not of the state, and would include all inhabitable space. This means a world state could not tolerate the existence of any other state, regardless of where that state were located, and that it would, normatively, treat all space as being under its control.

Another point: Presumably the world state would promote business, workforce mobilization, and social mobility. There is no room for particular interests beyond those of the universal prosperity and progress in happiness. It is the best suitable context, or environment, for the utilitarian thesis that “more is better,” more good, more wealth, more pleasure, more real opportunities for those who really may be in the position to exploit those opportunities. It is a good basis for maximizing profit. In that sense imperialism suppresses partial interests when they hinder this kind of

progress and development. Such hindrances nowadays are, among other things, national boundaries, which would be absent in a world state. Nationalism and national selfishness would be overcome as well. Also, all kinds of sentimentalism and all inclinations towards anything that is not productive for business and the progress of general happiness would be forbidden. A world state would remove all these hindrances, obstacles, and limitations.

There is a question which deserves special attention: the sovereignty of now existing states: what would happen to it? Would this sovereignty just disappear or would it be transferred to a supranational level? This issue is very sensitive, of course, and it is the central issue at stake here: where should the authority reside and how should the governance be articulated? We started with the question: Do we need and could we attain a world government, capable of insuring peace and facilitating worldwide well-being in a just and efficient way? This question provokes multitude of others: How would the representation in such a political structure function? How would *I* be represented in that structure, and for that matter how would anyone else? Is such representation possible on the global level? Would anything that is *mine* (or *thine*) stay preserved there for which I could say "It is my government?" Would any of my thoughts, projects, desires, anything that constitutes the value and meaning of my life, or anyone's life, still be present there? Or, on the contrary, would there be a point of power which takes all, or most, of my power to decide for myself, and would start to think, to decide, and to act on my behalf instead of me? Would it be that I am a robot living within a program in which I would have to take a place and finish my part of it, regardless of what I am and what I want? In other words, should we be optimists or pessimists regarding this option for our future, the option which is not yet available but is obviously becoming more and more viable?

* * *

World governance is broader of an issue than the world state. In the world we live in today it is more the matter of the world order of the many points of mutual or multilateral interests and those are the issues which demand common approach because they are of great importance and cannot be resolved other than jointly.

This is the approach of the first contribution, Richard Falk's "(Re)imaging the Global Governance." Although Falk did not mention the world state, his article deals with the most urgent issues of world governance. It is rather obvious that many of the pressing issues in today's world

have to be settled on a global level. However, Falk's article offers another important insight: he states that we already have a global state as a matter of fact. That state is the USA, a political entity which is not confined within its geographical borders (having ties with the rest of the world, influencing it, etc.); rather it is global in the sense that most of the planet, and in some aspects all of it, is under effective and to a great extent official control of the US government. The USA is not (only) the leader of the world, it "exists" throughout the world. In many ways it exercises its governmental power much beyond its borders, governing more than leading, and more globally than, e.g., British Empire ever controlled the high seas of the world. The pockets outside its control, and globally widespread anti-Americanism (in many fashionable and less fashionable forms), cannot disguise this fact. We may add the control, in a direct way and not only through the influence, of many multinational companies, most of which are originally American. This "new American orientation toward law and power" produces a "need for American military dominance everywhere," while, according to Falk, efforts to implement (new) global norms took on a new shape especially after September 11, making the "encounter between the United States and al Qaeda" borderless, producing a new kind of war without a clear concepts of "victory" and vision. This process of shifting patterns also changes the nature of the promise of international institutions, focusing more on enhanced global policing, intelligence gathering, and law enforcement" and losing the connection with "values associated with human rights and global democracy". However, Falk sees the world becoming "more multipolar but less Western," and he identifies four new emerging global players, besides the worldwide present US: China, India, Brazil, and Russia. The declining confidence in capitalism might have a role in this process as well. Falk's timely and comprehensive analysis covers a range of problems at the outset of the 21st century, from economical and security challenges to ecological concerns to the issues of justice and equality.

Michael Walzer in "Governing the Globe" reintroduces the issue of the world state by setting up its idealized types located on a continuum going from unity to pluralism, from global state to international anarchy. He believes, however, that the politics of difference is stronger than any unifying process, that diversity and multitude is a feature of the human world. In a unified world diversity and autonomy would lose their political relevance. Borders and sovereignty are means of self-protection and guard against insecurity and fear. "Sovereign statehood is a way of protecting distinct historical cultures, sometimes national, sometimes ethnic/religious in character," but the identities contained in these distinct political forms

are felt to be worth fighting for: “The passion with which stateless nations pursue statehood and the driven character of national liberation movements reflect...” the reality of common human life. Walzer draws a very interesting and morally important hypothesis from this: “So, the *morally* maximal form of decentralization would be a global society in which *every* [emphasis – J. B.] national or ethnic/religious group that needed protection actually possessed sovereign power.” On the other hand, “dividing up the world in this way would be (has been) a bloody business.” Nevertheless, what also has been a bloody business, and even more than bloody, was creating artificial divisions without any respect to real distinctions and differences in the world; this was the case in the employment of *uti possidetis iuris* rule in the process of decolonization which produced many still-born nationless “countries” worldwide—mostly in Africa—a process that could be more unjust than the colonization in the first place, and perhaps one of the gravest, if not the gravest, and most sinister crimes in the last few centuries. It seems that the “passion” with which such “countries” fight their civil wars, often incomprehensible to the rest of the humankind, are a very good corroboration of this insight of Walzer’s.

Walzer is more optimistic in the conclusion of his paper, envisioning a mixture of two schemes in a hybrid combination of international control that preserves some sovereignty in the existing political entities. His strategy is “many avenues of pursuit, many agents in pursuit.” The problem he detects here is how to secure any sovereignty to *new* political, national and ethnic/religious, entities, allowing them potential access to the scheme. Stanley Hoffmann, who shares this optimism, explores new possibilities, such as giving new kinds of tasks to UNESCO and other international organizations. He shares with Walzer the belief that the UN should have its own military force which would be supranational, along with many other instruments (international instruments of global economic control, international courts, etc.). Otfried Höffe also shares most of this optimism in his contribution, giving a description of an ongoing globalization, and of a possible scheme of the world governance that could be attained in various fields of our common everyday life from a more historical and philosophical perspective.

Campbell Craig is even more optimistic in his contribution. He believes that “the chances of attaining of some form world government have been radically enhanced by the end of the Cold War and the emergence of a unipolar order.” For Craig the deepest and almost conclusive argument for world government is the threat of nuclear war. This threat will exist “as long as sovereign nations continue to possess nuclear arsenals” and the only way to avoid the risk is to create “some kind of world government....

with sufficient power to stop states” from being such a threat by “acquiring nuclear arsenals and waging war with them.” It is not clear, however, how the world government would do this, especially in its second part. What comes to mind is just the opposite—that the only final defence of an independent sovereign entity might become acquiring nuclear weapons, and that all those countries *without* such weapons would easily become prey of any kind of international controlling and sanctioning, which would not be affordable after the moment of acquiring a nuclear shield. Many would say that nuclear deterrence is the main factor in preventing major wars in contemporary world.

On the other hand Craig, unlike Walzer and Pavković, thinks that world government would not pose any threat to distinct national cultures. He believes that “it is the only entity that can preserve them.” In this he closely follows the standpoint of Alexander Wendt, who, in his article “Why a World State Is Inevitable” (Wendt, 2003) argues that a world state will necessarily come into existence in the foreseeable future.

Aleksandar Pavković, in his contribution, gives a potentially devastating critique of the above mentioned text by Alexander Wendt. Pavković construes a thought-experiment from a distant future in which a group of people actually did usurp the interpretation of the final value of life (namely to prolong it as long as possible by using advanced technology). They also suppress another group which finds the value of life in something else, playing a special game and enjoying the life through it. The second group is coerced to pay, through high taxes, for the realization of the first concept of life. The other group then attempts to secede which would lead to reintroduction of the old anarchy, avoidance of which was the main reason to create the world state in the first place. According to Wendt, and unlike Walzer, the secession is not only bad, but also unnecessary because the world state is capable of securing equal recognition of all rights, not only individual but also group ones, and also all differences except those which aspire to superiority and imply discrimination, would be granted in that state. Pavković claims, however, that the superiority is not the aim of the seceding party, but as a matter of fact, superiority is present in the monopolistic position in the structure of distribution held by the group that has the power. The seceding party demands, unsuccessfully, equality, not superiority. But Pavković also claims that secession from the world state does not necessarily lead to anarchy among states, characterized by the (strong) right of states to kill people unilaterally, or to war against each other. This is similar to Babić’s thesis, in his interpretation of Kant, that truce, a characteristic of the anarchy of contemporary world, is more akin to peace than to war. Pavković concludes that the world state

could hardly avoid becoming “a ‘bad,’ that is, a murderous agency,” just the opposite of what its primary purpose was.

Jan Narveson is categorically against the world state. Any state is a bad thing, and a world state is even worse. We do not actually need a state, the state is making our lives worse than they would be without it, but the world state is not the remedy. It would not solve any real problems, even if it could exist. On the other hand, it “would certainly attempt to impose a welter of wrongheaded laws about any number of things.” The world government would contain all the ills of actual governments, but “in much higher degree. Who ... needs that?” To think otherwise is, according to Narveson, only wishful thinking. We may think that the world government “would be an overall nanny who could keep her unruly charges in line,” but the analogy is farfetched. “Nannies are usually large in relation to their charges, but would world government be?”

* * *

The second part of the book contains the issues of Kantian approach to world governance. Although many philosophers analysed the idea of world governance, Kant’s approach appears to be most relevant today. His works *Metaphysics of Morals* and *Perpetual Peace* are rich sources of relevant and valuable ideas regarding this topic. Sometimes his theories make rather complex web of concepts and arguments, but always end with one which is plausible and revealing. Although a universalist in morality, Kant is not a universalist in matters of happiness and wellbeing. What constitutes happiness cannot be determined in advance, before people set their goals and structure them in some life plan (Kant, 4:418). Political diversity and plurality seem to be morally demanded by Kant. Morality is only a demarcation line that should not be crossed; but to that point we have the terrain of freedom with ample room for all kinds of differences in pursuing happiness. Universal respect for moral autonomy requires of me to allow others to have different goals. The concept of justice valid within these limits is not easy to construe. We have a moral duty of beneficence, which requires adopting the happiness of others as our own end if that is within our reach. But this duty is constrained by, among other things, our primary duty to respect the autonomy of others, i.e. their right to conceive and pursue their own idea of good within the limits of the freedom possible for all. To some this might seem to be a small demand, but after due reflection it might turn out to be much more than many of us are prepared to sacrifice.

In the first selection of this part, Pauline Kleingeld explores the tension that exists between different possible interpretations of Kant's idea of world state as world federation. In her interpretation Kant advocates the establishment of a non-coercive league of states, and not a strong world state with a universal law (which might be more in accordance with the demands of reason). Her reasoning is subtle and precise both regarding the exegesis of Kantian texts and its relevance to the contemporary world. Despite the fact that in international affairs we have anarchy, there are important differences between individual persons, who have a moral duty to abandon the lawless state of nature by establishing a state with enforceable laws, and states, which have the right *not to be compelled* to establish one unified political structure with enforceable universal laws. This right is the essence of the principle of non-intervention. When individuals leave the state of nature and create civil condition there is always progress, while the case of states leaving the state of international anarchy would mean the destruction of all established and already existing rights, which would lead "to a 'soulless despotism' and the peace of graveyard." The international character present in relations among different states could not be grounded, "and international right would not be applicable." And here we face the issue that the state of states still would be based on a particular conception of justice, which means that any coercive inclusion of a state would disrespect the political and personal autonomy even if that occurs for the presumed good of those upon whom this law would be imposed. Kleingeld however concludes that despite the fact that "a fully legitimate world government may remain out of reach," it is still an ideal toward which humankind might strive and the creation of a league of states "constitutes a first important step on the road towards an ever greater transnational regulation of the interaction among states, a process that should be guided by the ideal of a global federative state of states".

Ingeborg Maus is more critical. Similar to Kleingeld, she believes that Kant is against a global state but adds some sharp remarks regarding the idea of a world state. She starts from Kant's thesis that the source of law is "only the general united will of the people." Kant's "Cosmopolitan right" is "free of contradictions when it provides the rules to be observed in cross-border exchanges between jurisdictions of various legal systems; it thereby actually presupposes the existence of borders." The idea of international law presupposes the plurality of nations. The idea of a unified universal state ("universal monarchy"), not based in peoples legislative will, decreases the effectiveness of the law and leads to a 'soulless despotism.' So the attempt to realize peace by setting up a global state would actually lead back to a state of nature, or to tyranny.

The article by Thomas Pogge is only one of his many works in a series dealing with Kantian themes regarding the contemporary world. In his “Cosmopolitanism and Sovereignty,” published in 1992, he states that Kant would have endorsed a world federation with different levels of political power if he was not prevented by too strong of a concept of absolute and indivisible sovereignty where resides the ultimate political authority. In his contribution in this volume Pogge offers an example and illustration of how such divisibility could be maintained; it is the European Union, in its attempt to unite a rather diverse map of many former kingdoms and remnants of former empires. Will this be a process like German unification throughout and prior to the 19th century, only without a visible usage of force, making Europe just another country among countries, or, as Pogge predicts (or hopes) a free federation of independent states, devoted to the cause of peace and prosperity? If the second is the case then we have another question: will the world follow the model? Pogge believes that Kant did not pay enough attention to economic factors that can influence such a project, and therein lies one of the main sources of his, as well as European, optimism—in belief that most important values are in the end economic values, and that all values could be reduced to issues of welfare as the goal toward which all ambitions of people and peoples are aimed at.

More optimism, brought almost to perfection (except in the last sentence), we can find in the article by Sharon Anderson-Gold. Her opinion is that *cosmopolitan right*, based in norms of hospitality, “necessarily has universal jurisdiction.” Since all individuals have a natural right to “offer to trade and to communicate” as part of “*original possession in common (communio possessionis originaria)*” (Kant, 6:262), there is also a need for a democratic representation on the global level. “The principle of hospitality ...prohibits fraud, force and exploitation.” Institutions in such a scheme must not be isolationist; hospitality is the supreme obligation, not self-centric “nationalist” interests that will inevitably lead to violence and war and result in exploitation that can permanently solidify the inequality between rich and poor. Relying on Pogge, Gold-Anderson criticizes the contemporary state of affairs in the world, characterized by an “alliance of international recognition of dictatorial power with internal underdevelopment.” But in a state of realized ideal of cosmopolitanism (mutual?) control, including military interventions, becomes justified and a matter of law enforcement, not external aggression. We do not need a global government to make this possible, but it seems that we need a true democratic representation as required by the principle of universal hospitality. Otherwise, we may wonder if we don’t already live in such a state of affairs, as Paul Gilbert suggests in his contribution. Gilbert claims that our “fundamental

identity, insofar as identity is ethically relevant, is a global identity.” The real issue then becomes how to realize viable legitimate democratic representation of such a complex body as the whole humankind, without relegating the solution to a distant, or, as the last sentence in Gold-Anderson’s article indicates, infinite future.

Jovan Babić, in his reading of Kant, claims that freedom, as the power to decide otherwise, produces differences in addition to changes brought by the flow of time, and accumulation of these differences makes a perpetual structure of the distribution of power impossible and stability and longevity of such a structure uncertain and tenuous. Peace is a specific articulation of power in a society capable of maintaining that power through laws, and part of that structure is a serious determination to enforce the laws and defend their existence. Therefore, the war is latently contained in the peace through the concept of defence.

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Institutionalizational articulation of world governance, its cosmopolitan nature and its various aspects, is the subject of third part of the book. Perhaps the most important of these issues is the legitimacy of global governance institutions, the topic of Alen Buchanan and Robert Keohane’s article. Global institutions are novel and still evolving; the requirements for their acceptance are more complex and subtle than requirements for the acceptance of internal rules. Thus, the legitimacy of these institutions is still an urgent and important matter. The principle might be the same as in all issues of legitimacy—that acceptance in the end depends on acceptability, that the fact of being accepted does not imply the acceptability, and that disagreements about both the goals and applicable, or applied, standards of justice may be deep enough to make claims to authority of such institutions unfounded and unviable. Here, moral reasons are especially important not only for reasons of justice but also for reasons of stability and maintenance of global institutions. The overarching pattern for legitimacy seems to be democracy, the main ideological tenet of our time in legitimizing states, and now global institutions as well. An informed deliberation may help to build global institutions that would require more than a minimal moral acceptability, offering benefits only global institutions can provide. This is a two-fold process, including learning what is needed and instituting this in an institutional framework, and collective learning of how to accept this framework.

Territorial limits define the domain of the jurisdiction and legal control. In this context the concept of “piracy” is very important. What is

“international crime” may be defined simply as crime across borders, but piracy seems to be different. Usually it is restricted to acts committed on or from the sea or air. The other part is the lack of “national character” inherent in the notion of piracy. On the Internet we have another case of crimes committed in a legal space that is difficult to distinguish from theft or robbery. Also, it seems important to distinguish between “pirates” and “terrorists” (although some pirates may declare or proclaim to have political goals). As Alfred Rubin points out, the pitfalls of the definition of “piracy” are many. Certainly, it is the basis of an extraordinary jurisdiction having a global impact, but being, as it appears, necessarily restricted to the “external” aspect of acts or crimes committed. This implies that pirates are not considered rebels, and identifying pirates and characterizing their affiliation becomes crucial in determining what happens. Although “all agree that ‘pirates’ go too far,” Rubin concludes that “the legal conception of ‘piracy’ has been so seriously abused over the centuries that it is doubtful that the word retains any useful content in law, whatever its value in morality or politics.” For Petar Bojanić, on the other hand, pirates may be just latent rebels: “If an act resists the empire [or, for that matter, a world government] in a completely asymmetric way, then it can be called and treated as being piratical,” an attempt to create or restore the lost “other” or “outside” (as there is no such a thing in a borderless world state). In this way pirates become “universal enemies” (enemies of the world order), as a condition for the very existence of international law. Bojanić cites a Somali pirate saying: “We will not stop until we have a central government that can control our sea,” presenting himself as a tax collector of sorts, declaring, thus, an aspiration for some political aims.¹

We are all human beings. Besides, in the world of divided identities and loyalties, we are Americans, Germans, Canadians, Britons, Serbs, etc., along with many other affiliations we can maintain. Do we have a right to be citizens of the world in the sense of being a subject to international law? This is the theme of Larry May’s article. In his opinion it is not necessary to be a citizen of any state “in order to be effectively a rights-bearer,” but this idea presupposes that there is some other entity that may endorse and grant a kind of “universal citizenship.” This is not entirely new, this is the case in Europe right now, where some are, and some others consider themselves as citizens of Europe more than citizens of their native states, making Europe a country. There were similar cases in the past: Prussians became Germans, Serbs were for a while Yugoslavs, etc. But is there a *right* to be or become a subject of international law? In the case of someone who is stateless and, thus, a non-citizen (a rightless outlaw?, a pirate?, a refugee?, an emigrant?) this might be important. In the case of

someone who is seeking refuge from her own state this might become urgent. The third possibility is being deprived of citizenship rights. May finds roots of a right to not be forced to lose the protection of one's rights as a 'citizen of the world'" in a "slight amendment" of the *Magna Carta* in 1255. At the bottom line this is the right "not to be deprived of citizenship rights," something that might be added to any list of human rights. It is "the right not to be outlawed to something like the right to trial by a jury of one's peers." May's claim is that this might be incorporated in the list of rules that any government should respect. Moral and legal implications of this are rather obvious, for example in the case of Guantanamo detainees, but also, obviously, much further than that. The conceptual and normative clarifications in this area seem to be of utmost importance perhaps even more than ever.

In close connection with the issues raised in Larry May's article is Anthony Ellis' critique of another of May's pieces. In the world in which the absence of the world government has been substituted by strong national sovereignty the idea of an international criminal court (unlike, perhaps, an international court of justice) could not find its place. Ellis claims, however, that the strength of national sovereignty has been eroded, and sees the establishment of an International Criminal Court as a symptom of this erosion. Although the creation of the ICC might be an experiment, it is welcome, at least in showing this particular erosion of national sovereignty. Arguably, Ellis contends that the main source of concerns against international tribunals is based on theoretical tenets about "rights of jurisdiction and the sovereignty of states." In a fine analysis of the relation between universal and particular properties of those who are harmed, group based harms, etc., Ellis criticizes the thesis that a specific "harm to humanity" is the justification for the international prosecution, holding that what should be justified is the reverse: how to justify not punishing some harm *outside* the supposed scope of sovereign jurisdiction, accepting a form of pure utilitarian justification of punishment: "The correct starting point is to ask: why should the international community *not* have a right to prosecute and punish certain behaviour? *Everyone* has a right, within limits, to prevent people from aggressing against others. That is simply a commonplace extension of the right of self-defence." State sovereignty does not add anything to this scheme of justification. In the end the articulation of what will be justified depends on many "practicalities, legal, political, financial and bureaucratic... (and... traditional habits of thought)."

The articles by Virginia Held and Paul Gilbert develop some other aspects of our topic. While Gilbert is searching for "better arguments for

cosmopolitanism which do not rely on the idea of a global civil society,” Held believes that the best way to “seek change and maintain order as non-violently as possible” is in “addressing the world as it is, in contrast with ideal theories based on hypothetical contract between states.” In her contribution she emphasizes the role of care, without demanding the replacement of justice by care but searching for the place of care, “building the trust, and practices of responding to actual needs”.

The last contribution in the book is a refreshing piece by Luis Cabrera. His paper starts with a description of disputes from Arizona. “Thirsty people should be given water,” says one party. “The country belongs to us. The country doesn’t belong to them,” says the other. Which of these two opposite standpoints is right and which is wrong? Is the “global citizenship,” or “a cosmopolitan moral outlook,” possible without creating a proper institutional frame of a supra-state capable of providing the global citizenship and the cosmopolitan right? In his article Cabrera gives a comprehensive survey of modern literature regarding these issues.

The material contained in this book is diverse and provocative. We hope that it will contribute to the debate about world governance in a timely and relevant way. Many issues raised in the book will not find a complete and satisfying solution for some time, and some others may not find solution ever, but what is important is the continuing debate that may encourage and inspire further research on this important topic.

Notes

1. In John Updike’s novel *Toward the End of Time* the role of such self-proclaimed (?) taxmen was, after some initial tussles, taken by FedEx.

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FOR AND AGAINST

(RE)IMAGINING THE GLOBAL GOVERNANCE

RICHARD FALK

I. Preliminary Complexities

There are three sets of concerns that bear upon a discussion of global governance, and related discourses on the adequacy of world order to meet the challenges of the early 21st century. As used here global governance is concerned with the establishment of order in the absence of world government or strong enough international institutions to implement global norms in relation to political actors strongly opposed. These governance concerns raise a series of difficulties that if left unattended will have serious negative policy consequences for the peoples of the world. Closely related into global governance is the idea of world order, which is primarily focused on the structure of relations and interplay among those political actors that are the makers of world history at any given time.

—*regulatory authority in the domain of transnational economic activity*: The era of neoliberal ideological hegemony following the Soviet collapse favoured a minimization of regulatory authority in the world economy, relying on market forces and crisis management to ensure optimal development and economic growth based on the efficient deployment of capital. This approach more or less dominated the policy scene in the 1990s, although coming under increasing scrutiny due to the mobilization of social forces dissatisfied with the neoliberal distribution of benefits and the hegemonic shaping of global economic policy. The backlash achieved notoriety initially in the so-called “battle of Seattle” in 1999 that exhibited a growing challenge being mounted by both populist forces (“globalization-from-below”) and by many governments of the South no longer willing to defer to Euro-American control over domains of trade and investment (exclusionary regimes established in accord with the priorities of “globalization-from-above”). The worldwide deep recession that started in late 2008 was caused mainly by irresponsibly risky and abusive practices in the banking, financial, and real estate sectors. The painful impact of these market failures has pointed to the urgent need for greater governmental supervision and for socially sensitive forms of economic regulation at national, regional, and global levels. The unsatisfactory character of

American leadership on matters of trade, finance, and fiscal policy also underlay the push for global economic reform, including international financial institutions. This push for regulatory authority is strong, but so is corporate and banking resistance to interferences with either market self-management or national sovereignty. At present, governmental actors are seeking to shape a more benevolent world economic order by way of diplomacy, especially to address issues of alleged currency imbalances, as with China, and excess indebtedness, as with Greece. International economic institutions, especially the International Monetary Fund, are an important part of the governance pattern, but less than previously, having somewhat discredited by their handling of the Asian Financial Crisis that occurred a decade earlier, but these institutions do offer governments a somewhat flexible instrument for international cooperation and crisis management. As of now, the concern about inadequate regulation of the world economy persists on two levels: the continuing unwillingness to address claims of an unfair distribution of benefits, including insufficient attention to the plight of the poor throughout the world, and the absence of effective oversight over devious and imprudent banking and accounting practices associated with financing and indebtedness;

—*climate change and nuclear weaponry*: In both settings, there is a rhetorical commitment by governmental leaders acknowledging the concern, and expressions of a willingness to take appropriate adaptive steps. For both climate change and nuclear weaponry the relationship to the problem and solution seems concentrated in a very few governmental representatives of sovereign states. For nuclear weapons, the nine states that possess the weaponry, led by the United States, appear to lack the political will to achieve their elimination, or even to embrace a declaratory policy that renounces any right of first use.¹ Those that possess nuclear weapons have devoted most of their political energy to preventing the further spread of the weaponry to additional countries, especially those countries believed to be challenging Western security interests. The overall preoccupation with the nonproliferation regime misleadingly implies that the principal danger arises from the countries that do *not* possess them rather from those that do. This diversion of concern serves to remove pressure from the nuclear weapons steps to engage in serious disarmament negotiations instead of engaging in a series of endless series of arms control negotiations whose modest outcomes are designed to provide the efficient and safe management of existing nuclear weapons arsenals.

When it comes to climate change, the issues raised relate mainly to policy priorities and inter-governmental disagreements as to the appropriate allocations of adaptive obligations. To what extent should the level of

pre-1990 contributions to the overall build-up of carbon emissions be taken into account in assessing relative responsibilities? The insistence of China that these earlier patterns of industrial development must be factored into any overall scheme for global policy coupled with the refusal of the United States to accept such an approach was a major reason why the Copenhagen Conference was generally viewed as a failure. It is also evident that a state-centred approach to climate change will neglect the human security impacts that would be emphasized by a people-centred approach that accorded emergency priority to the peoples and persons most disadvantaged by and vulnerable to global warming. As fundamental as these disagreements about apportioning responsibility for reducing carbon emissions is a parallel obstacle arising from the determined reluctance on the part of most governments and societies to incur large *present* economic costs for the sake of *future* benefits. Short cycles of political accountability greatly hamper the capacity and willingness of governments to meet longer term challenges until they produce crisis conditions, and then it may be too late.

Against this background, both in relation to nuclear weaponry and climate change, sceptics believe that only in response to a catastrophe will it become political feasible to meet these challenges of global scope. It also appears to be the case that waiting for a catastrophe may well be a matter of waiting too long to deal with either nuclear weapons or global warming. In the first instance, the damage done by a nuclear war may be so great to preclude recovery, while in the second instance; the time lag associated with a carbon build-up would mean that the adverse effects would intensify even after a crisis response.²

—*21st century security challenges*: since the September 11 attacks on the United States there has arisen a preoccupation with the vulnerability of even the most powerful states to severe harm inflicted by non-state actors with scant resources but a dedicated will and a cadre of warrior ready to die for the cause, including even a readiness to sacrifice one's own life in pursuit of political goals. The ideas about security that developed in the modern era of inter-state warfare and rivalry do not seem to fit the new circumstances of extremist resentments and tactics that cannot be territorially confined, making traditional military doctrine and capabilities of questionable relevance. Recourse to war by the United States in response to September 11 illustrates the enormous costs and uncertain results of treating threats posed by transnational terrorism as if they created a suitable occasion for waging war. From a governance perspective it would have made more sense to rely on enhanced global policing, intelligence gathering, and law enforcement. Such a law and intelligence approach seems

more sensitive to the specificities of the terrorist threat and incurs far lower economic and political costs. Yet such a soft power approach remains politically suspect in governmental settings as existing political bureaucracies are accustomed to relying on their military capabilities when addressing a security threat. What does seem correct is that the old delimitations associated with a world of sovereign states now provide almost no guidance, either because the preparation of an attack and even the overt acts involved in carrying it out may take place anywhere on the planet, with or without the support of the territorial sovereign.

II. Global Governance: Shifting Patterns

It was the English School of international relations that most effectively conceptualized the dual assertions of the anarchical structure of the world political system as complemented by a normative order based on international law, diplomatic prudence, and informal linkages of comity.³ These ideas were particularly appropriate in the setting of various Westphalian discourses articulating the logic of the state system as a moderating modification of the Machiavellian worldview associated with various forms of unalloyed realism.⁴ Especially Martin Wight and Hedley Bull were keen, as well, on distancing themselves from those who advocated more ambitious renderings of the normative dimensions of international relations associated with the Grotian tradition in international law. Some of these notable international relations specialists and leading statesmen stressed the promise of international institutions and favoured the extension of the coverage of international law even to the point of overriding the sovereignty of states and the impunity of governmental leaders.⁵ This view of international relations rested the prospects for good global governance on prospects for considerable hegemonic self-restraint by leading states in the enactment of benevolent managerial roles by leading states, taking full advantage of the ordering potentialities of a pluralist framework composed of territorial states whose sovereign status was deemed entitled to a wide margin of respect.

With the rise of transnational economic action and human rights, both with respect to actors and arenas, and with the multi-dimensional salience of transnational networks sustained by a variety of information technologies, the Westphalian discourse seems outmoded, or at the very least, in need of being enlarged to take into account some post-Westphalian perspectives.⁶ This essay seeks to do this in the context of an evolving critical understanding of “globalization,” not with the goal of cancelling the primacy of the state system, but in complicating the explication of how poli-

tics and authority operate on a global level. The pluralist tilt of the English School must now be adapted to encompass the role of actors in the global marketplace (trade, investment, currency), in the domain of human rights, and among civil society actors (transnational voluntary associations, militant global citizens and their networks). Strict Westphalian understandings of power and security were also deeply challenged by the September 11 attacks and the American response, producing an essentially non-territorial war between two actors, neither of which is a state in the generally accepted sense of a territorially delimited entity. Of course, the United States seems a traditional state if we cast our gaze only upon a world map, but if we construct its global presence in space, oceans, foreign bases and take account of the global scope of its security zone, then it seems more useful to abandon the notion of “state” and signal the conceptual rupture by adopting the label of “global state.”⁷

With suitable qualifications, an international society perspective still remains illuminating, principally because it calls our attention to the continuing absence of either effective centralized authority structures or a globally constituted security system operating efficiently under the aegis of the United Nations. Some readings of American grand strategy attribute to the global stature of the United States a condition of primacy that confers an opportunity, if not a responsibility, for maintaining a global security system administered from Washington, which since 2001 has focused on what the Pentagon has called “the long war,” and what others describe simply as “the war on terror” or counter-terrorism.⁸ To the extent that an American global state achieves coherent control over world politics, it would diminish the historical relevance of a pluralist account of world politics. Such American pre-eminence would offer the first instance of a solidarist world order of global scope, although not necessarily a benevolent or effective version. It would likely be widely regarded by opponents and sceptics as a species of dystopia rather than being viewed in positive terms as an idealistic or even utopian alternative to the alleged chaos and disposition toward violent geopolitics associated with pluralist experience. The actual trends with respect to the interplay of sovereign states suggest the re-emergence of a more multipolar, but less Western, geopolitical pattern featuring the rise of China, but also the emergence of India and Brazil, and renewed prowess of Russia, as major global players, as well as dominant regional presences.⁹

This essay will consider several solidarist tendencies and alternatives evident in present world society within the framework of a reconstituted discourse on globalization. A final brief section will revisit the question of “whither international society?” but under the preferred rhetorical banner

of “the future of world society.” This latter language is preferred because it frees the political and moral imagination from the bonds of a purely statist or materialist framing of political reality that linguistically presupposes that relations among “nations” or “states” remains the only fruitful focus for an explanation of cooperative and norm-governed behaviour as constraining energies. But at the same time, such a terminology does not ignore the continuing role of states and the state system, which for many dimensions of international life continues to be decisive, including setting membership rules for access to almost all important international institutions, arenas, and procedures (including treaty-making). What is currently needed given this growing complexity, but is not yet clearly enough discernible to articulate, is a global imaginary responsive to 21st century beliefs, behavioural patterns, and aspirations (see Charles Taylor, 2004).

III. “Globalization” under Stress

In the 1990s it was evident that “globalization,” despite objections about the unsatisfactory nature of the term as misleading or vague, was widely accepted as usefully descriptive and explanatory: namely, that the world order sequel to the cold war needed to be interpreted largely from an economic perspective, and that the rise of global market forces was displacing the rivalry among sovereign states as the main preoccupation of world order. This perception was reinforced by the ascendancy of Western style capitalism, ideologized as “neo-liberalism” or geopolitically labelled as “the Washington consensus,” a circumstance reinforced by the collapse of the Soviet Union and the discrediting of a socialist alternative. It seemed more illuminating to think of the 1990s in this economic light signified by reference to globalization than it would be to have held in abeyance any re-inscription of world politics by the evasive “the post-cold war era.” There were other ways of signalling that something new and important was taking place in the global setting. Some spoke convincingly of the start-up of “the information age” highlighting the re-structuring of international life that was being brought about by the computer and Internet. In my judgment such a label, while far from ridiculous, still seemed less resonant with the more pervasive emphasis on economic growth via neoliberalism than did the acceptance of the terminology of globalization.¹⁰

But then the September 11 attacks came along to complicate matters further. These attacks strangely both revived and revolutionized the modern discourse of world politics, at once highlighting anew the severity of security concerns, war/peace issues, facing leading state, yet also giving

rise to doctrines and practices that could not be understood by reference to the prior centuries of interaction among territorial sovereign states. The concealed transnational terrorist network that displayed the capability to inflict severe substantive and symbolic harm on the heartland of the dominant global state could not be comprehended, much less targeted, by resorting to a traditional war of territorial self-defence. There was no suitable statist adversary that could be blamed, and then attacked and defeated once and for all, although this fundamental and disquieting reality was provisionally disguised, by the once plausible designation of Afghanistan as responsible for the attacks due to its role in providing a safe haven for al Qaeda.¹¹ But with the initial phase of the Afghanistan War producing a “victory” in the form of the replacement of the Taliban regime and the destruction of the al Qaeda infrastructure situated within the country, it became clear that such a campaign was only marginally related to a “victory” in this new type of “war,” if by victory is meant the elimination of the threat. For one thing, most of the al Qaeda leadership and many among the cadre apparently escaped, slipping across the border, and quickly relocating in the remote tribal regions of Pakistan. This development underscored the novelty of the situation, especially, the absence of any fixed territorial base for the enemy or any way to secure a meaningful victory on a territorial battlefield. Unable or unwilling to confront the threat according to its distinctive features, the US Government shaped in response as if the security threat emanated from the “axis of evil” countries rather than from a mega-terrorist network with a long agenda of grievances, some legitimate, some not. These moves in world politics dramatized the originality of the global setting as well the confusing interplay of an expansionist grand strategy being executed by the neoconservative operatives in the Bush White House with a supposed preoccupation after September 11 with al Qaeda and terrorism. Bewildering questions of discourse and terminology arose as the Westphalian style of response to the al Qaeda threat seemed increasingly misleading and unsuccessful, as well as conceptually misdirected.¹² At the same time, the central contention of this essay is that “globalization” retains its relevance as a descriptive label for the current phase of international relations, but that it needs to be interpreted far less economically, and more comprehensively, since the events of 2001. The final section will consider approaches to global governance and world society given this altered understanding of “globalization.”

IV. The Changing Geopolitical Context of Globalization and Global Governance

To set the stage for this extended view of globalization as incorporating the new geopolitics of post-statist political conflict, it is necessary to review briefly the evolution of world politics after the cold war.

The breakdown of the geopolitical discipline of bipolarity that had managed conflict during the cold war era generated a security vacuum that could be and was filled in various ways. The Iraqi conquest and attempted annexation of Kuwait in 1991 was an initial expression of this breakdown. It would have seemed virtually certain that during the cold war epoch, without the approval of Moscow and Washington, Iraq would not have embarked on a path of aggressive warfare against its small neighbour. The American-led coalition that restored Kuwaiti sovereignty was the mark of a new era being shaped by essentially uncontested American global leadership, seemingly a geopolitical debut for unipolarity in the global security sphere. The fact that the UNSC endorsed the defensive effort, accorded America full operational control of the Gulf War, and supported the subsequent ceasefire burdens that Washington insisted on being imposed upon Iraq was far more expressive of the actuality of unipolarity than it was a sign that Woodrow Wilson's dream of an institutionalized international community upholding the peace collectively was finally coming true. What emerged from the Gulf War more than anything else was the extent to which the UNSC seemed willing to allow itself to be used as a legitimating mechanism for controversial US foreign policy initiatives that seemed to evade the limits on the use of international force contained in both international law and the United Nations Charter.

Another course of action could have been followed, and seemingly was even encouraged by the first President Bush's rhetorical invocation of "a new world order" in 1990 as a means of generating public and governmental support at the UN for authorizing a collective security response to Iraqi aggression. Such reliance on the procedures of the Security Council to fashion and supervise a response could have represented a genuine expression of the Wilsonian project to shift the locus of authority and responsibility in war/peace matters from the level of the state to that of the world community. But there was no such disposition in the White House of the Bush I presidency. Instead, the United States moved to fill the security vacuum by acting on its own to the extent that it deemed necessary, while seeking Security Council approval so as to possess a legitimating rationale that would mobilize support for the use of force and deflect criticism.

The initiation of the Kosovo War under NATO auspices in 1999 made this new American orientation toward law and power clear, and the fact that it was undertaken during the Clinton presidency suggested the bipartisanship of this geopolitical unilateralism in the aftermath of the disappearance of the Soviet Union as a state capable of deterring the United States. With the prospect of a Russian and Chinese veto in the offing, the US Government avoided the UNSC, while organizing “a coalition of the willing” to attack the Serbian presence in and control of Kosovo under the formal and operational umbrella of NATO. This created a precedent for use of non-defensive force without a mandate from the Security Council. This action represented a serious departure from the discipline of international law and the UN Charter, although there were extenuating circumstances that exerted interventionary pressures. The action taken was controversial, although endorsed by public opinion and governmental policy throughout Europe and in the United States.¹³ It was justified as an exceptional claim necessitated by the perceived imminence of an ethnic cleansing crisis in Kosovo and against the background of the earlier UN failure to protect the Bosnian peoples, as epitomized by the 1995 Srebrenica massacre of an estimated 7,000-8,000 Bosnian males while UN peacekeepers scandalously stood by as disempowered spectators.

The Iraq Crisis was a more revealing and consequential departure from the UN framework of restraint with respect to the use of international force in circumstances other than self-defence. Instead of circumventing the Security Council as in Kosovo, the US tried hard to enlist the UN in its war plans, and initially succeed in persuading the entire membership of 15 countries to back SC Res. 1441, which implicitly accepted the American position that if Iraqi weapons of mass destruction were not found and destroyed by Baghdad’s voluntary action or through the United Nations inspection process, then an American-led war with UN blessings would obtain political backing and international legitimacy. Tensions within the Security Council surrounded mainly the timing and the alleged requirement that acting on 1441 required a further explicit authorization for recourse to war. Evidently concerned that inspection might obviate the case for war, and that the Security Council additional mandate might never be obtained, the US went ahead on its own in March 2003, inducing a rather unimpressive coalition of more or less willing partners to join in the military effort, which produced a quick, although deceptive, battlefield victory, followed by a bloody, expensive, and still inconclusive occupation.¹⁴

In an important sense President George W. Bush was implementing a vision of a new world order, but not the one that his father appeared to favour in 1990-91 or that Wilson pushed so hard for after World War I.

Unlike The Gulf War of 1991 when the response, which was endorsed by the United Nations Security Council, was an instance of collective defence against prior aggression and conquest or the Kosovo War where the military action appeared necessary and justified as humanitarian intervention in circumstances where there were reasonable grounds to anticipate a potential humanitarian catastrophe for the Kosovars, the war against Iraq rested on neither a legal nor moral grounding that was persuasive to most governments in the world, was opposed by an incensed global public opinion, and even seemed politically imprudent, even perverse, from the perspective of meeting the al Qaida challenge of transnational terrorism. The Bush Doctrine of preemptive war as applied to Iraq, lacking a persuasive factual showing of imminent threat, seemed at the time to be a flagrant repudiation of the core international law prohibition of non-defensive force. It also established a precedent that, if followed by other states, could produce a series of wars and undermine the authority of the UN Charter and modern international law.¹⁵ The United States approach seemed to be filling the security vacuum that existed after the cold war with the unilateralism and lawlessness of hegemonic prerogatives and geopolitical ambition. This seemed to widen even the already contested claim of preemptive defence by resorting to war in the absence of an imminent threat, and possibly in the absence of any threat whatsoever, thereby embracing unilateralism and discretionary recourse to war in a manner that went beyond the already dangerous expansiveness of so-called “preventive war.” For the United States to attack Iraq, a weak state except within the Middle East, a state that had been weakened further by its lengthy war with Iran during the 1980s, by a devastating defeat in the Gulf War, and by more than a decade of harsh sanctions, involved launching a war without international or regional backing in a context where there was no credible past, present, or future threat.

This display of audacity by the U.S. Government, repeatedly, although unconvincingly, rationalized by continuous references to the distinctive challenges posed by global mega-terrorism made manifest in the September 11 attacks, was exhibited in efforts to reconstitute world order in three crucial respects: seriously eroding the sovereignty of foreign countries by potentially converting the entire world into a battlefield for the conduct of the American war against al Qaeda; greatly weakening the restraints associated with the international law of war and accompanying collective procedures of the organized world community while carrying on its campaign of counter-terrorism; re-establishing the centrality of the role of war and force in world politics, while dimming the lights that had been illuminating the rise of markets, the primacy of *corporate* globalization, and the

displacement of statist geopolitics. In effect, the focus on the terminology of globalization and the operations of the world economy were being partially eclipsed by a novel 21st century pattern of geopolitics in which the main adversaries were a concealed transnational network of political extremists and a global state engaging in multiple military interventions and operating without consistent regard for the sovereign rights of normal territorial states.¹⁶

For both of these political actors the framework of diplomacy and conflict that has evolved since the dramatic events of September 11 has radical, rather than moderate, world order implications. But there are important continuities, as well, that give persisting relevance to the role of the United Nations and international law. In view of this, it seems far better to deal with the current global situation by reference to its distinctive features as modifying our understanding of world order, rather than claiming that a unique set of circumstances justify the depiction of a new system and the adoption of a new political vocabulary. On balance, I believe that despite there being some merit in favouring an entirely new set of descriptive labels for this early 21st century period as compared to the 1990s, it remains advantageous to retain and revise the globalization discourse, especially in light of the increasing relevance of global governance as a preoccupation with respect to the complexities of global policy. A different conclusion on these conceptual issues might well be preferable if the discussion was focused exclusively on an appraisal of the “political economy” or “global security” aspects of world order rather than on the overall quality of governance as it affects the wellbeing of the peoples throughout the planet.

The Peace of Westphalia in 1648 that led over time to an agreed framing of political behaviour in a world of sovereign states was now being treated as more often anachronistic with respect to the resolution of acute transnational conflict.¹⁷ Seen in this light, reliance on the discourse of globalization seems useful to emphasize the extent to which crucial dimensions of contemporary world history are being addressed in such a way as to underscore the much diminished role for the agency and boundaries of sovereign states in many, but not all, settings. For instance, in extending control over the oceans and space, as well as insulating borders against unwanted and illegal migrants, the state in the early years of the 21st century is more assertive than it had been in the prior century. Above all states provide the boundaries that still shape the political geography of the world, and dominate our imaginative projections of how the world is organized. We are not likely to abandon this statist map of the world in the

foreseeable future despite its exaggerated reliance on territorial demarcations of human and natural activities.

V. Seven Globalizations for the 21st Century

Against this background framing the future of global governance is inherently problematic. The contours and ideological orientation of globalization and governance will remain highly contested and fluid for decades, far more so than was the case during the placid 1990s, and the future of world order will hang precariously in the balance. The old political language of statism will continue to be relied upon in many formal settings, including leading international conferences devoted to global policy concerns, but it will not illuminate the multi-layered and transnational complexities of world order nearly as comprehensively as a revamped reliance on the language of globalization.

Six overlapping approaches to global governance can be identified as the structural alternatives for the future of world order. These will be briefly depicted, and a few conclusions drawn: corporate globalization; civic globalization; imperial globalization; apocalyptic globalization; regional globalization; ecological globalization; and normative globalization. The emerging structure of world order is a complex composite of these interacting and overlapping elements, varying with conditions of time and space, and therefore incapable of positing a unified “construction” as a generalized account of the new reality of the global lifeworld. In other words, many partial constructions of world order compete for plausibility and adherence, but none has so far gained the sort of consensus that would qualify it as the defining reality. The contours and meanings of globalization are embedded in a dialogic process, further complicated by sharply divergent perceptual perspectives, uneven material circumstances and historical memories, and by a bewildering array of shifting policy challenges. Commentators upon the global setting must be content with partial, imprecise, tentative formulations of this evolving world order articulated by reference to multiple globalizations, and always put forward with the realization that changing conditions and unanticipated developments may require frequent re-formulations (see Talib, 2007).

Corporate and monetary globalization. In the 1990s, with the resolution of the East/West conflict, the centre of global attention shifted to the ideas, arenas, and practices associated with the functioning of financial markets, currency arrangements, and world trade and investment, as guided by a privileging of capital formation and efficiency, and a celebration of capitalist ascendancy. The role of governments was increasingly

seen as subordinate to this cultic commitment to the efficiency of capital, and expected to play facilitative roles that trusted the mechanisms of self-regulation. Political elites and elected leaders to achieve and sustain “legitimacy” struggled to win the support and prominent participation in government of private sector elites. Ideological adjustments were made to upgrade markets, privatize a wide range of undertakings previously situated within the public sector, and to minimize the role of government in promoting social goals associated with health, employment, and security. Keynesianism was out, neoliberalism was in. New informal non-governmental arenas of policy formation emerged to reflect this shift in emphasis away from electoral politics or welfare state expectations. The nanny state was out, the neoliberal state was in. In this atmosphere great weight was given to the pronouncements and outlook of such organizations as the World Economic Forum, an annual gathering of invited global business leaders, reinforced by the participation of top political figures. Political leaders seemed eager to receive invitations to speak at Davos, and whenever given the opportunity tended to express their enthusiasm for promoting the goals of a neoliberal world economy even if it meant subordinating such national priorities as jobs and domestic investment. Governments and international financial institutions (IMF, World Bank) accepted and promoted this economic agenda with enthusiasm, creating inter-governmental frameworks dedicated to the goals of the transnational private sector, such as the yearly economic summit (Group of Seven, then Eight, and later, Twenty) that first brought together the political heads of state of the principal advanced industrial countries in the North, and then later incorporated rising states in the South.

In the 1990s there seemed to be a rather neat displacement of the territorial and security features of the state system by the capital-driven concerns of the world economy conceived along these neoliberal lines. It appeared that a new non-territorial diplomacy associated with trade, investment, and monetary flows was taking precedence over older concerns with strategic alliances, as well as dividing sovereign states between friends and enemies, giving priority to the security and well being of each specific territorial community of citizens. As long as corporate and monetary globalization was sustained by impressive growth statistics, even if accompanied by evidence of persistent massive poverty, widening disparities among states and regions with respect to income and wealth, and a disturbing neglect of economic stagnancy in sub-Saharan Africa, there was little mainstream dissent from the pro-globalization consensus. This economic consensus was also believed to have political side benefits. There was a widespread belief that global economic growth would encour-

age shifts away from authoritarian forms of governance and toward the more decentralized patterns of governance associated with various types of constitutional democracy and the protection of essential human rights.¹⁸ Such attitudes reflected, in part, the belief that the victory of the West in the Cold War, which was ideologically explained by pointing to the superior economic performance of the liberal economies of the West that was itself sustained by constitutional democracy that allowed private sector creativity to flourish.

It was only in the wake of the Asian Financial Crisis that began in 1998, and its reverberations in such disparate countries as Argentina, Japan, and Russia that serious criticism began to produce a controversy as to whether the future of corporate and monetary globalization should be entrusted to the untender mercies of neoliberal guidance. In such an altered atmosphere, the reformist voices of such insiders as George Soros and Joseph Stiglitz began to be heard more widely, lending credibility to the previously ignored leftist critics. And then in late 1999, the Seattle demonstrations directed at an IMF ministerial meeting signalled to the world the birth of a wide and multi-faceted anti-globalization movement deeply opposed to the basic policies associated neo-liberalism even when it succeeded in producing global economic growth. The reaction to Seattle finally generated a serious debate, not yet resolved, about the effects of globalization-from-above, assessing its benefits and burdens, and focusing especially on whether the poor of the world were being victimized or impressively helped.¹⁹

In the Bush presidency, despite its obsessions with global security and the war against mega-terrorism, the US Government dogmatically and unconditionally reinforced its commitment to corporate globalization as the *sole* foundation of legitimate governance at the level of the sovereign state.²⁰ These policies were promoted without much fanfare because of the neoconservative espousal of an expansive grand strategy labelled here “the global domination project.” Corporate and monetary globalization at present time is the subject to a variety of challenges resulting from a sharp global recession and by a robust worldwide grassroots movement that is more than a negative response to globalization-from-above, providing some vision of more equitable and sustainable forms of globalization.

In the early 21st century confidence in capitalism has further retreated, especially in the aftermath of a global recession that started in 2008, and is not yet clearly over, and generates worries that a worse unravelling of the world economy might well occur in the years ahead. The seemingly superior capacity of centralized political order, such as China and Malaysia, to withstand economic turbulence and declines in world trade and investment

also has weakened the ideological hold of capitalism on the political imagination, especially in its neoliberal 1990s form. The high risk banking and financial practices that led to the economic collapse and a jobless recovery have not disappeared, which has had disillusioning effects on claims that market-driven economic policies are to be viewed as socially beneficial. At the same time, the business and banking leadership, abetted by rising economic nationalism that emphasizes competitive advantages in the global marketplace has made it almost impossible to establish appropriate forms of national and international regulation to restore confidence in corporate and monetary globalization.²¹

Civic Globalization. As suggested, the effects of corporate and monetary globalization have generated a counter-movement on the level of ideas and practices, a movement that seeks a more equitable and sustainable world economy, although not necessarily opposed to “globalization” as such despite some elements supportive of local sustainability. That is, if globalization is understood as the compression of time and space as a result of technological innovation and social/economic integration, and if its policy emphasis becomes people-oriented rather than capital-driven, then it is more accurate to consider civic globalization as favouring “another globalization” rather than being identified as an anti-globalization populism. Over the years, civic globalization has clarified its dominant tendencies, despite diverse constituencies from North and South, including activist groups with distinct and sometimes clashing priorities, including human rights, economic well being, and environmental protection, as well as a range of commitments to participatory and substantive democracy. Not surprisingly civic globalization has yet to convey a coherent image of what is meant by a people-oriented approach.²²

As already suggested, especially through the annual gatherings of the World Social Forum in Porto Alegre, Brazil and elsewhere, has been exhibiting both its vibrant and its divergent tendencies creating the impression of anarchic energy but not yet a political project. There is a certain negative unity among militants adherents of civic globalization—a systemic repudiation of the main tenets of corporate and monetary globalization, and the further belief that capitalism cannot be reformed, but must be transformed into a type of political economy that has not previously existed. In the search for coherence and a positive program, there is an increasing disposition to view civic globalization as essentially a movement dedicated to the achievement of *global* democracy, which emphasizes the call for a more participatory, transparent, and accountable process of shaping and implementing global economic policy, especially within regional

and global economic institutions, in relation to regulated marketplaces, and within the UN System generally.

As might be expected, those concerned with the impact of corporate and monetary globalization are also deeply disturbed by and generally opposed to the American response to the September 11 attacks, and view resistance to imperial globalization, and its accompanying militarism, as ranking with, or even regarded as more serious and urgent, than opposition to the predatory effects of corporate and monetary globalization. The mobilization of millions to oppose the Iraq War in early 2003 was mainly a phenomenon in the countries of the North, but it attracted many of the same individuals who had earlier been part of grassroots campaigns associated with opposition to corporate globalization. There is an uncertainty, at present, as to whether anti-war and anti-imperial activism will merge successfully with the struggle for a transformed world economy and for substantive democracy, and whether the experience of global recession, will move this struggle forward, or shift attention to incremental reform and temporary recovery.

Imperial Globalization. Even at the high point of corporate and monetary globalization in the mid-1990s, there were a variety of critical assessments that pierced the economic veil to depict and lament the American project of global domination.²³ It was notable that during the 1990s the United States failed to use its global pre-eminence constructively. It failed to promote nuclear and general disarmament or to create a more robust UN peacekeeping capability or to address the major unresolved conflicts throughout the world. Instead, the United States Government put its energies into the identification of new enemies whose existence would justify high defence spending, the strengthening its worldwide network of military bases and regional naval commands, the retention of its nuclear arsenal, and the continuation of an expensive program for the militarization of space. In retrospect, it seems difficult to deny the charges that US policy, whether or not with full comprehension by its leaders and many of its citizens, was seeking a structure for world order that rested on American imperial authority.²⁴ True, the apparent priority goal in the 1990s for American global leadership was to keep the world profitable for corporate and financial globalization, deflecting criticism and threatening potential opponents.

The “election” of George W. Bush in 2000 as a representative of the radical right in America, a result greatly abetted by the national emergency atmosphere following the September 11 attacks gave an unanticipated wide opening to the most ardent advocates of imperial globalization situated within the American policymaking community. It converted the un-

dertaking from one of indirection and closet advocacy in conservative think tanks to that of the most vital security imperative in the history of the country with intense popular backing although disguised. There was, of course, no official American acknowledgement that was pursuing imperialist ideas and goals. The need for American military dominance everywhere and the associated projection of military force to various corners of the globe were justified as essential security adjustments to the post-September 11 global setting. In the immediate aftermath of the attacks a globally aggressive conception of security provided the most powerfully persuasive rationale for the global projection of U.S. military power since the cold war era, and it did so in a setting where the absence of strategic and ideological statist rivalry allowed the U.S. Government to promise a future world order without wars and geopolitical rivalry among states, and thus assure foreign governments that would be able to enjoy the benefits of a reinvigorated corporate and monetary globalization.²⁵ As suggested earlier, the counter terrorist consensus loomed large at first, giving rise to widespread support at home and abroad for the US decision to wage war against Afghanistan, and to dislodge the Taliban regime from control. The move toward war with Iraq disclosed the limits of this global consensus as well as the *diplomatic* limits of American power to generate active political support for its project of global dominance. As with Afghanistan, the Iraqi regime was widely deplored by other governments as oppressive and militarist, but unlike Afghanistan, Washington's claims of pre-emption as directed toward Iraq seemed much more connected with plans for unrelated geopolitical expansion, especially in the Middle East, than qualifying as a sincere response to September 11 justified by claims of defensive necessity with respect to the continuing threats posed by the al Qaeda network. Indeed, as critics of the Iraq War pointed out during the pre-war debate, the probable effect of the war would be to heighten the al-Qaeda threat rather than diminish it. This critical view was accompanied by the surfacing of many suspicions about what were the *real* motivation for military intervention in Iraq, and explanations relating to ensuring future control over Gulf oil reserves, Israelis security, containment of political Islam, and regional hegemony were forthcoming.

The perception of imperial globalization is a matter of interpretation, as are its probable effects on the governance of political behaviour in the world. The advocates of the new imperialism emphasize its benevolent potentialities, with reference to the spread of constitutional democracy and human rights, and the provision of peacekeeping capabilities that could act far more effectively than what could be achieved by reliance on the United Nations.²⁶ The critics make several main arguments. Some are concerned

with prospects for a geopolitical backlash in the form of a new strategic rivalry, possibly involving a Sino-European alliance. Others stress that this commitment to global militarism will lead to the further weakening of American republicanism at home and abroad. Given these developments, it seems prudent to worry about the emergence of some new oppressive political order that might be most accurately described as “global fascism,” a political fix without historical precedent.²⁷ Of course, the proponents of imperial globalization resent the friction produced by civic globalization, and despite the claims of support for “democracy” prefer compliant governmental elites and passive citizenries. Bush “rewarded” and lavishly praised governments that ignored and overrode the clearly evidenced anti-war sentiments of their citizens, especially Britain, but also Italy and Spain, while “punishing” those countries that refused to support fully recourse to an aggressive and unlawful war against Iraq, including France, Turkey, and Germany. To some degree these concerns have abated since Barack Obama became president of the United States, although the structure of American militarism persists, as does the resolve to deal with persistence of threats associated with the September 11 experience by military intervention. The Obama presidency has escalated American and NATO military operations in Afghanistan and has kept tensions high in relation to Iran.

Apocalyptic Globalization. There is no entirely satisfactory designation for the sort of political stance associated with Osama Bin Laden’s vision of global governance. It does appear reliant upon extreme forms of political violence that challenge the West, especially the U.S., by a “war” without limits. Without normal military capabilities the strongest consolidation of state power in all of human history is being challenged. The al Qaeda capability to pose such a challenge was vividly demonstrated on September 11, attacking the United States symbolically and substantively more severely than throughout the course of its entire history with the possible exception of the War of 1812. The Bin Laden vision also embodies very far reaching goals that if achieved would restructure world order as it is now known: driving the United States out of the Islamic world, replacing the state system with an Islamic *umma*, and converting the residual infidel world to Islam, thereby globalizing the *umma*. It is here characterized as “apocalyptic” because of its religious and absolutist embrace of violent finality that radically restructures world order on the basis of a specific religious vision, as well as its seeming willingness to resolve the historical tensions of the present world by engaging in a war of extermination against the “crusader” mentality of those designated as enemies, including Jews, Christians, and atheists, an avowedly genocidal agenda. Since the

United States as the target and opponent of al Qaeda also expresses its response in a political language of good and evil, but with the moral identities inverted, there seem to exist grounds for the term “apocalyptic globalization.”²⁸ This designation also conforms to the concern about nuclear weaponry, both as a safeguard for the established order and as a potential threat should such weapons of mass destruction fall into the hands of al Qaeda or others of similar disposition.

Perhaps, it confers on al Qaeda an exaggerated prominence by treating its vision as sufficiently relevant to warrant a distinct status as a new species of globalization that approaches the future with its own formula for global governance. At present, the scale of the attacks, as well as the scope of the response, seems to validate this prominence, even though it may seem highly dubious that such an extremist network has any enduring prospect of toppling statism or challenging either corporate and monetary globalization or imperial globalization. As far as civic globalization is concerned, there exists a quiet antagonism, and an even quieter basis for limited collaboration. The antagonism arises because the main support for civic globalization comes from primarily from those that regard themselves as secularists, or at least as opponents of extremist readings of any particular world religion that gives rise to a rationale for unrestricted holy war waged against civilian society. The collaboration possibility, if it exists at all, is implicit and a result of convergent goals rather than active cooperation. This convergence is present because of certain shared goals, including justice for the Palestinians and opposition to imperial and corporate and monetary globalization.

Regional Globalization. As with apocalyptic globalization, the terminology presents an immediate problem. Does not the postulate of a regionalist world order contradict trends toward globalization of a planetary scope? The language may seem to suggest such a tension, but the intention is coherent, to imply the possibility that global governance may in the future be partially, or even best, conceived by reference to a world of regions. The basic perspective, longer range than the others, is to view European regionalism as an ambitious exploratory venture, which if it is maintained and seems vindicated in the eyes of the world, will lead to imitative behaviour in other principal regions of the world. What would constitute success for the EU is not entirely clear, and is impossible to specify at this time. It would undoubtedly include economic progress, social democracy, conflict resolution in relation to ethnic and territorial disputes, resistance to, or at least the moderating of, imperial, apocalyptic, and corporate and monetary manifestations of globalization. Such regionalizing prospects are highly speculative at this stage, but still worth entertaining, given

the dramatic transformations experienced by Europe during the past fifty years, and the difficulties associated with establishing beneficial world order alternatives.²⁹

Regionalism is conceptually and ideologically appealing as a feasible synthesis of functional pressures to form enlarged political communities and the rise of identity politics associated with civilizational and religious orientations. Regionalism is geopolitically appealing as augmenting the capabilities of the sovereign state without abandoning its centrality in political life at the national level, especially to allow non-American centres of action to compete economically and to build bulwarks of political resistance to the threats posed by imperial and apocalyptic globalization.

It is also well to acknowledge grounds for scepticism with respect to regional globalization. The United States, as well possibly as China, Russia, Japan, Brazil, and India, seem likely either to oppose or to try their best to dominate any strong regionalizing moves outside of Europe. The disparities and rivalries among countries in the non-Western regions are so great as to make ambitious experiments in regionalism seem rather utopian for the foreseeable future. Also, regional frameworks are not entirely congruent with the supposed recognition of civilizational and religious identities. Even in Europe there are large non-Western, non-Judeo-Christian minorities, and in Asia and Africa, the civilizational and religious identities cannot be homogeneously categorized without neglecting the realities of their basic condition of heterogeneity.

Ecological globalization. The advent of growing concerns about the adverse effects of climate change present a statist world order with a series of difficult problems that can be effectively addressed through inter-governmental cooperation on an unprecedented scale and scope. The Copenhagen Climate Conference at the end of 2009 showed both the realization that some portions of the world are exceedingly worried about the harmful effects of global warming in the coming decade. This seems especially true for low lying island communities facing the prospects of rising ocean levels due to the melting of polar ice and parts of sub-Saharan Africa that are threatened with higher temperatures and catastrophic drought in conditions where the human struggle for survival is already exceedingly difficult. There are related issues concerning the discouragement of deforestation, the danger that marine life will be devastated by acidification of the oceans, reduced biodiversity, a rising incidence of extreme weather, and a variety of harms associated with growing scarcities of fresh water.

Normative globalization. By normative globalization is meant the impact of international law, the United Nations, human rights, and religious and secular forms of humanism upon transnational behaviour and policy

agendas. It represents a recognition of the role of values and rights both in public consciousness and in political behaviour. By considering these influences within a framework of globalization, there is also a recognition that national identity frameworks are being superseded to varying degrees by universalistic and civilizational identities. Civic globalization is also often the bearer of undertakings that reflect commitments to the *human* interest and to *human* security rather than to more exclusive perspectives centring on nation, religion, ethnicity. The rise of human rights and humanitarian intervention are expressive of this tendency, but also may operate in a contradictory manner as disguised carriers of imperial or apocalyptic globalization, and even of corporate and monetary globalization.³⁰

VI. A Concluding Observation

The basic argument made here is that it remains useful to retain the descriptive terminology of globalization in addressing the challenge of global governance, but that its provenance should be enlarged to take account of globalizing tendencies other than those associated with the world economy and the anti-globalization movement that formed in reaction. The discourse on globalization to remain useful needs to extend its coverage to the antagonism produced by the encounter between the United States and al Qaeda, acknowledging its borderless character and the degree to which both antagonists sponsor a visionary solution to the problem of global governance, neither of which seems consistent with the values associated with human rights and global democracy. As well, the European experiment in organizing many aspects of political community on a regional basis suggests what many find to be an attractive alternative to reliance on statism, (which had been unquestioned at the time the United Nations was established) as well as a potential source of resistance to both imperial and apocalyptic menaces.³¹ Ecological stresses, especially associated with climate change and global warming, also seem to require such high levels of cooperation among sovereign states that perceive their interests very unevenly as to generate a variety of disturbing effects on the collective life of the planet.

Such an appreciation of various globalizations is not intended as a funeral rite for the state system that has shaped world order since the mid-seventeenth century or to deride the achievements of territorial sovereignty in promoting tolerance, reason, plural space for self-determination, and a liberal conception of state/society relations. The state may yet stage a comeback, including a normative comeback, providing most of the peoples of the world with their best hope for blunting the sharp and often cruel

edges of corporate, imperial, apocalyptic, ecological, and even regional dimensions of globalization. This possibility is explored in Falk (1997:123-136). The recovery of a positive world order role for the state may be further facilitated by collaborative endeavours joining moderate states with the transnational social energies of civic globalization, and possibly environmental activism. Such a possibility has already been manifested in impressive moves to support the Kyoto Protocol on climate change, the outlawry of anti-personnel landmines, and especially by the successful movement that led to the establishment of the International Criminal Court in 2002.

The whole project of global governance has been eclipsed by the events of recent years, especially by the advent of unilateralist American government as of the 2000 presidential elections, followed in 2001 by the unleashing of the borderless war and the deliberate Washington effort to sideline the United Nations and disregard international law to the extent that such sources of authority clash with the policies of imperial globalization by withholding a legitimating seal of certification. Part of the rationale for reimagining globalization is to encourage a more relevant debate on the needs and possibilities for global governance, that is, suggesting that the world situation is not altogether subject to this vivid clash of dark forces, that constructive possibilities exist to move forward, and deserve the engagement of citizens and their leaders throughout the world. Of course, it will be maintained by some commentators that such an undertaking is merely rescuing globalization from circumstances that have rendered the discussions of the 1990s irrelevant to present concerns, including how to re-stabilize the world economy and provide a regulatory framework protective of human security.

Returning to the observations made at the outset, the postulate of a decentralized political order composed of many dispersed actors continues to support a pluralist view of world society, but not one that is elegantly simplified by limiting the class of political actors to sovereign states. Beyond this, the integrative characteristics of the world economy, environmental protection, and global civil society, as well as the American drive for global empire, give unprecedented weight to more solidarist constructions of the global reality. Indeed, the most responsive rendering of world order prospects would seem to rest upon the emergence of a creative tension between the two poles of assessment, pluralist and solidarist as conceptualized in an earlier global setting by the English School. We do not yet have a convincing political language with which to express this new dynamic reality, and so during what might be a long waiting period, the best solution seems to describe the world situation as one of "complex

globalization,” a multi-dimensional viewpoint that is sensitive to the currently anguished, messy, and controversial interplay of the main contending agents of history. Whether a new coherence will emerge from complex globalization is radically uncertain, although it is plausible to highlight two solidarist candidates for the shaping of the future of world society: the first, associated with the American dominance project, the second associated with the vision of a global democracy that informs the activities of global civil society.³² An imperial solution for world order would create a negative form of solidarism while a democratic solution, as abetted by environmental activism, would embody a positive form. In either case the pluralist hypothesis is likely to be refuted by the middle of this century. As mentioned in the discussion of a world of regions, that is, regional globalization, it is at least conceivable that a triumphal regionalism will produce a new pluralism rather than lead to political unification in some form, that is, the realization of a partial variant of solidarism as a sequel to the Westphalian Era.

The future of world society, it has been argued, is being forged on this anvil of complex globalization. It is most likely to produce a world order that exhibits a high degree of structural hybridity, combining aspects of pluralist and solidarist organizational ideas. Whether it will make beneficial contributions to human security will depend, above all, on neutralizing apocalyptic and imperial forms of globalization, as well as democratizing corporate and monetary, civic, regional, and even normative and ecological globalization. It is an ongoing historical cosmodrama that is likely to swerve to and from before arriving as some outcome that is sufficient stable to give rise to a new generalized account of world society.

Notes

1. President Barack Obama did deliver a speech in Prague that committed the United States to a vision of a world without nuclear weaponry, but there seems to be little evidence of an intention to follow up on such an initiative, except in managerial arms control/non-proliferation modes as in the New START Treaty or the 2010 Nuclear Posture Review. “Remarks of President Barack Obama,” Hradcany Square, Prague, April 6, 2009; for more general assessment, see Falk (2010:131-149).
2. This issue is well depicted by Anthony Giddens, presented as the “Giddens’s Paradox” (Giddens, 2009).
3. The contours of the English School have been set forth most definitively by Martin Wight and Hedley Bull. See especially Bull (1977); Butterfield & Wight (1966). For a sympathetic presentation of the English School see Dunne (1998) and more recently Linklater and Suganami (2008).

4. The effort was to show that both prudent power management respectful of international law and the benefits of inter-state cooperation across a wide spectrum of issues were characteristic of the workings of the state system. For a far more sceptical reading of the Westphalian image of world order either historically or empirically see various essays in Orford (2006).
5. A viewpoint most influentially expressed by Bull in his influential essay, "The Grotian Conception of International Society" (1966: 51-73n2).
6. My attempt to treat these concerns is to be found in Falk (2004).
7. See a graphic depiction of this global reach in Johnson (2004), but the designation of "empire" needs elaboration as the American embodiment of the global state makes no formal claim to override the sovereignty of subordinated states, but its disregard of the sovereignty of others is blatant and constitutive of a new 21st century framing of world order.
8. An intelligent expression of this perspective can be found in Brooks & Wohlforth (2009:49-63); especially in the period after September 11, this primacy was articulated as an ideological mission that amounted to a global domination project.
9. For differing approaches to the changing geopolitical landscape see Kagan (2008); Moravcsik (2010:91-98).
10. Most influentially by Manuel Castels in his magisterial three volume work bearing the overall title *The Information Age: Economy, Society and Culture* (1996, 1997, 1998).
11. My own misguided early endorsement of the Afghanistan War represented a misplaced view that the threat that produced the attacks was both attributable in part to a government in power and could be significantly reduced, if not eliminated, by recourse to war and regime change. See Falk (2003).
12. Ignored here, but not to be dismissed, are continuing calls for a redescription and reappraisal of what actually took place on September 11, giving rise to a growing ethos of suspicion with respect to truth and governance. See Griffin (2008); for an inquiry into deeper roots see Scott (2007).
13. Perhaps most comprehensively and intelligently defended in Glennon (2001); for a more nuanced endorsement of the Kosovo intervention that seeks to revise international law to take wider account of humanitarian pressures to erode sovereign rights see *The Kosovo Report: Conflict, International Response, Lessons Learned* (2000).
14. For analysis of these issues, including an assessment on the future viability of the Charter constrains on the use of international force see Falk (2008:69-82).
15. For mainstream assessment, and accompanying official texts appearing as appendixes, see Korb (2003); for early criticism see Falk (2002). For useful consideration of deeper and complex issues see Doyle (2008).
16. For one interpretation of this new framework of global conflict see Falk (2003).
17. For extended discussion Falk (2002:311-352).
18. For a widely read extravagantly positive account of the benefits of globalization see Friedman (1999).
19. *The Economist* in its treatment of the anti-globalization movement that was initiated at Seattle in late 1999 demonstrations against the World Trade Organiza-

tion argued that the poor were much more helped by market-oriented constitutionalism than by more social democratic or welfare oriented approaches to economic development.

20. For text of the most authoritative statement see the opening sentences of the covering letter signed by George W. Bush as president, White House, "The National Security Strategy of the United States of America," Washington, D. C., 2002.

21. An insightful critical response to the failures of economic globalization and possible transformative responses is found in Gill (2008).

22. The dominant tendencies within civic globalization favour democracy as the basis for political life, but are sceptical about procedural forms of democracy that is centred upon periodic and free elections. Instead, what is proposed by those associated with various forms of globalization-from-below is substantive democracy in which the governing process is dedicated to equitable economic, social, and political development, with a bias toward ensuring the wellbeing of the impoverished.

23. For two very different approaches to the emergence of imperial globalization see Hardt and Negri (2000) and Bacevich (2002).

24. The ending of the Bacevich (2002:244n22) asserts this challenge: "The question that urgently demands attention—the question that Americans can no longer afford to dodge—is not whether the United States has become an empire. The question is what sort of empire they intend theirs to be." Whether this question retains its same saliency in 2010 in the aftermath of the world economic recession and the frustrations faced by American military interventions in Iraq and Afghanistan is questionable. In any event, both the American public and its leaders have difficulty discussing this imperial identity or project because the guiding national political myth remains anti-imperial, a legacy of the country's revolutionary origins.

25. Bush writes as follows in very first sentence of his cover letter attached to the 2002 National Security Strategy document cited in Note 20: "The great struggles of the twentieth century between liberty and totalitarianism ended with a decisive victory for the forces of freedom—and a single sustainable model of national success: freedom, democracy, and free enterprise."

26. For influential statements of this pro-imperial outlook see Kagan (1998:24-35); Ignatieff (2003:22-27;50-53).

27. For two rather different lines of argument along these lines see "Will the Empire be Fascist?" in Falk (2004: 241-252n5); Wolin (2008).

28. My use of the word "apocalyptic" here is based on conversations with Robert Jay Lifton.

29. See useful conceptualization and advocacy by Paupp (2009); also Falk (2004:45-65n5).

30. For several explorations see Orford and Kennedy chapters in Orford (2006:131-196n3).

31. Although this Westphalian consensus that existed at the birth of the United Nations was distinctly West centric, and had no trouble reconciling this conceptual statism with an acceptance of European colonial empires as valid political arrangements.

32. Important to distinguish the spread of democracy within states from the democratization of the world order system. The latter includes the procedures of such entities as the IMF and World Bank, and the operations of the UN principal organs, General Assembly and Security Council. For incisive overview of the interdependent nature and significance of national and global democracy see Archibugi (2008).

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GOVERNING THE GLOBE: WHAT IS THE BEST WE CAN DO?*

MICHAEL WALZER

Imagine the possible political arrangements of international society as if they were laid out along a continuum marked off according to the degree of centralization. Obviously, there are alternative markings; the recognition and enforcement of human rights could also be measured along a continuum, as could democratization, welfare provision, pluralism, and so on. But focusing on centralization is the quickest way to reach the key political and moral questions, above all the classical question: what is the best or the best possible regime? What constitutional goals should we set ourselves in an age of globalization?

My plan is to present seven possible regimes or constitutions or political arrangements. I will do this discursively, without providing a list in advance, but I do want to list the criteria against which the seven arrangements have to be evaluated: these are their capacity to promote peace, distributive justice, cultural pluralism, and individual freedom. Within the scope of this essay, I will have to deal summarily with some of the arrangements and some of the criteria. Because the criteria turn out to be inconsistent with—or at least in tension with—one another, my argument will be complicated, but it could be, and no doubt should be, much more so.

It's best to begin with the two ends of the continuum, so that its dimensions are immediately visible. On one side, let's say the left side (though I will raise some doubts about that designation later on), there is a unified global state, something like Immanuel Kant's "world republic," with a single set of citizens, identical with the set of adult human beings, all of them possessed of the same rights and obligations. This is the form that maximum centralization would take: each individual, every person in the world, would be connected directly to the centre. A global empire, in which one nation ruled over all the others, would also operate from a single centre, but insofar as its rulers differentiated between the dominant nation and all the others, and perhaps among the others too, this would

represent a qualification on its centralized character. The centralization of the global state, by contrast, is unqualified. Following Thomas Hobbes's argument in *Leviathan*, I want to say that such a state could be a monarchy, oligarchy, or democracy; its unity is not affected by its political character. By contrast, unity is certainly affected by any racial, religious, or ethnic divisions, whether these are hierarchical in nature, as in the imperial case, establishing significant inequalities among the groups, or merely functional or regional. Any political realization of difference moves us rightward on the continuum as I am imagining it.

At the far right is the regime or the absence-of-regime that political theorists call "international anarchy." This phrase describes what is in fact a highly organized world, but one that is radically decentred. The organizations are individual sovereign states, and there is no effective law binding on all of them. There is no global authority or procedure for policy determination and no encompassing legal jurisdiction for either sovereigns or citizens. More than this (since I mean to describe an extreme condition), there are no smaller groups of states that have accepted a common law and submitted to its enforcement by international agencies; there are no stable organizations of states working to generate common policies with regard, say, to environmental questions, arms control, labour standards, the movement of capital, or any other issue of general concern. Sovereign states negotiate with each other on the basis of their "national interests," reach agreements, and sign treaties, but the treaties are not enforceable by any third party. State leaders watch each other nervously and respond to each other's policies, but in every other sense, the centres of political decision making are independent; every state acts alone. This is not an account of our own situation; I am not describing the world as it is in 2000. But we are obviously closer to the right than to the left side of the continuum.

The strategy of this essay will be to move in from the two sides. I will be moving toward the centre, but from opposite directions, so as to make clear that I am not describing a developmental or progressive history. The different regimes or arrangements are ideal types, not historical examples. And I don't assume in advance that the best regime lies at the centre only that it doesn't lie at the extremes. Even that assumption needs to be justified; so I had better turn immediately to the twin questions: What's wrong with radical centralization? What's wrong with anarchy? The second of these is the easier, because it is closer to our own experience. Anarchy leads regularly to war—and war to conquest, conquest to empire, empire to oppression, oppression to rebellion and secession, and secession leads back to anarchy and war again. The viciousness of the circle is continually reinforced by inequalities of wealth and power among the involved states

and by the shifting character of these inequalities (which depend on trade patterns, technological development, military alliances, and so on). All this makes for insecurity and fear not only among the rulers of states but also among their ordinary inhabitants, and insecurity and fear are, as Hobbes argued, the chief cause of war.

But would an international society, however anarchic, all of whose constituent states were republics, be drawn into the same circle? Kant argued that republican citizens would be far less willing to accept the risks of war than kings were to impose those risks on their subjects—and so would be less threatening to their neighbours (*Perpetual Peace*, First Definitive Article). We certainly see evidence of that unwillingness in contemporary democracies, though it has not always been as strong as it is today. At the same time, it is qualified today by the willing use of the most advanced military technologies—which don't, indeed, put their users at risk though they impose very high costs on their targets. So it may be the case, as the Kosovo war suggests, that modern democracies won't live up to Kant's pacific expectations: they will fight, only not on the ground.

A rather different argument has been made by some contemporary political scientists: at least in modern times, democratic republics don't fight *with one another*. But if this is so, it is in part because they have had common enemies and have established multilateral forms of cooperation and coordination, alliances for mutual security, that mitigate the anarchy of their relations. They have moved, so to speak, to the left along the continuum.

But I don't want to dismiss international anarchy without saying something about its advantages. Despite the hazards of inequality and war, sovereign statehood is a way of protecting distinct historical cultures, sometimes national, sometimes ethnic/religious in character. The passion with which stateless nations pursue statehood and the driven character of national liberation movements reflect the sombre realities of the twentieth century, from which it is necessary to draw moral and political conclusions for the twenty-first. Sovereign power is a means of self-protection, and it is very dangerous to be deprived of this means. So, the *morally* maximal form of decentralization would be a global society in which every national or ethnic/religious group that needed protection actually possessed sovereign power. But for reasons we all know, which have to do with the necessary territorial extension of sovereignty, the mix of populations on the ground, and the uneven distribution of natural resources above and below the ground, dividing up the world in this way would be (has been) a bloody business. And once the wars start, the divisions that result are unlikely to be either just or stable.

The problems at the other end of the continuum are of a different kind. Conventional warfare would be impossible in a radically centralized global state, for its agents would have disappeared, and none of the motives for going to war would any longer operate: ethnic and religious differences and divergent national interests, indeed, every kind of sectional interest, would lose their political relevance. Diversity would be radically privatized. In principle, at least, the global state would be constituted solely and entirely by autonomous individuals, free, within the limits of the criminal law, to choose their own life plans.

In practice, however, this constituting principle is radically unlikely to prevail, and ideal types should not be fictional types; they have to fit an imaginable reality. It isn't plausible that the citizens of a global state would be, except for the free choices they make, exactly like one another, all the collective and inherited differences that make for rivalry and distrust today having disappeared in the course of the state's formation. Surely different understandings of how we ought to live would persist; and these would continue to be embodied in ways of life, historical cultures, and religions, commanding strong loyalties and seeking public expression. So let me redescribe the global state. Groups of many different sorts would continue to shape the lives of their members in significant ways, but their existence would be largely ignored by the central authorities; particularistic interests would be overridden; demands for the public expression of cultural divergence would be rejected.

The reason for the rejection is easily explained: the global state would be much like states today, only on a vastly greater scale. If it were to sustain itself over time, it too would have to command the loyalty of its citizens and give expression to a political culture distinctly its own. It would have to look legitimate to everyone in the world. Given this necessity, I don't see how it could accommodate anything like the range of cultural and religious difference that we see around us today. Even a global state committed to toleration would be limited in its powers of accommodation by its prior commitment to what I will call "globalism," that is, centralized rule over the whole world. For some cultures and most orthodox religions can only survive if they are permitted degrees of separation that are incompatible with globalism. And so the survival of these groups would be at risk; under the rules of the global state, they would not be able to sustain and pass on their way of life. This is the meaning I would give to Kant's warning that a cosmopolitan constitution could lead to "terrifying despotism" (*Theory and Practice*, Part III)—the danger is less to individuals than to groups. A more genuine regime of global toleration would have to make

room for cultural and religious autonomy, but that would involve a move rightward on the continuum.

Once again, however, I want to acknowledge the advantages that lie on the continuum's far left side, though in this case they are more hypothetical than actual, since we have less experience of centralization than of anarchy. But we can generalize from the history of centralized states and suggest that global distributive justice might be better served by a strong government able to establish universal standards of labour and welfare and to shift resources from richer to poorer countries. Of course, the will to undertake egalitarian reforms might well be absent in the world republic—just as it is in most sovereign states today. But at least the capacity would exist; the European Community (EC) provides some modest but not insignificant examples of the redistribution that centralized power makes possible. At the same time, however, the strength of the single centre carries with it the threat of tyranny.

Now let's move one step in from the left side of the continuum, which brings us to a global regime that has the form of a *Pax Romana*. It is centralized through the hegemony of a single great power over all the lesser powers of international society. This hegemony sustains world peace, even if there are intermittent rebellions, and it does this while still permitting some degree of cultural independence—perhaps in a form like that of the Ottoman *millet* system, under which different religious groups were granted partial legal autonomy. The autonomy is not secure, because the centre is always capable of cancelling it; nor will it necessarily take the form most desired by a particular group. It isn't negotiated between equals but granted by the powerful to the weak. Nonetheless, arrangements of this sort represent the most stable regime of toleration known in world history. The rulers of the empire recognize the value (at least, the prudential value) of group autonomy, and this recognition has worked very effectively for group survival. But the rulers obviously don't recognize individual citizens as participants in the government of the empire, they don't protect individuals against their own groups, and they don't aim at an equitable distribution of resources among either groups or individuals. Imperial hegemony is a form of political inequality that commonly makes for further inequalities in the economy and in social life generally.

I have to be careful in writing about imperial rule, because I am a citizen of the only state in the contemporary world capable of aspiring to it. That's not my own aspiration for my country, nor do I really think that it's possible, but I won't pretend to believe that a *Pax Americana*, however undesirable, is the worst thing that could happen to the world today (it may be the worst thing that could happen to America), and I have been an ad-

vocate of a more activist American political/military role in places like Rwanda and Kosovo. But a role of that sort is still far from imperial hegemony, which, though we might value it for the peace it brought (or just for an end to the massacres), is clearly not one of the preferred regimes. It would reduce some of the risks of a global state, but not in a stable way, because imperial power is often arbitrary and capricious. And even if a particular empire did protect communal autonomy, it would be of no use to individuals trapped in oppressive communities.

Now let's move in from the right side of the continuum: one step from anarchy brings us to something like the current arrangement of international society (hence this is the least idealized of my ideal types). We see in the world today a series of global organizations of a political, economic, and judicial sort—the United Nations, the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), the World Court, and so on—that serve to modify state sovereignty. No state possesses the absolute sovereignty described by early modern political theorists, which makes for anarchy in its strongest sense. On the other hand, the global organizations are weak; their decision mechanisms are uncertain and slow; their powers of enforcement are difficult to bring to bear and, at best, only partially effective. Warfare between or among states has been reduced, but overall violence has not been reduced. There are many weak, divided, and unstable states in the world today, and the global regime has not been successful in preventing civil wars, military interventions, savage repression of political enemies, massacres, and “ethnic cleansing” aimed at minority populations. Nor has global inequality been reduced, even though the flow of capital across borders (labour mobility too, I think) is easier than it has ever been—and, according to theorists of the free market, this ought to have egalitarian effects. All in all, we cannot be happy with the current state of the world; indeed, the combination of (many) weak states with weak global organizations brings disadvantages from both directions: the protection of ethnic and religious difference is inadequate and so is the protection of individual rights and the promotion of equality.

So we need to move further toward centralization. The next step doesn't bring us to, say, a United Nations with its own army and police force or a World Bank with a single currency. In terms of intellectual strategy, we would do better to reach arrangements of that kind from the other side. Consider instead the same “constitutional” arrangements that we currently have, reinforced by a much stronger international civil society. Contemporary political theorists argue that civil society has often served to strengthen the democratic state. Certainly, associations that engage, train, and empower ordinary men and women serve democracy more

effectively than other regimes, but they probably strengthen any state that encourages rather than suppresses associational life. Would they also strengthen the semi-governmental international organizations that now exist? I am inclined to think that they already do this in modest ways and could do so much more extensively.

Imagine a wide range of civic associations—for mutual aid, human rights advocacy, the protection of minorities, the achievement of gender equality, the defence of the environment, the advancement of labour—organized on a much larger scale than at present. All these groups would have centres distinct from the centres of particular states; they would operate across state borders and recruit activists and supporters without reference to nationality. And all of them would be engaged in activities of the sort that governments also ought to be engaged in—and where governmental engagement is more effective when it is seconded (or even initiated) by citizen-volunteers. Once the volunteers were numerous enough, they would bring pressure to bear on particular states to cooperate with each other and with global agencies; and their own work would enhance the effectiveness of the cooperation.

But these associations of volunteers co-exist in international civil society with multinational corporations that command armies of well-paid professional and managerial employees and threaten to overwhelm all other global actors. This is still a threat, not an achievement—the corporations haven't entirely escaped the control of the nation-state—but the threat isn't imaginary. And I can describe only an imaginary set of balancing forces in an expanded civil society: multinational labour unions, for example, and political parties operating across national frontiers. Of course, in a global state or a world empire, multinational corporations would be instantly domesticated, since there would be no place for their multiplication, no borders for them to cross. But that isn't an automatic solution to the problems they create; in domestic society, exactly as in international society, they challenge the regulative and redistributive power of the political authorities. They require a practical, political response, and international civil society provides the best available space for the development of this politics.

Best available, but not necessarily sufficient for the task: it is a feature of the associations of civil society that they run after problems; they react to crises; their ability to anticipate, plan, and prevent lags far behind that of the state. Their activists are more likely to minister heroically to the victims of a plague than to enforce public health measures in advance. They arrive in the battle zone only in time to assist the wounded and shelter the refugees. They struggle to organize a strike against low wages and

brutal working conditions, but are unable to shape the economy. They protest environmental disasters that are already disastrous. Even when they predict coming troubles, they have too little institutional power to act effectively; they are not responsible for the state as a whole, and their warnings are often disregarded precisely because they are seen as irresponsible. As for the underlying, long-term problems of international society—insecurity and inequality above all—civil associations are at best mitigating factors: their activists can do many good things, but they can't make peace in a country torn by civil war or redistribute resources on a significant scale.

I want to take another step in from the left side of the continuum, but will first summarize the steps so far. Because this next one, and the one after that, will bring us to what seem to me the most attractive possibilities, I need to characterize, perhaps try to name, the less attractive ones already canvassed. Note first that the right side of the continuum is a realm of pluralism and the left side a realm of unity. I am not happy with that description of right and left; there have always been pluralist tendencies on the left, and those are the tendencies that I identify with. Still, it is probably true that unity has been the dominant ambition of leftist parties and movements, so it doesn't make much sense, on this occasion anyway, to fiddle with the rightness and leftness of the continuum.

Starting from the right, then, I have marked off three arrangements, moving in the direction of greater centralization but doing this, paradoxically, by adding to the pluralism of agents. First, there is the anarchy of states, where there are no effective agents except the governments that act in the name of state sovereignty. Next, we add to these governments a plurality of international political and financial organizations, with a kind of authority that limits but doesn't abolish sovereignty. And after that, we add a plurality of international associations that operate across borders and serve to strengthen the constraints on state action. So we have international anarchy and then two degrees of global pluralism.

On the left, I have so far marked off only two arrangements, moving in the direction of greater division but maintaining the idea of a single centre. The first is the global state, the least divided of imaginable regimes, whose members are individual men and women. The second is the global empire, whose members are the subject nations. The hegemony of the imperial nation divides it from the others, without abolishing the others.

The next step in from the left brings with it the end of subjection: the new arrangement is a federation of nation-states, a United States of the World. The strength of the centre, of the federal government, will depend on the rights freely ceded to it by the member states and on the direct or

indirect character of its jurisdiction over individual citizens. Defenders of what Americans call “states’ rights” will argue for a mediated jurisdiction, with fewer rights ceded to the centre. Obviously, the greater the mediating role of the member states, the more this arrangement moves rightward on the continuum; if the mediation disappears entirely, we are back at the left end, in the global state. To find a place for this federal regime, we need to imagine a surrender of sovereignty by the member states and then a constitutionally guaranteed functional division of power, such that the states are left with significant responsibilities and the means to fulfil them—a version, then, of the American system, projected internationally. A greatly strengthened United Nations, incorporating the World Bank and the World Court, might approximate this model, so long as it had the power to coerce member states that refused to abide by its resolutions and verdicts. If the UN retained its current structure, with the Security Council as it is now constituted, the global federation would be an oligarchy or perhaps, because the General Assembly represents a kind of democracy, a mixed regime. It isn’t easy to imagine any other sort of federation, given the current inequalities of wealth and power among states. The oligarchs won’t yield their positions, and any effective federal regime would have to accommodate them (though it might also drain their strength over the long run).

These inequalities are probably harder to deal with than any political differences among the states. Even if all the states were republics, as Kant hoped they would be, the federation would still be wholly or partly oligarchic, so long as the existing distribution of resources was unchanged. And oligarchy here represents division; it drastically qualifies the powers of the centre. By contrast, the political character of the member states would tend to become more and more similar; here the move would be toward unity or, at least, uniformity. For all the states would be incorporated into the same constitutional structure, bound, for example, by the same codes of social and political rights and far less able than they are today to ignore those rights. Citizens who think themselves oppressed would appeal to the federal courts and presumably find quick redress. Even if the member states were not democracies to start with, they would become uniformly democratic over time.

As a democrat I ought to find this outcome more attractive than I do; the problem is that it’s more likely to be reached by pressure from the centre than by democratic activism at (to shift my metaphor) the grass-roots. Some combination of the two might work fairly well. But I want to stress that my own preference for democracy doesn’t extend to a belief that this preference should be uniformly enforced on every political com-

munity. Democracy has to be reached through a political process that, in its nature, can also produce different results. Whenever these results threaten life and liberty, some kind of intervention is necessary, but they don't always do that, and when they don't the different political formations that emerge must be given room to develop (and change). But could a global federation make its peace with political pluralism?

It is far more likely to make its peace with material inequality. A federal regime would probably redistribute resources, but only within limits set by its oligarchs (once again, the European Community provides examples). The greater the power acquired by the central government, the more redistribution there is likely to be. But this kind of power would be dangerous to all the member states, not only to the wealthiest among them. It isn't clear how to strike the balance; presumably that would be one of the central issues in the internal politics of the federation (but there wouldn't be any other politics since, by definition, nothing lies outside the federation).

Constitutional guarantees would serve to protect national and ethnic/religious groups. This seems to be Kant's assumption: "In such a league, every nation, even the smallest, can expect to have security and rights..." (*Idea for a Universal History with a Cosmopolitan Intent*, Seventh Thesis). In fact, however, only those groups that achieved sovereignty before the federation was formed would have a sure place within it. So there would have to be some procedure for recognizing and securing the rights of new groups, as well as a code of rights for individuals without regard to their memberships. Conceivably, the federal regime would turn out to be a guardian of both eccentric groups and individuals—as in the United States, for example, where embattled minorities and idiosyncratic citizens commonly appeal to the central government when they are mistreated by local authorities. When such an appeal doesn't work, however, Americans have options that would not be available to the citizens of a global union: they can carry their appeal to the UN or the World Court or they can move to another country. There is still something to be said for division and pluralism.

Now let's take another step in from the right side and try to imagine a coherent form of division. I have in mind the familiar anarchy of states mitigated and controlled by a threefold set of non-state agents: organizations like the UN, the associations of international civil society, and regional unions like the EC. This is the third degree of global pluralism, and in its fully developed (ideal) version, it offers the largest number of opportunities for political action on behalf of peace, justice, cultural difference, and individual rights; and it poses, at the same time, the smallest risk of

global tyranny. Of course, opportunities for action are no more than that; they bring no guarantees; and conflicts are sure to arise among men and women pursuing these different values. I imagine this last regime as providing a context for politics in its fullest sense and for the widest engagement of ordinary citizens.

Consider again the troubling features of the first five, possibly the first six regimes: in some of them it is the decentred world and the self-centred states inhabiting it (whether the states are strong or weak) that threaten our values; in others it is the tyrannical potential of the newly constituted centre that poses the danger. So the problem is to overcome the radical decentralization of sovereign states without creating a single all-powerful central regime. And the solution that I want to defend, the third degree of global pluralism, goes roughly like this: create a set of alternative centres and an increasingly dense web of social ties that cross state boundaries. The solution is to build on the institutional structures that now exist, or are slowly coming into existence, and to strengthen all of them, even if they are competitive with one another.

So the third degree of global pluralism requires a UN with a military force of its own capable of humanitarian interventions and a strong version of peacekeeping—but still a force that can only be used with the approval of the Security Council or a very large majority of the General Assembly. Then it requires a World Bank and IMF strong enough to regulate the flow of capital and the forms of international investment and a WTO able to enforce labour and environmental standards as well as trade agreements—all these, however, must be independently governed, not tightly coordinated with the UN. It requires a World Court with power to make arrests on its own, but needing to seek UN support in the face of opposition from any of the (semi-sovereign) states of international society. Add to these organizations a very large number of civic associations operating internationally, including political parties that run candidates in different countries' elections and labour unions that realize their longstanding goal of international solidarity, as well as single-issue movements of a more familiar kind. The larger the membership of these associations and the wider their extension across state boundaries, the more they would knit together the politics of the global society. But they would never constitute a single centre; they would always represent multiple sources of political energy; they would always be diversely focused.

Now add a new layer of governmental organization—the regional federation, of which the EC is only one possible model. It is necessary to imagine both tighter and looser structures, distributed across the globe, perhaps even with overlapping memberships: differently constituted fed-

eral unions in different parts of the world. This would bring many of the advantages of a global federation but with greatly reduced risks of tyranny from the centre. For it is a crucial feature of regionalism that there will be many centres.

To appreciate the beauty of this pluralist arrangement, one must attach a greater value to political possibility, and the activism it breeds, than to the certainty of political success. To my mind, certainty is always a fantasy, but I don't want to deny that something is lost when one gives up the more unitary versions of globalism. What is lost is the hope of creating a more egalitarian world with a stroke of the pen—a single legislative act enforced from a single centre. And the hope of achieving perpetual peace, the end of conflict and violence, everywhere and forever. And the hope of a singular citizenship and a singular identity for all human individuals—so that they would be autonomous men and women, and nothing else.

I must hurry to deny what the argument so far may suggest to many readers: I don't mean to sacrifice all these hopes solely for the sake of "communitarianism"—that is, for the sake of cultural and religious difference. That last is an important value, and it is no doubt well served by the third degree of pluralism (indeed, the different levels of government allow new opportunities for self-expression and autonomy to minority groups hitherto subordinated within the nation-state). But difference as a value exists alongside peace, equality, and autonomy; it doesn't supersede them. My argument is that all these are best pursued politically in circumstances where there are many avenues of pursuit, many agents in pursuit. The dream of a single agent—the enlightened despot, the civilizing *imperium*, the communist vanguard, the global state—is a delusion. We need many agents, many arenas of activity and decision. Political values have to be defended in different places so that failure here can be a spur to action there, and success there a model for imitation here.

But there will be failures as well as successes, and before concluding, I need to worry about three possible failures—so as to stress that all the arrangements, including the one I prefer, have their dangers and disadvantages. The first is the possible failure of peacekeeping, which is also, today, a failure to protect ethnic or religious minorities. Wars between and among states will be rare in a densely webbed international society. But the very success of the politics of difference makes for internal conflicts that sometimes reach to "ethnic cleansing" and even genocidal civil war. The claim of all the strongly centred regimes is that this sort of thing will be stopped, but the possible price of doing this, and of maintaining the capacity to do it, is a tyranny without borders, a more "total" regime than the theory of totalitarianism ever envisaged. The danger of all the decen-

tered and multicentered regimes is that no one will stop the awfulness. The third degree of pluralism maximizes the number of agents who might stop it or at least mitigate its effects: individual states acting unilaterally (like the Vietnamese when they shut down the killing fields of Cambodia), alliances and unions of states (like the North Atlantic Treaty Organization in the Kosovo war), global organizations (like the UN), and the volunteers of international civil society (like Doctors Without Borders). But there is no assigned agent, no singular responsibility; everything waits for political debate and decision—and may wait too long.

The second possible failure is in the promotion of equality. Here too, the third degree of pluralism provides many opportunities for egalitarian reform, and there will surely be many experiments in different societies or at different levels of government (like the Israeli kibbutz or the Scandinavian welfare state or the EC's redistributive efforts or the proposed "Tobin tax" on international financial transactions). But the forces that oppose equality will never have to face the massed power of the globally dispossessed, for there won't be one global arena where this power can be massed. Instead, many organizations will seek to mobilize the dispossessed and express their aspirations, sometimes cooperating, sometimes competing with one another.

The third possible failure is in the defence of individual liberty. Once again, the pluralism of states, cultures, and religions—even if full sovereignty no longer exists anywhere—means that individuals in different settings will be differently entitled and protected. We can (and should) defend some minimal understanding of human rights and seek its universal enforcement, but enforcement in the third degree of pluralism would necessarily involve many agents, hence many arguments and decisions, and the results are bound to be uneven.

Can a regime open to such failures possibly be the most just regime? I only want to argue that it is the political arrangement that most facilitates the everyday pursuit of justice under conditions least dangerous to the overall cause of justice. All the other regimes are worse, including the one on the far left of the continuum for which the highest hopes have been held out. For it is a mistake to imagine Reason in power in a global state—as great a mistake (and a mistake of the same kind) as to imagine the future world order as a millennial kingdom where God is the king. The rulers required by regimes of this kind don't exist or, at least, don't manifest themselves politically. By contrast, the move toward pluralism suits people like us, all-too-real and no more than intermittently reasonable, for whom politics is a "natural" activity.

Finally, the move to the third degree of pluralism really is a *move*. We are not there yet; we have “many miles to go before we sleep.” The kinds of governmental agencies that are needed in an age of globalization haven’t yet been developed; the level of participation in international civil society is much too low; regional federations are still in their beginning stages. Reforms in these institutional areas, however, are rarely sought for their own sake. Few people are sufficiently interested. We will strengthen global pluralism only by using it, by seizing the opportunities it offers. There won’t be an advance at any institutional level except in the context of a campaign or, better, a series of campaigns for greater security and greater equality for groups and individuals across the globe.

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WORLD GOVERNANCE: BEYOND UTOPIA

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Ever since the rise of nation-states in the modern period, diplomats and political theorists have struggled to devise international institutions that might more effectively secure peace and some measure of justice among nations. The very complexity of the current international scene makes a fair and effective system of world governance more necessary than ever—but it also makes it unlikely. In these circumstances, it may be useful to sketch briefly a scheme for world governance that is an improvement over present circumstances, without being hopelessly utopian. That means that any such scheme must be appropriate for international politics as it actually exists.

The most salient feature of international politics has long been its anarchic character. Ever since the rise of sovereign nation-states, there has been no sovereign power above them. The absence of a super-Leviathan, combined with the absence of a broad consensus on values or on procedures of conflict resolution, means that international politics has long been, in Rousseau's terms, a "state of war," real or potential. There have been truces, temporary remissions, and zones of peace—but so long as anarchy prevails, there can be no end to the possibility of war.

In the nineteenth century, the main European powers constituted a "concert" to try to preserve the post-Napoleonic peace settlements. But this was primarily a mechanism of consultation, and the concert eventually fell apart over the issue of intervention in domestic affairs.

After World War I, statesmen and citizens began to think of going beyond the sovereign nation-state. The League of Nations seemed like a big step forward, because of its provisions against aggressive wars and its procedures for peaceful change. But it was a strictly inter-national organization: its coercive powers depended on the willingness of the major states to put them into effect. Even worse, the League's strong connections with the territorial status quo established by the post-1918 treaties thwarted the application of its provisions for peaceful change.

When the United Nations was founded in 1945, it was designed to prevent a fiasco like the League of Nations, rather than to cope with the mess left by World War II. The Security Council of the UN had much more power than the Council of the League. But within two years, the Cold War showed that this power was meaningless in practice unless the major states were able to serve as a kind of directorate—which, during the Cold War, they were not.

After the end of the Cold War and the collapse of the USSR, hopes for a new global regime flourished again. But these hopes were dashed, even though a fundamental cause of the Security Council's paralysis had been eliminated. In a unipolar world dominated by one sovereign nation-state—since 1990, the United States—the UN could function effectively only when it followed the lead of the United States.

The UN in the past half century has faced a further difficulty, caused by the collapse of the traditional distinction between international and civil conflicts. During the Cold War, one of the chief conflicts between the United States and the USSR concerned the nature and composition of domestic regimes. In the years since the Cold War ended, a number of states, especially in former colonized areas, have disintegrated, and their fragmentation has incited outside interventions, further blurring the distinction between wars waged between states and those within a state.

At the same time, an emergent concern for human rights, a secondary issue when the UN Charter was established, has also helped to erode the barrier between interstate and domestic affairs, as the UN has in recent years succeeded in extending its jurisdiction and in inventing new methods of peacekeeping. But it still does not have the kind of supranational power necessary to enforce human rights consistently. Nor does it have the power to force recalcitrant parties to resolve intractable conflicts in the Middle East, Kashmir, Cyprus, and Korea, and between the two Chinas.

As if matters in the traditional domain of world politics—whose primary actors are sovereign nation-states—had not gotten complex enough, a new domain of a very different sort has emerged: a global civil society, in which force (except in the form of terrorism) and conquest play little role, and in which the main actors are transnational financial organizations and multinational corporations. These actors are increasingly free to ignore the sovereignty of select nation-states—largely because the dominant nation-state, the United States, wills it so.

In addition, the new global civil society involves millions of private investors and speculators, thousands of non-governmental organizations (NGOs), and a number of transnational alliances of specialized bureaucracies (for example, the World Health Organization and national health

ministries). Innovations in information technology and communications are meanwhile driving a steady integration of civil societies around the world.

Thus we live in a world where one crucial sector, involving security and survival, remains a zone of fragmentation, while another sector, involving prosperity and growth, is a zone of growing integration. At the same time, the globalization of civil society is gradually depriving some nation-states of many of the instruments that were once at their disposal—especially monetary and industrial policies.

Undoubtedly, globalization is a new source of conflict: the rich nations do not agree on how—or indeed on whether—to help the poor; the poor apparently must choose between a more or less gilded dependence and an autarkic misery; the experts meanwhile disagree about the best formula for assuring global well-being; the champions of free markets often vehemently disagree with the proponents of social justice and human rights; the interests of labour clash with the needs of entrepreneurs, as environmental interests clash with demands for modernization.

And then there is the phenomenon of the new transnational forms of terrorism exemplified by the attacks of September 11. The terrorists responsible for these attacks were able to exploit the open borders of the new world economy, as well as the global reach of new communication media like the Internet. They demonstrated that violence on a vast scale is no longer a monopoly of nation-states or aspiring leaders of nation-states. To make matters worse, the costs of waging the current war on terrorism are liable to make aid for international development even more scarce—thus aggravating the troubles of an already troubled world economy.

In recent years, a number of steps have been taken in order to render international affairs less chaotic. But each of these steps has been flawed in ways that have frustrated the hopes of reformers.

In the society of states, two sets of advances have been noticeable—and controversial. There have been a number of humanitarian interventions aimed at preventing mass killings for ethnic reasons, and the creation of new forms of international criminal justice has accompanied these efforts. But defenders of national sovereignty have resisted both the internationalization of human rights and the assimilation of internal to international conflict. On each of these two paths, defeats have been as conspicuous as successes: think of Rwanda, and of America's hostility to the International Criminal Court.

Indeed, the means of peacekeeping and peacemaking at the disposal of the UN and of regional organizations (both for internal and interstate conflicts) remain pitifully insufficient, in financial and military terms. And

efforts to limit the spread of weapons of mass destruction have thus far been sporadic and generally ineffective.

In the global civil society that has emerged in recent decades, governance is similarly patchy and ineffective. A variety of transnational agencies that are specialized and often contradictory in their policies have been allocated varying degrees of authority and power. Existing global institutions meant to regulate such matters as the environment, population growth, and the condition of women are little more than talk shows. Governance of the global economy has been weak because of the strong opposition of interest groups and some powerful states to anything that could encumber a free market; thus, it has been all but impossible to regulate foreign investments or short-term capital flows—and there is still no international bankruptcy code. Many states and the domestic interest groups influential in them prefer to have their own national institutions provide economic and financial stability, rather than entrusting these aspects of domestic policy to multinational agencies. The United States has been especially reluctant to accept multinational constraints on trade and on the free circulation of currencies.

All of these limitations in the current system have produced a growing dissatisfaction with current forms of world governance. Critics deplore the restrictions imposed on the UN and regional organizations by the most powerful states—especially those on the UN Security Council endowed with veto power. The provisions of the UN Charter aimed at giving military capabilities to the Security Council have never been substantiated; a code defining the conditions in which humanitarian intervention could and should be undertaken has not been drafted. There is still disagreement, for example, on what constitutes genocide. And then there are the special problems created by the overwhelming power of the United States; it claims vociferously the right to act without UN endorsement when its security is at stake, and has often resorted to unilateral sanctions without seeking external support. More recently, the United States has pushed aside UN arms control efforts.

At the same time, critics protest that current forms of economic governance are both incomplete and unjust. Under current circumstances, states must conform to the ideology of free trade and obey the dictates of the International Monetary Fund, even if this means undermining domestic support and democratic legitimacy. Many international agencies are denounced for being pawns of U.S. interests, for exploiting the weakness of poorer countries and countries in crisis, for disregarding environmental and human rights standards, for acting in secret, etc. Multinational corporations are attacked for usurping powers of the state: they are increasingly

global in their control of resources, products, banking, and insurance; their private connections with politicians make them increasingly influential (in trade negotiations, for instance); and their ability to shift their activities toward low-wage countries fosters a race to the bottom. Thanks to the absence of international oversight, corporations are able to exploit relatively weak states with impunity.

Such is the unsatisfactory state of world governance today. But what is to be done?

If we are to improve on the present situation without being utopian, we shall have to imagine a set of institutions appropriate for the world of international politics as it presently exists.

This means that I must reject a number of familiar proposals for reform. The first—chronologically—is Kant’s formulation of a confederation of representative republics. On the one hand, its provisions for the abolition of war do not deal with such pressing contemporary issues as terrorism or humanitarian interventions (Kant is, fundamentally, a non-interventionist liberal). On the other hand, Kant foresees no significant regulation of civil society on a global scale, apart from protecting freedom of trade and the right of individuals to hospitality abroad. This is too sketchy for a world in which liberal regimes are relatively few, standing armies prosper, armaments are ever more sophisticated, and the world economy is ever more inegalitarian.

Another scheme, which had many proponents just after the end of World War II, is the creation of a world-state, usually advocated in the form of a global federation not unlike the United States of America. This proposal for reform acknowledges a world of nation-states, but has little to say about the global society in which both states and a free market of individual actors and private groups and organizations operate. Furthermore, its demand that the states give up their formal sovereignty is still “a bridge too far.” Kant’s critique of such a world-state remains valid: such a state would have to be imposed by force, or else it would be too weak to survive the daily crises and challenges of world and internal affairs.

Nor do I find John Rawls’s scheme in *The Law of Peoples* convincing. He has little to say about governance, even though he realizes that in the world as it is—the world of “non-ideal theory”—the states would have a formidable task dealing with rogue and aggressive actors and with the “burdened societies” that need economic assistance. Paradoxically, in Rawls’s ideal theory, his concern with the need for a consensus broader than that of liberal regimes leads him to a restricted conception of human rights, one that would have to be acceptable to what he calls “decent hierarchical” regimes. The priority he gives to “the justice of societies” over

the “welfare of individuals” finally raises important questions about the fate of the increasingly large number of individuals—migrants, refugees, and other stateless people—who do not fall under the protection of any specific society.

I will therefore leave (with some regret) the realm of utopia and describe briefly the kind of governance that would constitute a great improvement, from the viewpoint of a rather traditional liberal with social-democratic leanings.

In the global society of sovereign nation-states, two issues are central. The first is the protection of human rights. There are, in some parts of the world, such as Europe, strong agencies that protect such rights; it is relatively easy for European citizens to lodge complaints against state violations. But these institutions do not cover the globe, and the relevant UN agencies remain weak, politicized, and state-centred.

That is why we need a world commission and a world court on human rights, on the European model, as well as the right of monitors and inspectors to operate at the service of such a commission. The latter would have the duty to report to, if necessary to ask for action from, the secretary-general and the political organs of the UN under Chapter VII of the Charter, if necessary. States, being the most frequent violators of human rights, should not be left in charge of initiating the enforcement of covenants they have either refrained from signing or, more usually, signed but disregarded. Although there has been a gradual shift away from invariably preferring a claim of national sovereignty to a claim of human rights, the conflict between these two principles remains intense.

The second issue is that of the use of force. There has been a similar shift away from the nineteenth-century claim by states of a right to wage war—with limitations only on the means—toward a modern version of the old doctrine of *jus ad bellum*, which bans aggression and recognizes as legal only wars of self-defence and of solidarity with the victims of aggression. But here, too, two contradictory principles uneasily coexist, with uncertain implications for the practice of war.

A more consistent application of emergent principles of world governance would require an enormous reinforcement of the powers of the UN. The secretary-general should be not merely allowed to bring dangerous cases to the Security Council: he should be obliged to activate the Council and the General Assembly when the legal limitations on the use of force among states risk being violated, or when grave violations of human rights risk being committed internally. There needs to be a legal code that clearly defines when humanitarian interventions are justified. States that want to use force in (or by claiming) self-defence, individual or collective, should

need the authorization of the Security Council, or, if the Council is paralyzed, of the General Assembly—and when the General Assembly itself cannot agree on the proper course of action, the use of force as a last resort should have to be fully reported to the UN's bodies.

Above all, the Security Council should be provided with a standing force, recruited from the member states but placed under a UN military command that would have a supranational character. This command could be put in charge of preventive or reactive operations licensed by the Security Council, and a civilian board, composed of UN officials who would monitor all UN military actions, could supervise it. These bodies could also have a right to inspect countries suspected of acquiring weapons of mass destruction, and to call for sanctions by the Security Council if such weapons are indeed being acquired. The secretary-general should have the duty to be the chief negotiator for the UN in grave conflicts that threaten global or regional peace—either along with state efforts at good offices, or instead of such efforts if they are blocked by states or if state efforts have failed. A permanent supranational arms control negotiating body would put pressure on states in dangerous zones to reduce their arsenals and to open their borders to inspections.

In the case of humanitarian interventions—future Yugoslavia's or Rwanda's—the powers of the UN should go beyond restoring peace, and extend to the kind of nation-building or rebuilding that would be indispensable. Obviously, this would entail a vast increase of the UN's budget, and a substantial increase in the number of international civil servants working for the UN secretariat.

In order to curb terrorism, a UN agency should be created to insure the cooperation and coordinate the responses of state forces. Such an agency could also issue periodic reports to the relevant political and military agencies of the UN. As in cases of inter- and intra-state wars, wars against terrorism and wars against states that foment or shelter terrorism should be authorized by the Security Council and proceed under the supervision of the UN's military command.

In imagining how to improve the governance of civil society on a global scale, a traditional liberal with social-democratic leanings will proceed with caution. Global dirigisme is neither possible nor probably desirable. But a few important problems need to be addressed. Just as nineteenth- and twentieth-century capitalism gradually came to accept a modicum of national and international regulation—to protect workers and consumers, to preserve price stability, to prevent monetary disasters, etc.—twenty-first-century global capitalism needs a regulatory framework that is less fragmented than what exists today. I am thinking of the flaws, demon-

strated by the Asian crisis of a few years ago, in the supervision of countries and of banks by the IMF, and in the IMF's frequent indifference to the domestic effects of the deflationary policies it imposes, the disastrous effects of the volatility of private capital flows, the risks created by excessively rigid exchange rates, the need to oblige foreign investors to take into account human rights and labour conditions, health standards, and environmental protection.

I have neither the competence nor the space to redesign the institutional architecture, but the need for fresh political initiatives in four areas seems to me essential.

First, there ought to be one embryonic economic government that oversees and tries to guide the evolution of the world economy. Here the model could be the European Union, whose supranational commission functions as an economic executive, and whose Council of Ministers sets the rules. (For the global economy, a new economic and social council comparable to the Security Council would be needed.) Harmonizing the activities of the World Trade Organization with those of the International Labour Organization, the World Bank, and the IMF would be within the jurisdiction of this economic government, and a functional equivalent of the EU's commission could act as its executive agent. Divergences over economic philosophies and goals would persist, but these bodies could focus on setting common norms, in the form of codes of good practices, and on reducing the bad effects of capitalist competition—the rash of alliances and mergers, which creates a need for a global antitrust mechanism.

Second, the responsibility for giving aid to developing nations ought to be more centralized, the goals being an increase of development assistance and a reduction of the inequality between the rich and the poor countries' influence in world governance: this would entail giving the UN the power to tax its member states in order to promote more equitable patterns of global development, and to inspect, report on, and recommend changes in the policies of countries receiving such UN aid.

Third, a world environmental agency must be created. It would be in charge of negotiating global protocols and be provided with the expertise necessary to supervise their enforcement and to recommend sanctions against noncompliance.

Fourth, UNESCO would have to be revamped; from the (valuable) concern for elite cultures and endangered local ones, UNESCO's activities should partly switch to a global effort against fanaticism, parochialism, and intolerance. This would require major funds to influence and activate governments, churches, and school systems. Once again, an agency com-

parable to the EU commission would serve as this new UNESCO's executive.

A final point of principle must be stressed: The improvement of global governance requires not only more powers and resources for global institutions, but also far greater democratization. The UN General Assembly, which represents the governments of states, needs to be complemented by a UN Assembly of Peoples' Representatives that, in the beginning, might have only powers of general recommendation. Even so, such a UN Popular Assembly would introduce unofficial voices into the global debates. The General Assembly might also be augmented by an additional consultative assembly, composed of representatives of NGOs and of important multinational corporations (an official and public supplement to, if not a substitute for, the Davos Conference). As I have suggested before (Hoffmann, 1998:185, chap. 12), mandating a routine review of the resolutions adopted by the Security Council, the General Assembly, and the new Economic and Social Council could be entrusted to the World Court, in order to increase the authority and legitimacy of these resolutions, just as supreme courts in many democratic states currently enhance the authority and legitimacy of the laws passed by their elected representatives.

Short of being mobilized by a world catastrophe—a nuclear, biological, or chemical war that kills millions, an economic recession next to which that of 1929 would appear insignificant, a meteorite colliding with the earth, a series of global epidemics that nobody would know how to stop, global warming turning into a boil (we now understand that Hollywood science fiction can anticipate real events)—the many tribes of the human race are unlikely to launch a world constitutional convention that would do away with the sturdy residues of the Westphalian order, to abolish existing states and the creaky international institutions that serve them, and to proclaim a world state. If they occur at all, institutional reforms are likely to be gradual, and to grow out of responses to crises.

Indeed, if one recalls how difficult it has been to complete the transformation of the European Union from a complex mechanism of inter-state cooperation into what Jacques Delors likes to call, cryptically, a federation of nation-states, then one has to concede that the transnational regime I have described is, at best, a very remote possibility. The obstacles are too many to examine in detail here, but the main ones need to be faced frankly.

First, the nation-state is not yet obsolete. Despite the erosion of their legal and operational sovereignty by global markets and the claims to universal jurisdiction made on behalf of the new global institutions that have been set up to reduce violence and protect human rights, nation-states

remain the ultimate locus of authoritative decision-making regarding most facets of public and private life. The enduring power of nation-states means, of course, that conflicts between states will not disappear—indeed, such conflicts may grow even sharper as states become more fearful of losing what power they still have. Although the number of ostensibly sovereign states has multiplied in recent decades, most of them lack any real clout. The fact that power is so unevenly distributed today makes an agreement on the respective weight of different states in the institutions of global governance very dubious. Military and economic giants will not be outvoted or pushed around by hordes of pygmies. They are also unlikely to embrace abstract obligations that clash with concrete calculations of national interest. (This is why the United States can deplore nuclear proliferation when it involves “rogue” states such as Iraq and North Korea, while tolerating it in an ally like Israel.)

A second obstacle involves the sheer variety of cultures represented by the growing number of nation-states. Despite the partial globalization of mass culture, and the existence of pressing ecological problems that can only be solved through global cooperation, recent decades have also seen ongoing movements of nationalist secession, the rise of new religious-political movements, especially in Muslim states, and a reassertion of indigenous cultural practices in many countries around the world. In a world driven by economic and technological forces, where the political ideologies of the past two centuries have tended to exhaust themselves—through horrible excesses or humbling irrelevance—there remains an unbridgeable gulf between globalizers, whose hopes lie with capitalism, and cultural particularists, many of whom distrust the inhuman scale of global capitalism. All this has made Rousseau’s dictum about the absence of any unity of humankind truer than ever before.

A third obstacle to reform is the cleavage between liberal democratic regimes that respect human rights and the right of people to self-determination, and authoritarian or totalitarian regimes that do not. The “decent” authoritarians of Rawls are a fiction of his ideal theory. The many tyrants of this world have no incentive to grant to other countries, or to a global criminal court, jurisdiction over those of their subjects who have committed crimes against humanity or genocide. States whose regimes erect political walls even if they open up their economies will not welcome the democratization that I propose. A UN Assembly of Peoples’ Representatives half elected by popular vote and half appointed by dictators would be a joke. Without the Kantian prerequisite—a world of liberal democracies—the institutions of world governance will remain battlegrounds.

The final obstacle that needs to be confronted lies closer to home: it is the United States, the very superpower that sees itself as the upholder of world order and the champion of liberal democracy. My scheme of world order needs not just new international institutions, but also the good will of the world's most powerful sovereign nation-state. Without moral and financial support from the United States and the other major powers, it is impossible to imagine how a new regime of global governance could enforce the principles and procedures I have sketched.

In recent years, unfortunately, a sizable section of the American establishment has expressed scepticism about the value of U.S. support for existing global institutions—never mind creating new ones. Under President George W. Bush, furthermore, a growing number of international protocols and treaties have been abandoned or repudiated.

The underlying message of this boastful unilateralism is clear: the United States is a self-sufficient guarantor of global order, and the inter-preter of last resort of what global order requires.

This is not exactly conducive to a consensual scheme. Other states do not want America to rule the world by itself. And without a thorough rejection of this new doctrine, and a return to a policy of American leadership without dictation, the prospects for creating a new and more democratic form of world governance are very dim indeed (see Nye Jr., 2002).

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A SUBSIDIARY AND FEDERAL
WORLD REPUBLIC:
REMARKS ON DEMOCRACY
IN THE AGE OF GLOBALIZATION*

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Any political philosophy which is truly political addresses contemporary challenges. Today, this especially means coming to terms with globalization. But the word itself has become so amorphous through overuse that it calls for a new formulation. To this end, I would like to suggest three observations from which this reformulation might begin.

(Observation #1) Plural Globalization

It is common to hear the word globalization in the singular, used as a term that refers only to *economic* changes in the contemporary world. If this picture were accurate, economic sciences are certainly of primary relevance to any account of globalization, and so too are the law of peoples, the theory of international relations and sociology. But for at least two reasons, philosophy is also suited to assist in an assessment of globalization. First, philosophy concerns itself generally with the very conditions under which globalization is possible: the capabilities of language and reason shared by all human beings. Second, philosophy, being exclusively concerned with these very capabilities, is itself a global success story of sorts. After beginning in Asia Minor and then flourishing in classical Athens, philosophy spread itself across the Mediterranean and from there over the whole globe. Consequently, the masterpieces of philosophy—those of Plato and Aristotle, Hobbes and Descartes, Kant and Hegel—were read worldwide long before financial and economic globalization were themselves the subjects of study. Indeed, long before computers came into the houses of educated people, Nietzsche, Heidegger and Wittgenstein were already there.

The conception of globalization as a one-dimensional process, this reduction of globalization into narrow economic terms manages to reconcile—at least on this one point—two otherwise bitterly opposing groups: orthodox Marxists and orthodox Liberals. Both believe that the primary powers at work in the world are economic. In truth, however, economic changes have more than just economic causes. They are based also on political decisions—consider, for example, the deeply political roots of Bretton Woods, GATT and the OECD—as well as on technological innovations, whether military or non-military. In addition, globalization is not confined to a world-wide network consisting only of markets and labour. Rather, its domain is the whole of the free world, including even such things as global tourism. Hence it includes a great wealth of phenomena, which are only partially or not at all economic. The totality of globalization, including its economic components, can be grouped according to its three dimensions.

The first dimension consists of a multifaceted “society of violence.” This society operates **(a)** in war, which threatens to assume global scale through new weapons, **(b)** in international crime (drug trafficking, slavery, terrorism), and **(c)** in the exploitation of the environment, which certainly observes no national borders. This society of violence has left a trail of bloodshed through history. This trail is picked up by what might be called a “critical world-memory” which follows the society of violence and keeps its misdeeds in common memory. And if this world-memory preserves, unlike up to now, a non-selective memory of the atrocities, it will help us to prevent future terrors from this society.

Thankfully this wide-spread society of violence is complemented by a still wider-spread “society of cooperation,” the second dimension of globalization. Here economics and finance play an important role, along with the institutions of communication, transportation and the labour market. As previously, though, economics is not the only force at work. Philosophy itself, along with its sibling academic disciplines and the other important areas of culture and education, take part in this process of globalization. Further, liberal democracy itself is part of this society of cooperation and drives the tendency of the “cooperation” toward globalization, partly through its promotion of “world-memory.” An indication of this is that, even though not all human rights abuses are punished worldwide, they lead at least to a worldwide protest. A common public sphere, indeed a global one, is growing and endorsing a critical “world-memory.” This global public sphere is indeed becoming stronger through the expansion of international law and the growing number of globally active governmental and non-governmental organizations. In addition to these newcomers, such

as the World Bank and Amnesty International, older examples should not be forgotten, such as international sporting organizations and the even much older churches.

One should not confuse this society of cooperation with love and friendship. On the contrary, in all areas of the society of cooperation competition is still an essential component. But competition has two sides: one which motivates the effort, risk, and creativity that fosters the growth of a collective human wealth, and another which involves costs. These costs, which are sometimes economically internal, e.g. unemployment, and sometimes external, e.g., damage to the environment, bring forth the third dimension of globalization, the “society of shared destiny,” the community of neediness and suffering. This includes a broad spectrum, the movement of refugees with its concomitant religious, political and economic background, civil wars, which are often the later consequences of colonization and decolonization, but also often the eruptive answer to corruption and mismanagement. Natural catastrophes, famine, poverty, and economic as well as cultural and political underdevelopment also belong to this dimension.

All three dimensions—my first of the three promised observations about globalization—call for a global reaction to their global implications. And this puts into perspective the dominant paradigm of political philosophy from Plato and Aristotle to Hobbes and Hegel: the self-contained, national state.

(Observation #2) Two Qualifications

It has been pointed out that globalization is not the exclusive movement of contemporary history. Indeed, as if to qualify the expression of globalization, there are some pronounced oppositions to it. These include the growing self-confidence of certain regions and the formation of regional authorities, as well as the fragmentation of many mega-cities into separate ethnic and cultural groups and even the strengthening of national sentiment in young democracies. There is, in any case a variety of languages, customs, morals, and religions. If indeed humanity develops into a global society of shared destiny, fate itself will be more immediate at the regional, local and individual level. For this reason, the notion of a world village is highly simplistic, but, in the same time, the often conjured danger of a standardization of our lives is avoidable.

By way of a second qualification, we do well not to forget that globalization has historical antecedents. International trade routes such as the Silk Road were developed long before the modern era. In Hellenistic times

there emerged something of a smaller-scale international trade area with market pricing and even trading centres of international scale, such as Alexandria and the Mesopotamian city of Seleucia. Further, certain religions—such as Buddhism, Judaism, Christianity, and Islam—spread themselves; they are therefore called world religions. These faiths also promote international pilgrimages to their holy cities, such as those to Jerusalem, Mecca and Santiago de Compostela. In addition to religious pilgrimages there are also “epic” pilgrimages, such as the fables and tales of the sort depicted in Boccaccio’s *Decameron*, which are in fact comprised of material from a variety of cultures and geographies from around the globe. Indeed, much that appears again later in the art of almost all European countries can be traced back over Persia and then to India. And, in addition to these examples from cultural history, let us not forget that the natural sciences have “globalized” themselves through the development of philosophy: science, medicine, and technology.

Following this cultural phase of globalization, inventions from the era of intellectual rediscovery and enlightenment—such as the compass, telescope, gunpowder, and printing press—led the way to a second phase of globalization which took place in the early and middle stages of modernity. This is the age, of course, not only of discovery, but also of the colonialism which corresponds to it disturbingly.

The third historical phase of globalization, the one in which we presently live, is similar in this respect. Both commercial inventions (radio technology, electronic media, etc.) and military inventions (first the long range bomber, then the InterContinental-Ballistic-Missile) play a roll. Political decisions come into play with respect both to the opening of financial and trade markets and to international organizations such as the United Nations or the World Bank. These practical and historical qualifications comprise the second of the three observations about globalization which were promised at the outset. In so doing, we see once again that globalization is a concept which is *both* overrated *and* oversimplified.

(Observation #3) Two Pinches of Scepticism

Before attempting to respond to the realities of globalization, it will be helpful to observe a couple of the common mischaracterizations of globalization. I want to add two pinches of scepticism to contemporary discussions. The first follows from the insight that contemporary globalization is not really very contemporary after all. In considering the challenges and potential of the modern era, we must recognize one of the illusions that modernity seems glad to indulge in: namely, that every generation sur-

passes the preceding one. For example, the present moment in history may seem impressive for the internationalization of finance and currency markets, but any historian is sensitive to the manner in which it seems to repeat historical precedents. At the time of the monetary gold standard (circa 1887-1914), the trade among the developed countries was on a similar level to the one we know today. In this respect, we are returning only today to the status quo of that era which was interrupted by World War 1, the financial crises of the 1930s, and World War 2. Whether information is transmitted over deep sea cable or electronically is not trivial in itself, but the overall impact on global trade is not greatly significant. And with respect to peace politics, its impact is hardly discernible. Take, for example, the peace treaty which in 1648 ended the Thirty Years' War, a great terror in Germany. Because the post took one month to get a letter to Madrid, one had to wait a total of about a quarter of a year for news instructions from Spain. Peace only came after four years of negotiations. But neither air planes nor electronic message transfer have been able to speed up the peace process on the front lines of Asia or in the former Yugoslavia.

The second pinch of scepticism is a result of the recognition that the economic globalization that occurs of today occurs only on a moderate and limited scale. In terms of real numbers, global trade happens almost exclusively between the U.S., Japan, and the European Community. And these three hardly allot an excessively high share to exports. Exchange is probably greater in other areas: once again the globalization of science and culture is at least equal to that in the economic sphere.

Two Visions how should the human race best respond to the challenges posed by globalization? In general, there are two fundamental models of social organization. Both have a visionary power one might also speak of a utopia. On the one hand, civil rights and public powers remove despotism and privately held power, the rule of law and justice take the place of naked power. And public powers achieve this goal through democratic organization. We therefore might speak of a universal vision of a well-ordered legal and political society and an equally universal vision of democracy. Liberal democracy, in particular, gives space to the free play of human capacities, and expects from this—indeed from the hard competition this entails—a great return of goods and services, including those from science, medicine, and technology, as well as those from music, literature, and art. This second vision of a multidimensional prosperity complements the vision of peace, justice and democracy. The final aim is to realize an ancient dream of humanity not unlike the political situation described by the Hebrew prophet Isaiah: “They shall beat their swords into plowshares / and their spears into pruning hooks” (Isaiah 2:4 RSV). Lib-

eral democrats have long dreamed of putting the physical strength often used for war to the service of economic and cultural ends. And when peace predominates, it is thought, in addition a prosperity that is not merely material should be realized. Here is the fundamental question: can what holds true within a community also be valid on a global scale? Can there first be an ordered system of peace and law, such that as it is—by means of economic, scientific, and cultural competition—broadly integrated society in which, above all, the individuals will flourish? And in fact: no envisioned society is an end in itself: What counts is the individual in relation to all other individuals, rather than just one or a select few. Legal and political philosophy accepts and endorses the second vision, but opposes its being made absolute by the suppression of the political through the market. No longer, one often hears, are decisions made by democratically responsible officeholders, but rather by international corporations and entrepreneurs. In many corners, an economic fatalism rules, which says that “the economy decides both means and ends.” The goal of the economic power brokers is to marginalize politics—instead of actively forming anything, politics is required passively to *conform*. In truth, of course, there are no anonymous forces at work. Globalization is promoted by publicly-named and publicly-recognized people, organizations, and movements—just as the previously referred to agreements on the liberalization of world markets. And as the domestic market is forced to conform to more general to certain rules, to an internal setting, an analogous setting of the global market is not excluded a priori. It is politics itself—hardly national, indeed truly international—which either subjugates to the powers of the market, or forces them into a fair setting through a code of competition as well as through social factors and ecological minimum criteria. The world community should and must leave many things to work on their own: the creativity of individuals and groups, free competition, and the chance distribution of natural talents and potential. But in many instances the power and responsibility that shapes social and political events is required. Therefore we have to ask the question: If law and justice instead of private power are to rule, if law and justice are to be organized democratically within a state, should not the same hold true at all levels, both *in* and *between* states? Is there not, then, a need for a global legal system responsible for the promotion of law and justice, grounded in a democratic organization? Does the best political response to the age of globalization lie in the extension of democracy on the level of the single state to a world democracy—one might also choose to call it a “world republic?” Given the three dimensions of globalization outlined above, any such world republic should be judged according to three positions corresponding to the

three dimensions: (1) if it appropriately challenges the “society of violence,” (2) if it successfully fosters the global “society of cooperation,” and (3) if it makes allowances for the neediness and suffering that must be addressed by the “society of shared destiny.”

Five Objections

I hope that these observations and responses to the age of globalization appear compelling. Given that they entail a radical break with contemporary political reality, I would like to anticipate and address certain objections. I will treat five of these which seem especially significant. The very first objection was presented by no less a man than Kant. A world republic—Kant suggested—is a monster which cannot be governed well due to its bulkiness and intangibility. Is this a reasonable criticism? For citizens of Lichtenstein with its 28,500 inhabitants, Switzerland with its 6.5 million is gigantic and the USA with 265 million is truly a monster, to say nothing of the 850 million in India and the 1.1 billion in China. When a community the size of the USA—almost 10,000 times the size of Lichtenstein and about 40 times that of Switzerland—may be governed well, the first criticism has a certain claim. But in itself it hardly amounts to a devastating argument against the idea of a world republic. Indeed the criticism can be seen as constructive given what it recommends. The world republic is permissible, even morally required, under the condition that it is able to prevent its own unmanageability as well as the potential overcompensation of this unmanageability: too much bureaucracy or even a police state. Here we should be content with a constructive point. A world republic must not follow the pattern of the United Nations and blindly fuse mega countries like India or China together with tiny countries like Lichtenstein. One should first bring together political unities on the continental or sub-continental level. And these new unities could—in this respect, the model of the EU is of great value—establish the practice of dealing with most problems in their own back yard, leaving only a few things for the global government. Let us establish a principle of large intermediary regional unities.

The Principle of Subsidiarity

According to a second objection, a world republic puts at risk the great accomplishments of civilization: human and civil rights. According to this criticism, only the single state has been successful in guaranteeing rights throughout history. This line of reasoning is correct insofar as (a) it makes

a normative claim as to the responsibility to promote and protect human and civil rights, and (b) it points at the empirical observation that individual states have succeeded in protecting rights. There is indeed no doubt that, in the West, human and civil rights are protected by the state first and foremost. (In Europe, of course, the Human Rights Convention also has considerable influence.) At any rate, citizens who presently rely for this protection only on international organizations, fare quite badly.

Nevertheless, to argue that (a) and (b) prove that only the nation-state can protect rights overlooks two things. First, Western governments were the first to put these precious rights into danger: France persecuted the Huguenots, the USA—founded to a great extent as a response to the religious intolerance of England—allowed slavery far into the middle of the 19th century. So individual states have violated as well as fostered their share of rights. Second, a good place for a world republic is just where human and civil rights already enjoy a history of some form of protection. Where human and civil rights already have some historically established defence—partly through the state and partly according to the regional conventions of human rights (set by example in Europe)—the world republic might hold back from intervention. But when there are enormous violations of human rights, the world republic should only hold back when a humanitarian intervention would cause even greater damage. In principle, though, just to stand by and do nothing is not justifiable.

Like the first objection to a world republic, the second hardly amounts to a refutation of the proposed responses to globalization. Once again, rather, it comes to support our argument through constructive criticism. Here we agree with the part of the criticism that suggests that sovereign nations should remain accountable for the protection of basic rights in the first place. Only the nation-state has the rank of a first-order government, while the world republic remains only a second-order government, even a third-order in the case of large regionally governed regions. Let us take this as the basic aspect of the “subsidiary” world republic. Being “subsidiary” means two things. First, the republic should not decree things from on high, but rather democratically, built, as it is, from citizens and individual countries. It is not a centralized world government, but rather a world government comprised of member states: a federal world republic. Second, the scope of its tasks is limited to those issues which cannot be dealt with on the national level. The “federal” is, in the same time, a complementary world republic: one that includes rather than excludes the first-order governments. The questions of civil and criminal law, of labour and social law, of law governing the freedom of speech, religion and culture—these and other tasks remain in the jurisdiction of the primary government

of the individual states. But because of diverse globalization, the primary states will have to work with their fellow primary states. Then, it will be more efficient to give certain responsibilities to a higher, more global authority, such as the coordination of combating crime that does not observe national borders and the determination of the fair rules which govern international markets.

The world republic has not merely subsidiary, but original responsibility for peace between nations and its precondition of disarmament. The first of these tasks on the practical level is the successful abolition of atomic, biological and chemical weapons (ABC).

A subsidiary world republic must be vigilant in preventing any compromise in the basic standards of liberal democracy, which is already achieved by the single states and their larger regional units. Beyond subsidiarity, the world republic must develop gradually, so that one can try new possibilities, collect experience, and—first and foremost—develop an important precondition: a global public sphere. Difficulties in establishing a public sphere already exist in Europe, and even more challenges await it on a global level. To achieve such a world-wide public sphere, it is not enough that we become outraged about far away rights violations. We must also—as already happens too infrequently in the case of European legislation—lead the type of debate common within states, to prepare, accompany, and later, comment on parliamentary discussion and legislation, and—should it be necessary—to suggest new laws. The sphere of publicity on a global scale is inseparable from a competent world republic: So long as there is no global public sphere, the establishment of a complementary and federal world republic would be unreasonable. It is indeed un-permissible that a lasting global legal system is created through a surprise coup or with the wool over the eyes of the people.

During the period of transition involving a provisional world legal system, in addition to the law of peoples international organizations will have certain tasks to assume. International organizations will realize a certain structure and permanency of international cooperation and they then could realize a global order with rudimentary elements of statehood. The resulting provisional system would call together the entire international cooperation structure to determine the time frame needed to manage a world government with rudimentary formations of statehood.

There is a theory of international relations called realism which sees international institutions only as instruments of governmental diplomacy. Individual states jump into a foray with and against each other in pursuit of influence and resources. In fact, these international institutions are not only an arena for a struggle of power among the individual states, but also

a forum for political interaction between states. Moreover, international organizations themselves have some power to set agendas. They are thus able to motivate some reluctant states to participate in negotiations. In the best cases, they even become an authority of arbitration. Individual states will use them when the relative costs of a military solution of conflicts seem too high. In the same direction points their relevance as a point of interstate coordination, they are in fact to be seen as a precursor of a world republic. They help member states to articulate and—within reason—realize their interests.

Impartiality—the central responsibility of public authorities—may be attributed to international organizations only to a highly limited extent. The standard business of the day involves individual states attempting to exploit international organizations for their own interests: superpowers try to use their weight to push through their objectives while smaller states attempt to outnumber their larger rivals. For this reason alone international institutions their organizations and rules, may only help to prepare a world republic. They cannot substitute a world republic permanently.

Are democracies inclined toward peace?

According to a third objection, there is a much simpler means to protect human rights than a world republic: namely, the democratization of each individual state. In accordance with the thesis that global peace will be achieved through a global democratization, we have to take account of the contention that a world-wide peace politics may be pursued by the means of a world-wide politics endorsing democracy. Thus, a world republic becomes superfluous. And it is true, liberal democracy already protects human rights within states. And certainly, democracy has more reasons on its side. As the European Convention of Human Rights already assesses the protection of human rights within single states, one has to endorse the establishment of a global commission of human rights which surveys those authorities of larger regions. (The United States, for example, would not pass muster even within times of peace because of its death penalty.) And in particular, individual states are to be protected: their territorial integrity and their political self-determination.

As far as the danger of aggressions is concerned, contemporary political science has married itself to the famous theory of Kant that liberal democracies—or republics, as Kant called them then—have very little proclivity to invade other countries. Kant was assuming not that the citizens of a democracy have a genuine propensity to peace, but he rather assumes that enlightened self-interest would bring about a tendency to-

ward peace. In a democracy “the vote of the citizens should be required” to go to war. Further, “because they would have to decide to bring all of the hardships of war upon themselves (they themselves must do the sword fighting, pay the costs of war from their own possessions, to try to rebuild the wretched devastation which is left behind...)” they would hardly ever begin “such a bad” game.

Nevertheless, history calls for scepticism. The new French republic overran Europe with war and pursued its own imperial interests throughout. A still older republic, the United States of America, spread itself westward, acting ruthlessly toward the native peoples. Moreover, the USA first annexed Texas, and then went to war with Mexico to pursue manifest destiny further, resulting in the acquisition of the states of Arizona, Utah, New Mexico, California, and Nevada. At the same moment in history, Great Britain did not hold back from developing plans to become a world power and to spread out its Commonwealth, all while developing internally as a democracy. For this reason political scientists had to weaken their claims: democracies are not peaceful in principle. At best the claim is true, on the one hand, for democracies which fulfil certain very high standards, and, on the other, for the relation between democracies exclusively. Toward other democracies only democracies exhibit a tendency toward peaceful relations, but certainly not toward non-democratic states.

But even against this moderate claim some reservations might be raised. On the one hand, very important elements—such as equality of women and of the working class, and a higher level of education for the whole population—were absent from early democracy as well as parliamentary decisions about entry into war and anticipated public debates. But entry into war often enjoyed such a broad support among the people that “more democratic democracies” would have hardly decided the matter otherwise. And on the other hand, enlightened self-interest does not always speak against war. In wars which take place far away the people at home feel fewer hardships and they feel even fewer hardships when the enemy is clearly weaker. War away from home can distract from political strife at home, in addition there is mass hysteria. Further, foreign wars can be profitable. In the end, the preparedness for peace could be weakened as soon as most states become democracies. A potential for conflict already has arisen today relating to commercial policy and ecological questions, which could broaden under the influence of grave economic conditions and social problems. There is also a wealth of legal problems below the level of war.

Consequently, the universal duty to establish a legal and governmental order remains relevant, again in the form of a constructive criticism. The

protection of rights and peace, which already is achieved by a world-wide democratization, may be recognized. Individual states have a claim—just as individuals do—that possible conflicts be resolved through other means than power. They should be resolved through law, so that in fact a world legal establishment and ultimately a world republic, is needed.

In accordance with the fourth criticism there can only be a world legal system if a precondition were fulfilled which is actually unfulfilled: a sense of justice common to all human beings, a world-wide consciousness converging on moral standards of right and wrong. We know that such a common sense of justice is lacking already in the West. We should be content with a small example: whoever reads about US legal compensations, multi-million dollar pay outs in certain cases in which German courts at best would give 10,000 German Marks, wonders if we live on different legal planets. Stronger differences show themselves in the attitude toward the death penalty, even stronger toward corporal punishment in some Islamic states or in dealings with dissidents in China, Cuba, and North Korea. On the other hand, there are important commonalities: the laws of equality and impartiality are recognized in the application of law, as well as laws of procedure of the sort *audiatur et altera pars* (the other side is also to be heard) or the presumption of innocence. Further, nearly all legal orders recognize the same basic goods of subjects of rights: body, life, property, and honour. And the human rights conventions of the United Nations provide further evidence of commonalities. The only thing lacking is preparedness to enforce those standards in an unbiased and effective way. For this reason, the constructive criticism which comes to us through the consideration of the fourth criticism seems almost obvious: More time is needed for a world-wide sense of justice to unfold. But the already emerging common ground is remarkable indeed. It has, in itself, already made world courts possible, including The International Court, the Maritime Court, and most recently, even when not yet ratified, the International Court of Justice.

A Right to Difference

According to a fifth and final criticism that we will consider, we are threatened by a levelling off of cultural particularities in the age of globalization. To respond to this, it is said, we must respect the peculiarities on which the social and cultural wealth of the world depends, especially in the identity of individual human beings as bound to their particular tradition. These criticisms are presented by the recently prominent Communitarians, who plead for “good fences,” and thus for national separateness

instead of global unity. For philosophers like Alasdair MacIntyre and Michael Walzer, for example, the highest social unity—in which moral and political concepts such as justice and solidarity have sense and meaning—has to be seen in the individual state. And indeed, many states are founded on a common history of their members as they have, each on its own, a particular tradition, culture, and language or even a well defined plurality of languages, as the case may be. They also follow a common set of values; the dissolution of states within a global state therefore would limit the wealth of humanity. Over and above this, the identity of the unit is being threatened which is, in the end, the very source of values: the individual, though not isolated person. It is argued that in spite of all individuality, often in fact to this very goal, individuals belong to certain “communities.” These communities strengthen the source of “solidarity,” the very definition of human readiness to help ones neighbour. Above all, every community has a right to follow its own ideal of a common good—provided that it is consistent with the requirements of liberal democracy.

Such a right to national particularities—let us refer to it as a right to “difference”—is favoured already by the lack of a full determination of universal principles of right, which suggest that human rights, at first, operate only as a *secondary* level of social regulation. Only their “application” to particular issues and types of situations leads to the common rules covering concrete action. But neither the particular issues nor the types of situations admit of only one interpretation. History, culture, and tradition have their right too.

Let us think, in a thought experiment, of an ideal lawgiver, a Solon of sorts, or even—as the discourse theorists prefer—an ideal parliament, and let us instruct him or it to draw up laws which are equally valid for all cultures. In contrast to an empirically existing lawmaker, our ideal lawmaker has all relevant knowledge at his disposition; he is omniscient. Untainted by particular interests and passions, our lawmaker orients himself exclusively toward the principles of justice, especially those relating to human rights: our lawmaker is perfectly just. Such a magical lawgiver can establish the framework for just laws. He finds, however, hardly a single solution from the standpoint of justice. Even less as one can design a chair from criteria such as comfort and durability, can he find a well-defined norm of law which can be derived from the principles of justice? Cultural particularities stemming from history and tradition belong to the wealth of elements which must be included, among them different preferences and minor settings and other purely conventional things. Economic and other matters play a roll too.

Thanks to his omniscience, the ideal Solon knows about the particularities. Thanks to his justice and impartiality, he wants to let justice prevail over these competing particularities. Hence he acknowledges them equally. The result looks paradoxical only on first glimpse: The interculturally groundable principles of justice are open for different cultures and universal principles might be expressed in a particular form. Here, in a moral universalism which is culturally open, both—our ideal Solon and the ideal parliament—find their limits. And because of these limits a participatory democracy is called for. In mathematics it should be different: an ideal Pythagoras does not have the limitations of the ideal Solon. When democratic discourse seeks more than the establishment of universally true human rights, when it recognizes the requirements of historical contexts and political decisions, then it also recognizes a “right to difference.” And the two are indeed inseparable: the more rights we want to award to participatory democracy, the more we have to recognize the lack of a full determination of universal principles and the more we have to grant to the right of difference. Otherwise democracy degenerates into the organ of enforcement for an ideal law giver.

Let us take the freedom of religion as an example. As one of the principles of human rights, it demands a religious tolerance concerning the practice of religion which refuses to any community, to deny the right to participate in religion, to “freethinking” and atheism, or even the withdrawal from religious society altogether. (A religion, which declares apostasy to be a crime, or even a capital crime, makes a major violation of human rights.) Above this minimum, the individual right to a negative freedom of religion, a minimum of a positive freedom of religion is probably required, namely the right to develop oneself religiously and to build a religious community for this end. This two part requirement, as Article 18 already a part of the *Universal Declaration of Human Rights*, allows a wealth of open points. Freedom of religion does not exclude, for example, that a community understands itself as Christian, Jewish, Islamic or Shinto. A strongly anti-religious or atheistic arrangement of a legal and constitutional order is not required for human rights. Consequently, different formations are justifiable, such as the laicism of France, which overcame the flaring up of Huguenot persecution (that occurred despite edicts of tolerance) through the strong break between church and state—and in Alsace-Lorraine differs there from. Founded as a place of refuge for the persecuted religious communities, the USA nursed against the practice of “well-meaning neutrality.” Germany on the other hand, like Austria and part of Switzerland, allowed an institutional connection between church and state, but firmly not in the inner circle of the law of the constitution or

in the political nucleus. Defined by the reformed national church, Scandinavian countries, and in another respect Great Britain, have a church of national character. Israel on the other hand ensures Christians, Druses, and Muslims full religious freedom, even their own jurisdiction for personal, marriage, and family law and nevertheless grants far reaching privileges to its own people. For example, the costs of religion are born one-third by the state and two-thirds by the Communes. And in a multicultural state like Malaysia three fundamentally different legal systems are in to be seen in a complicated coexistence: an “autochthonous” law of customs, the Islamic Sharia, and the British Common Law.

In addition to these fine details comes the task of weighing up rights, which, once again—because of the corresponding “under-determination”—can be taken differently by different communities. Consideration of the freedom of the press is relevant to this example: Is one—in the name of protecting rights—allowed to film (for television broadcast) rights violations such as property damage, kidnapping, and perhaps even genocide, instead of stepping in against them? Another example: Is one allowed with so-called public figures to diminish the necessary right to privacy, perhaps even violate it? A choice between conflicting rights is also necessary when the question is posed as to which evidence in a criminal proceeding should be admissible. Here the defence of the private sphere necessary for human rights is to be weighed against the combating of crime which is also necessary to preserve human rights. Further, within the sphere of positive rights to freedom, the realization of which being restricted by scarcity, another question must be considered: how much of the resources should the health service or education receive? And, finally, perhaps one must weigh up the benefits of the welfare state against the incentive to personal responsibility and personal initiative.

Obviously the under determination of universal principles has far-reaching consequences. It is by itself the foundation of the right to difference, namely a universal authorization to particularity, in some way comparable with the right to individuality, which not in spite of but because of universal morality is due to human beings. Because of this right to difference there can be no world republic which stubbornly opposes the nation-state of the Communitarians. According to the view of political theorists like Charles Beitz the global political order should be set up as a homogeneous world republic similar to a single state. In his conception, possible subdivisions only result secondarily from top to bottom, whereas the nation-states themselves, as an expression of particularity, lose their right. But the right to difference opposes this.

Our constructive criticism of Communitarianism says that their position has value, but what is valuable about it only goes a third of the way. Human beings indeed have the right to characteristics: their history, tradition and religion, as well as language, culture and shared idea of the good community. And because the diversity of these characteristics augments the social and cultural wealth of humanity, it is important that the right to difference will be observed. The second third of the way, however, which the Communitarians fail to go, indicates that the resulting nation-states are not an end in themselves that earns an uncompromising protection. As unities which exist for the sake of human beings, they can change themselves by them and for their sake. They can dissolve themselves, reform themselves, and thereby achieve both lesser and greater unity.

And the last third of the way, the final stretch unrealized by the communitarians insists that neither states nor foreign citizens are relieved of the universal law of a legal and political order. The relevant principle is called “federalism.” Only a federal unity can be a morally legitimate world republic.

For the world republic there are three strategies of democratic legitimation which should be considered. According to the one which bases its legitimation exclusively on the people, the world state will emerge from the will of the entire world population—comprising the complete citizenship of the world republic. Because individuals have the last word on legitimacy, one could consider this strategy appropriate. As the interests of states are legitimized through their citizens, one could eliminate the individual states as additional authority of legitimation. But the right of statehood speaks against this. So too does the fact that the interests of collectives cannot be reduced to the sum of the interests of their members. For this reason a second strategy of democratic legitimation suggests itself. Because the single states represent both the distributive interests of the single citizens and the collective interests of the population, one could want to eliminate the first legitimation and defend the exclusive legitimation of the individual states, with the result that the collective will of the single-states would decide. But this trammels the membership which should be enjoyed by the individual, which is ultimately the deciding authority of legitimation, and which should be allowed to freely extend beyond national borders. These memberships includes religion, language and occupation, demanding hobbies or every political interest such as that represented by organizations such as Amnesty International, Greenpeace, or Doctors Without Borders, and further the cultural membership of dispersed peoples, such as Irish, Jews, and Kurds.

Already because of the “membership across state lines” the exclusive legitimation of states is ruled out, so that only the third strategy remains—the combined legitimation. Its democratic legitimation the world republic wins through a connection of citizen legitimation and nation-state legitimation. In consequence, all power of the world state comes from this double constituency: the community of all human beings and of all states. And this doubled legitimation must find expression in the organization of the world state. The parliament, its most important organ, must consist of two chambers, an upper chamber of the citizens and a lower chamber of the states. Of the specific constitution of these assemblies one need not, at this moment, think further. That Lichtenstein will not have the same weight as India or China is understood. Which weight exactly, it will be decided politically. Anyway, the large regional intermediary organizations could change the situation.

A Final Balance: Graded Cosmopolitanism

The world government, which should exist according to the universal obligation to establish a legal and democratic order, would entail a *subsidiary* and, further, a *federal* world republic. In it we are citizens, but not in an exclusive, but rather in a complementary understanding of citizenship. The exclusive conception of citizenship corresponds to that brand of cosmopolitanism which defines itself—along with Hegel’s *Philosophy of Right* (§209, Note)—“in contrast to the political life in a concrete sense.” The exclusive cosmopolitan, not without an air of superiority, says: “I am neither German, French nor Swiss, but rather I am a free citizen of the world.” Here world government substitutes the single state, and international civil rights replaces nationally based civil rights. Under world government one is a world citizen rather than the citizen of a particular nation-state. The federal world republic, however, is beyond the simplistic alternatives “national or global” and “nation-state or cosmopolitan.” International civil rights do not take the place of national civil rights, but rather the first complements the second. To a certain extent, it realizes a global variation of de Gaulle: a world of separate “*Vaterländer*” and large regional polities, but, quite apart from de Gaulle, it is one with a special and (up until now unknown) multiple body of citizens. Whether one is primarily German, French, or Italian and a citizen of Europe only secondarily, the democracies of Europe will have to decide in the coming years. In the end, it doesn’t matter whether one is citizen of a nation-state first and European citizen second or vice versa. In a graded sense, one will be both

at the same time, and on the third level one will be a citizen of the world: a citizen of the federal and subsidiary world republic.

* This text is based in part on my book Höffe (2007).

Bibliography

For a more detailed development of the argument as well as a discussion of the relevant literature see:

- Höffe, O. 1999, *Demokratie im Zeitalter der Globalisierung*, München: C. H. Beck Verlag
- , 1999, *Gibt es ein interkulturelles Strafrecht? Ein philosophischer Versuch*, Frankfurt am Mein: Suhrkamp
- , 2007, *Lebenskunst und Moral oder: Macht Tugend glücklich?*, München: C. H. Beck Verlag

THE RESURGENT IDEA OF WORLD GOVERNMENT*

CAMPBELL CRAIG

The idea of world government is returning to the mainstream of scholarly thinking about international relations. Universities in North America and Europe now routinely advertise for positions in “global governance,” a term that few would have heard of a decade ago. Chapters on cosmopolitanism and governance appear in many current international relations (IR) textbooks. Leading scholars are wrestling with the topic, including Alexander Wendt, perhaps now America’s most influential IR theorist, who has recently suggested that a world government is simply “inevitable.”¹ While some scholars envision a more formal world state, and others argue for a much looser system of “global governance,” it is probably safe to say that the growing number of works on this topic can be grouped together into the broader category of “world government”—a school of thought that supports the creation of international authority (or authorities) that can tackle the global problems that nation-states currently cannot.

It is not, of course, a new idea. Dreaming of a world without war, or of government without tyranny, idealists have advocated some kind of world or universal state since the classical period. The Italian poet Dante viewed world government as a kind of utopia. The Dutch scholar Hugo Grotius, often regarded as the founder of international law, believed in the eventual formation of a world government to enforce it. The notion interested many visionary thinkers in the late nineteenth and early twentieth centuries including H. G. Wells and Aldous Huxley. In 1942 the one-time Republican presidential candidate Wendell Willkie published a famous book on the topic, *One World*. And after the Second World War, the spectre of atomic war moved many prominent American scholars and activists, including Albert Einstein, the University of Chicago president Robert Hutchins, and the columnist Dorothy Thompson, to advocate an immediate world state—not so much out of idealistic dreams but because only such a state, they believed, could prevent a third world war fought with the weapons that had just obliterated Hiroshima and Nagasaki. The campaign continued

until as late as 1950, when the popular magazine *Reader's Digest* serialized a book by the world-government advocate Emery Reves, while at the same time the Senate Subcommittee on Foreign Relations was considering several motions to urge the Truman administration to adopt a policy of world federalism (see Boyer, 1985; Cabrera, forthcoming). In fact, to this day the World Federalist Movement—an international NGO founded in 1947 and recognized by the United Nations—boasts a membership of 30,000 to 50,000 worldwide.

By the 1950s, however, serious talk of world government had largely disappeared. The failure of the Baruch Plan to establish international control over atomic weaponry in late 1946 signalled its demise, for it cleared the way (as the plan's authors quietly intended) for the United States and the Soviet Union to continue apace with their respective atomic projects. What state would place its trust in a world government when there were sovereign nations that possessed, or could soon possess, atomic bombs? (Craig and Radchenko, 2008)

Certainly, neither the United States nor the Soviet Union was willing to do so, and once the two states committed themselves to the international rivalry that became known as the Cold War, the impossibility of true global government became obvious and the campaign in favour of it diminished. Even after the invention of thermonuclear weaponry and intercontinental missiles in the late 1950s, a technological development that threatened to destroy all of humanity, few voices in the West (it was never an issue in the Soviet bloc, at least until Gorbachev) were raised to demand a new kind of government that could somehow eliminate this danger. There were some exceptions: a surprising one was the common conclusion reached by the two American realists Reinhold Niebuhr and Hans Morgenthau, who deduced around 1960 that the “nuclear revolution” had made a world state logically necessary. But how to achieve one when the United States and the Soviet Union would never agree to it? Niebuhr and Morgenthau had no answer to this question. The British philosopher Bertrand Russell, however, did: the antinuclear activist once argued that, since his preferred solution of total disarmament was not going to occur, the nuclear revolution had made global government immediately necessary and, thus, the only way to achieve it was to wage war on the USSR. There was a perverse logic to this, but we can be thankful that his demands were not heeded.

The end of the Cold War, together with the emergence of various intractable global problems, has spurred the resurgence of writing about world government. In this essay I will introduce three themes that appear frequently in this writing: how the “collective action problem” lies behind

many of the current global crises; the debate between those who support a softer form of “governance” and those who look toward a full-fledged world state; and the fundamental question of whether world government is possible, and whether it is even desirable.

The Intensifying Dangers of International Anarchy

Certainly, one of the most evident failures of the nation-state system in recent years has been its inability to deal successfully with problems that endanger much or most of the world’s population. As the world has become more globalized—economically integrated and culturally interconnected—individual countries have become increasingly averse to dealing with international problems that are not caused by any single state and cannot be fixed even by the focused efforts of individual governments. Political scientists refer to this quandary as the “collective action problem,” by which they mean the dilemma that emerges when several actors have an interest in eradicating a problem that harms all of them, but when each would prefer that someone else do the dirty work of solving it. If everyone benefits more or less equally from the problem’s solution, but only the actor that addresses it pays the costs, then all are likely to want to “free ride” on the other’s efforts. The result is that no one tackles the problem, and everyone suffers.

Several such collective action problems dominate much of international politics today, and scholars of course debate their importance and relevance to world government. Nevertheless, a few obvious ones stand out, notably the imminent danger of climate change, the difficulty of addressing terrorism, and the complex task of humanitarian intervention. All of these are commonly (though not universally) regarded as serious problems in need of urgent solutions, and in each case powerful states have repeatedly demonstrated that they would prefer that somebody else solve them.

The solution to the collective action problem has long been known: it requires the establishment of some kind of authoritative regime that can organize common solutions to common problems and spread out the costs fairly. This is why many scholars and activists concerned with acute global problems support some form of world government. These advocates are not so naïve as to believe that such a system would put an effortless end to global warming, terrorism, or human rights atrocities, just as even the most effective national governments have not eradicated pollution or crime. The central argument in favour of a world-government approach to the prob-

lems of globalization is not that it would easily solve these problems, but that it is the only entity that *can* solve them.

A less newsworthy issue, but one more central to many advocates of world government, is the persistent possibility of a third world war in which the use of megaton thermonuclear weaponry could destroy most of the human race. During the Cold War, nuclear conflict was averted by the spectre of mutual assured destruction (MAD)—the recognition by the United States and the Soviet Union that a war between them would destroy them both. To be sure, this grim form of deterrence could well obtain in future international orders, but it is unwise to regard the Cold War as a promising model for future international politics. It is not at all certain that international politics is destined to return to a stable bipolar order, such as prevailed during the second half of the Cold War, but even if this does happen, there is no guarantee that nuclear deterrence would work as well as it did during the second half of the twentieth century. It is well to remember that the two sides came close to nuclear blows during the Cuban crisis, and this was over a relatively small issue that did not bear upon the basic security of either state. As Martin Amis has written, the problem with nuclear deterrence is that “it can’t last out the necessary time-span, which is roughly between now and the death of the sun” (Amis, 1987:16-17). As long as interstate politics continue, we cannot rule out that in some future conflict a warning system will fail, a leader will panic, governments will refuse to back down, a third party will provoke a response—indeed, there are any number of scenarios under which deterrence could fail and thermonuclear war could occur.

It is possible that the United States, if not other nations, can fight against the thermonuclear dilemma with technology. By constructing an anti-ballistic missile (ABM) system, America could perhaps defend itself from a nuclear attack. Also, and more ominously, the United States may be on the verge of deploying an offensive nuclear capability so advanced that it could launch a first strike against a nuclear adversary and disarm it completely.² But these are weak reeds. As things currently stand, an ABM system remains acutely vulnerable to inexpensive decoy tactics, jamming, and the simple response of building more missiles. The first-strike option is even more questionable: an aggressive or terrified United States could launch a nuclear war against a major adversary, but no American leader could be sure that every enemy weapon would be destroyed, making the acute risks of initiating such a war (unless a full-scale enemy thermonuclear attack was imminent and certain) likely to outweigh the benefits. Technology is unlikely to solve the nuclear dilemma.

Theorists considering world government regard the thermonuclear dilemma as particularly salient because it epitomizes the dangers of the continuation of the interstate system. As long as sovereign nations continue to possess nuclear arsenals, nuclear war is possible, and the only apparent way to put a permanent end to this possibility is to develop some kind of world government, an entity with sufficient power to stop states—not to mention subnational groups—from acquiring nuclear arsenals and waging war with them.

Global Governance versus a World State

Scholars nevertheless disagree whether an informal, loose form of governance is sufficient, or whether a more formal world state is necessary. Supporters of global governance argue that the unique dangers created by globalization can be solved by a gradual strengthening of existing international institutions and organizations, making the imposition of a full-blown world state unnecessary. Anthony McGrew, a leading scholar of globalization in the British academy, where support for global governance is particularly pronounced, suggests that global problems can be effectively dealt with by liberal international agencies, such as the World Trade Organization; nongovernmental organizations, such as Greenpeace and Doctors Without Borders; and security bodies, such as the U.N. Security Council. McGrew argues that the key is to grant increased and more formal powers to such institutions and organizations, ultimately giving them greater effectiveness and influence on the international stage than nation-states. Another British scholar, David Held, stresses the importance of making international institutions accountable to democratic controls. Held maintains that the world's population must have a direct say in the composition and policies of increasingly powerful international bodies.³ Held, along with others who insist on greater democratic oversight of global institutions, worries that the current "democratic deficit" afflicting existing international bodies, such as the International Monetary Fund and the U.N. Security Council, could become far worse as they acquire and wield greater and greater power.

The European Union is often offered as a model of what could happen at the international level. Gradually, once-hostile European states have cooperated to develop forms of transnational governance without subjecting themselves to the convulsive and possibly violent task of creating a European state. Nations that might refuse to accept the formation of a dominant state have nevertheless readily accepted the establishment of institutions and bureaucracies that slowly create transnational political

bonds and reduce their own sovereignty. True, the process of establishing the European Union has been unsure and—for those who want to see a stronger political union—remains incomplete, but it has taken place, and in a peaceful manner. A similar process at the international level, contend advocates of global integration, would constitute a practical way to establish global government.

Theorists who believe that a more formal world state is necessary do not necessarily disagree with the logic of global governance: it is difficult to dispute the claim that the gradual creation of supranational institutions is likely to be more feasible and peaceful than the imposition of a true world state. The “key problem” for the governance argument, however, as Alexander Wendt writes, is “unauthorized violence by rogue Great Powers” (see Wendt, 2003:506). As long as sovereign states continue to exist under a system of governance, in other words, there is nothing to prevent them from using violence to disrupt the international peace for their own purposes. The European Union has created forms of transnational governance, but decision-making in the areas of security and defence is still the prerogative of its member states. Thus, the EU remains effectively powerless to stop violence undertaken by one of its own members (such as Britain’s involvement in the Iraq war), not to mention war waged by other nations even in its own backyard (such as in Bosnia and Herzegovina). Until this problem is solved, world-state advocates argue, any global order will be too fragile to endure. Sooner or later a sovereign state will wage war, and the inability of a regime of global governance to stop it will deprive it of authority and legitimacy. International politics would then revert to the old state system.

In “Why a World State Is Inevitable,” Wendt argues that a formal world state—by which he means a truly new sovereign political entity, with constitutional authority over all nations—will naturally evolve as peoples and nations come to realize that they cannot obtain true independence, or what Wendt calls “recognition,” without one. In other words, the advent of global technologies and weaponry present weaker societies with an emerging choice between subjugation to powerful states and globalized forces or participation in an authentic world government; a world state would not threaten distinct national cultures, as pluralist scholars have argued, but rather it is the only entity that can preserve them. Wendt sees this as a teleological phenomenon, by which he means that the logic of globalization and the struggle by all cultures and societies for recognition are bound to lead to a world state whether it is sought or not. Such a state, Wendt argues, would not need to be particularly centralized or hierarchical; as long as it could prevent sovereign states from waging war, it could

permit local cultures, traditions, and politics to continue.⁴ But a looser system of governance would not be enough, because societies that seek recognition could not trust it to protect them from powerful states seeking domination.

Daniel Deudney's recent book, *Bounding Power*, provides the fullest and most creative vision yet of formal world government in our age (Deudney, 2006). Deudney argues that the driving force behind world government is the fact that international war has become too dangerous. Unified by a common interest in avoiding nuclear extermination, states have the ability to come together in much the same way as tribes and fiefdoms have in the past when advances in military technology made conflict among them suicidal. Unlike Wendt, Deudney does not see this as an inevitability: states may well choose to tolerate interstate anarchy, even though it will sooner or later result in a nuclear war. But Deudney is also optimistic that a world government created for the purpose of avoiding such a war can be small, decentralized, and liberal. In *Bounding Power*, he develops an elaborate case for the establishment of a world republic, based upon the same premise of restraining and diffusing power that motivated the founders of the American republic in the late eighteenth century.

World-state theorists such as Wendt and Deudney stress the danger that advocates of more global governance often downplay: the risk that ambitious sovereign states will be unrestrained by international institutions and agencies, even unprecedentedly powerful ones, and wage war for traditional reasons of power and profit. For Wendt, military conflict of this sort will simply push along the inevitable process of world-state formation, as societies and peoples recognize that a return to interstate anarchy will only unleash more such wars, while a world government will put an end to them and so guarantee their cultural independence. Deudney is less hopeful here. Military conflict in our age can well mean thermonuclear war, an event that could put an end to the pursuit of meaningful human independence and of the kind of world government that would respect it.

Is a World Government Possible?

The initial argument against a world state, and even a coherent system of global governance, is the one that anyone can see immediately: it is impractical. How could nations of radically different ideologies and cultures agree upon one common political authority? But the "impracticality" argument disregards historical experience. The history of state formation from the days of city-states to the present era is precisely the history of warring groups with different ideologies and cultures coming together

under a larger entity. While the European Union is not at all yet a state, who would not have been denounced as insane for predicting a political and economic union among France, Germany, and other European states seventy years ago? For that matter, how “practical” would it have seemed forty years ago to foresee the peaceful end of the Cold War? As Deudney argues, smaller political units have always merged into larger ones when technology has made the violence among them unsustainable. The surprising thing, he maintains, would be if this did *not* happen at the planetary level.

The more important objections to world government posit not that it is impractical but that it is unnecessary and even undesirable. According to one such argument, the world should be governed not by a genuinely international authority but rather by the United States: a *Pax Americana* (for example, Ferguson 2004). This school of thought stresses two main points: that such authority could more readily come into being without the violent convulsions that would likely accompany genuine world-state formation; and, as neoconservative writers particularly stress, that a world run by the United States would be preferable to a genuinely transnational world government given the superiority of American political, economic, and cultural institutions.

The case against *Pax Americana*, however, can be boiled down to one word: Iraq. The war in Iraq has shown that military operations undertaken by individual nation-states lead, as they have always done, to nationalist and tribal reactions against the aggressor that pay no heed to larger claims of superior or inferior civilizations. The disaster in Iraq has emboldened other revisionist states and groups to defy American will, caused erstwhile allies and friends of the United States to question its intentions and competence, and at the same time soured the American people on future adventures against states that do not overtly threaten them. In conceiving and executing its war in Iraq, it would have been difficult for the Bush administration to undermine the project of *Pax Americana* more effectively had it tried to do so. The United States could choose in future to rally other states behind it if it can persuade them of a global threat that must be vanquished. But, as Wendt implies, to do that successfully is effectively to begin the process of world-state formation.

Another objection to world government was first identified by Immanuel Kant. In articulating a plan for perpetual peace, Kant stopped short of advocating a world state, for fear that the state could become tyrannical. In a world of several nation-states, a tyranny can be removed by other states or overthrown from within. At least it could be possible for oppressed citizens of that state to flee to less repressive countries. But a sovereign

world government could be invulnerable to such measures. It could not be defeated by an external political rival; those who would overthrow it from within would have nowhere to hide, no one to support them from the outside. Kant concluded that these dangers overrode the permanent peace that could be had with world government, and he ended up advocating instead a confederation of sovereign, commercial states.

One can raise two points in response to Kant's deeply important concern. First, he wrote in the eighteenth century, when the spectre of war was not omnicidal and the planet did not face such global crises as climate change and transnational terrorism. International politics as usual was not as dangerous an alternative to his vision of perpetual peace as it potentially is today. Second, as Deudney argues, there is one central reason to believe that a world government could avoid the temptations of tyranny and actually exist as a small, federal authority rather than a global leviathan (Deudney, 2006, especially chap. 6 and conclusion). This is the indisputable fact that—barring extraterrestrial invasion—a world government would have no need for a policy of external security. States often become increasingly tyrannical as they use external threats to justify internal repression and authoritarian policies. These threats, whether real or imagined, have throughout history and to the present day been used by leaders to justify massive taxation, conscription, martial law, and the suppression of dissent. But no world government could plausibly make such demands.

Will the world-government movement become a potent political force, or will it fade away as it did in the late 1940s? To a degree the answer to this question depends on the near-term future of international politics. If the United States alters its foreign policy and moves to manage the unipolar world more magnanimously, or, alternatively, if a new power (such as China) arises quickly to balance American power and instigate a new Cold War, the movement could fade. So, too, if existing international organizations somehow succeed in ameliorating climate change, fighting terrorism, and preventing humanitarian crises and other global problems. On the other hand, if the United States continues to pursue a *Pax Americana*, or if the transnational problems worsen, the movement could become a serious international cause.

These considerations aside, as Reinhold Niebuhr, Hans Morgenthau, and others discerned during the height of the Cold War, the deepest argument for world government—the spectre of global nuclear war—will endure as long as sovereign nation-states continue to deploy nuclear weaponry. Whatever occurs over the near-term future that is a fact that is not going away. The great distinction between the international system prevailing in Niebuhr and Morgenthau's day and the system in our own time

is that the chances of attaining some form of world government have been radically enhanced by the end of the Cold War and the emergence of a unipolar order. This condition, however, will not last forever.

Notes

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1. Wendt (2003:491–542). For a more extensive discussion of new scholarship on world government, see especially Lu (2006).

2. Lieber and Press (2006:7–44). Lieber and Press do not advocate an American first strike against a potential aggressor; they simply argue that the United States has developed a capability to do so.

3. For an overview of McGrew's and Held's positions, see McGrew and Held (2002: chaps. 13 and 15). Also see Hurrell (2007). American scholars in favour of global governance include Falk (1995); Slaughter (2005). For an innovative treatment of the problem of global democracy, see Cabrera (2004).

4. Wendt (2003:507–510;514-516). For the argument that world government would threaten cultural pluralism, see Walzer (2004).

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SECESSION AS A CRIME AGAINST THE WORLD STATE

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Advocates of the world state rightly point out that an effective world state, if it is to be created any time in the future, would introduce the rule of law on the whole of our planet. As a result, the world state would be empowered to prevent or stop any unlawful use of violence, that is, violence not properly authorized by a legitimate government. While any state—and by implication a world state—would ban unlawful violence, it is far from clear what kind of collective action, short of violent ones, a future world state would prohibit and prevent. In particular, it is not clear whether any detachment, or secession, from the world state would be explicitly prohibited by the globally enforced law. Any attempt to determine which collective action would or should be prohibited is at this stage speculative. This kind of speculation, in the present state of our disciplinary demarcations, is often the privilege of normative political or ethical theorists. This essay explores the speculations and arguments of one very influential normative theorist.

In his “Why the World State is Inevitable” Alexander Wendt (2003: 491-542)* maintains that the disruptions of the world state would constitute not politics but crime. At present disruptions of the world order or relations among states—for example, through the creation of new states through secession—constitute not a crime but political processes whose outcome and legal consequences are often uncertain. In the world state which, Wendt hopes, will be established within one hundred years or less, disruptions of this kind would no longer be disruptions of the world order but of the world state. If so, they fall under the legal regulative of the world state. Disruptions detrimental to the world state would no doubt constitute a breach of these legal regulations and, thus, a crime. From this it follows that secession, as a disruption of the world state, would constitute a crime whose punishment Wendt does not specify.

Wendt’s article is instructive in two distinct ways. First, it offers a few reasons why secession would constitute a crime. Second, it suggests how

the world state should “tame” or “domesticate” secessionist tendencies based on nationalist narratives. In this way, the article exemplifies the standard “carrot and stick” model which world statist employ in their approach to the question of secession. The world state should, on the one hand, reduce the incentives for secession by satisfying those interests and desires that lead, in our anarchic world, to secession; and, on the other, the world state should criminalize and punish any actual acts of secession.

However desirable I think the world state may be, I find this aspect of the current projects concerning the world state somewhat worrying. It is worrying because of its dogmatic and utilitarian approach to politics. Within this approach, any act of politics which may, in some vague sense, be detrimental to the world state should be criminalized. The history of the twentieth century suggests that attempts to criminalize allegedly undesirable political acts are very costly in terms of the loss of human life and property, and that the extent of these losses may provide a good utilitarian reason to resist criminalization of political actions. For example, Bolshevik and Nazi criminalization of political actions and political beliefs led to large-scale conflict and to these states’ systematic maltreatment and execution of their own citizens. In Wendt’s view, the lessons of history are simple: the world state should be made a “good” and not “bad” agency. A “good” agency should, presumably, not kill its own citizens because they are attempting to establish political organizations of their choice—political organizations which are themselves not “bad” agencies.

Yet if such a “good” political organization—a seceding state—presents, in the view of the rulers of the world state, a threat to the happiness and security of the whole of humanity, in Wendt’s view, these rulers would be justified in deploying lethal force against its supporters. The allegedly “good” world state is thus justified in deploying lethal force against—and killing—its citizens if their political actions and aspirations, however unintentionally, threaten the security and happiness of the whole of mankind. The same kind of reasoning has been used in the past to justify “bad” states’ mass murder of potential political opponents who were not even aware that they were political opponents of the regime. How does, then, a utilitarian justification of killing by a “bad” state differ from the same justification by a “good” state? Does the goodness or badness of a state in such circumstances depend only on the good that is allegedly being threatened by its opponents? And so killing in order to remove the threat to the future (Communist) world of equality is bad, while killing in order to remove a possible threat to the (World State) security and happiness of the whole of mankind is good? Wendt does not offer any answers to these

questions. But he does offer an explanation as to why secession should be a crime in the future world-state. Let us now examine his explanation.

Against anarchy

The world state, according to Wendt, is inevitable partly because collective actors will rationally decide that the costs of anarchy and the unilateral right to use violence and to wage war are too high. Moreover, the world state will be able to recognize all individuals and groups' subjectivity equally thus removing the inequality and domination that characterizes state and group relations today. The struggle for recognition by groups will be domesticated, that is, regulated within the domestic law of the world state. The use of violence to achieve recognition will be not only prohibited but also pointless—recognition will be achieved and achievable without the use of violence. This is of course an oversimplification of Wendt's argument—but as I am not examining Wendt's argument for the inevitability of the world state this oversimplification may be excused.

Why, then, is secession prohibited? There are two reasons: first, secession means the return to anarchy, which is characterized by the unilateral group right to kill people. In anarchy, states retain the right to kill their alleged enemies without being punished for the killing. In the world state, no group, except the government of the world state, has the right to kill. If a unit of the world state is to secede, it will aim to regain the right to kill unilaterally. This is not only dysfunctional—because it brings us back to anarchy—but also unjust.

Second, all demands for equal and mutual recognition by secessionists can be met within the world state. Any such demand that cannot be met is, necessarily, a demand for unequal and thus unilateral recognition. Secessionists, by demanding a separate sovereign state, are demanding that they be recognized not only as different but as superior. They believe that they are in some sense superior because their group deserves or needs a sovereign state while many or most others do not. But there is no justification for the belief that one or more groups require a separate sovereign state apart from the existing world state. There is no justification for their belief that they are superior in this sense. Such a demand for the recognition of a group's superiority over others is without ground and unjust, an unjust demand which should not be met. Although some groups may be recognized as superior in some respect—for example, in so far as they cherish specific arts more than others—no superiority requiring a separate sovereignty can be recognized. Perhaps Wendt believes that sovereignty is a

good that can only be equally shared and, therefore, no group can have more sovereignty than any other group.

Against Wendt's first argument, one can point out that a secession from the world state does not, necessarily, lead to anarchy among states characterized by the right of states to kill people unilaterally. The seceding state does not, necessarily, aspire to acquire or exercise the right to kill unilaterally. States can, and do, accept outside (that is, inter-state) restraints on their rights, including their rights to kill non-citizens. In fact, I do not think that even today, in our society of states, that states have that right to kill people unilaterally. In our society of states, states have the right to kill those who are attacking their territory and citizens or those preparing to do so. While we have no effective legal and coercive mechanism to enforce or regulate this right, this right still significantly restricts the states' right to kill. Our world, then, is not the world of anarchy that Wendt describes in his argument against secession.

If this is the case, why does Wendt describe our world by reference to the alleged right of states to kill people unilaterally? In his *Leviathan* Hobbes uses a very similar device to describe the state of nature or anarchy among individuals that allegedly occurs in the absence of a sovereign or a state. Individuals, in Hobbes's state of anarchy, have the very same right to kill people unilaterally that, in Wendt's state of anarchy among states, is conferred on states. The function of Wendt's right to kill unilaterally is also similar to that of Hobbes' right: it is to convince his readers of the need for a strong state by vividly presenting—and exaggerating—the alleged costs of the absence of the world state. As noted by Locke and Hume among others, in the absence of modern states, with their monopoly on the use of force, individuals do not kill each other unilaterally and they are not considered to be holders of the right to do so. Hobbes' description of war of all against all, as a description of a society in which a state with its absolute monopoly on the use of force has not been established, is simply false. Likewise, Wendt's description of anarchy, as a description of the practices in our present society of states, is simply false. Each uses his description of the right to kill unilaterally as a rhetorical device whose function is to pre-empt any detailed examination of the costs and benefits of a strong state with an absolute monopoly on the use of force.

Against Wendt's second argument, one can point out that by demanding territorial sovereignty, a group is not, necessarily, demanding the recognition of its superiority over other groups. A group demanding a separate state can base its demand on the ground that its interests are not served well enough in the world state: that the state over which they had full control would serve their interests better and would not harm anyone

else's interest. Their argument is that their sharing sovereignty over territory does not serve their interests as well as their own sovereignty over the territory. Their interests, they believe, are better served if they can control the scope and nature of their own contact with others. This is not because they are superior to others but because they have different interests from others. Since their interests are, in their view, different from others, their demand is to recognize the equal importance of their interests to those of the others. If the others' interests can be served within a world state, and if the seceding group's interests cannot, then the principle of equality requires granting a separate state to the seceding group. The secessionist group is not demanding that it exercise sovereignty over its alleged inferiors nor is it disparaging, as inferior, those who prefer a world state to a separate state. Therefore, a demand for a separate sovereignty may be a demand for the recognition of equality of interests—the secessionists' interests need to be treated as equal to those of the others. If so, that recognition would include the recognition of a separate sovereign state for the seceding group.

Wendt's world state is predicted to come about in 100 to 200 years and to display competencies and institutions which are perhaps difficult to even imagine today. Therefore, our dispute is about an imagined world—and a world which may even stretch beyond the capacities of our imagination. Let us then try to imagine a possible scenario for secession in such an imagined world which would NOT (a) threaten to return the world to anarchy and (b) involve a demand for the recognition of superiority.

An imagined secession in an imagined world-state

Let us start with a basic division of cultural practices and beliefs in our imagined world. In some units of the world, human life is regarded so valuable that any human being is kept alive, whether or not he or she wants to be kept alive by all available medical means. In those units/countries, there are large medical survival centres, where thousands and perhaps millions of human beings are kept alive with the help of a great variety of advanced machines. In some units, however, the conception of a natural span of life is prevalent, and if a person becomes immobile and loses their principal cognitive faculties, he or she is allowed to die. People who share this conception often migrate to the natural-span-of-life units/countries in order to avoid long-term preservation in a vegetative state.

Now one small unit in the natural-span-of-life sphere—with a few million people—is dedicated to the competitive game called simply the

GAME. It is a complex game involving the use of computing power, physical movement and an ability to catch balls. Something like today's cricket with an extensive use of computing and optical equipment predicting and directing the movement of the ball. GAME is played all over the planet but our GAME unit/country prides itself on having originated the GAME and having the best world players. All enthusiasts of GAME tend to migrate to the unit of GAME where they pursue this game with ardour and dedication.

At some point, several GAME players and entrepreneurs proposed that the GAME unit/country offer free GAME facilities to each of its inhabitants capable of playing the GAME and introduce compulsory GAME playing in all schools together with prizes for all categories of players. The costs of this re-direction of budget were so large that the GAME unit authorities requested the Planetary Council that the GAME unit contribution to the Planetary budget be reduced. The Planetary Council, after long and diligent deliberation, rejected the request pointing out that other units with popular sports could follow this example and thus deplete the Planetary budget. It would be unjust to burden non-sportive units more than sportive units, they argued.

In response, GAME enthusiasts launched a campaign under the slogan—*We stand for life and GAME, not for dying*. They argued that the Planetary redistribution of income favours those units which spend a lot of resources on keeping its citizens alive artificially. The living and those who are full of life are thus subsidizing the dying. In response, the non-natural-span-of life intellectuals and journalists accused the GAME enthusiasts of immorality and of devaluing the value of life. The accusations and counteraccusations flew freely—and at some point the GAME enthusiasts suggested that their way of life is threatened by the need to continuously argue with their opponents and to defend their values and their way of life against continuing attacks and innuendos. Couldn't they enjoy freedom from this pressure of the moralists and their demands to respect the dying?

This is how the idea of secession was born. The idea was simple: the GAME unit should become a separate budgetary unit so that it can only contribute to those shared Planetary costs that its citizens find necessary. The secessionists argued: let us share the costs of the defence and of shared police forces and perhaps other necessary functions—but not other expenses, in particular, no expenses for medical and other care beyond the natural span of life.

In turn, this proposal rang alarm bells in the Planetary Council—if the all the natural-span units were to withdraw their contribution, through this

kind of budgetary secession, the life preserving machines for many thousands if not millions of the dying would have to be switched off. Many natural-span members of the Planetary Council agreed that this was unacceptable in part because this would appear to withdraw recognition from the values of the non-natural-span-of-life adherents.

In response, the GAME advocates pointed out that they fully recognize the importance of life preservation for the non-natural-span adherents but that they only demand equal recognition of the importance of GAME for them. Neither the GAME nor the non-natural span adherents should fund each other's preferences: to each one's own, they claimed.

The Planetary Council warned that the Planetary law does not allow a unilateral withdrawal of budgetary contributions. The GAMERs retorted that their proposal to withdraw is prompted by considerations of justice—that their action is just and that the law is in this case unjust and should not be upheld. The Planetary Council then proceeded to use force to extract the contribution by sending its officials, from all over the planet, under armed guard.

The GAMERs in turn proclaimed the nullification of laws of the Planet (the world state) and called for non-violent resistance to the officials. Confronting demonstrators hurling abuse and tomatoes (or their 22nd century equivalents), the Planetary forces used the most modern stun technology which totally incapacitated several demonstrators (who ended up on life-preserving machines but were not killed). These became the martyrs for the cause and the GAMERs demanded the punishment of the Planetary forces and withdrawal of the armed riot units. As the armed intervention was rapidly alienating the GAME population and destroying the Planetary “WE” identity, many Planetary officials and armed forces officers started to doubt the wisdom of the armed intervention and imposition of this law by force.

The Planetary Council faced the dilemma—either to continue to use armed force and provoke further violent conflict *or* to withdraw from the GAME unit and allow other natural-span units to withdraw their contributions to the dying machines. Both alternatives were highly costly and none of them prevented secession.

What is at stake?

Does the world state have means of preserving itself under the circumstances of differing lifestyle priorities—some of which require funding from the groups which do not share these priorities?

The importance of this story is not only to highlight this question but also to point out that the secession is not, necessarily, a demand for the right to kill unilaterally nor does it lead to the acquisition of that right. The GAMERs wanted a budgetary secession and were willing to remain under the security umbrella of the World State. They forfeited their right to arm and to use force against non-GAMERs at least until they were exposed to the violence of the Planetary forces. They demanded equality of recognition, not superiority.

Why should they be punished for that? Why is it criminal to make the demands that they did? If the GAMERs revoked the shared security agreements and started to arm—in the absence of any threats—this indeed might have been regarded as a breach of law that required preventive armed intervention. But preventive armed intervention was carried out against a budgetary secession because the latter threatened the beliefs and way of life of a group of people. Indeed, these people regarded these beliefs as the most important—as the core of their own identity—and their identity was based on the way of life that involved the use of life-preserving machines. Even so, is the threat to these very deeply held beliefs (identity-beliefs) a sufficiently good reason for the use of lethal force (or its contemporary equivalent) against those who do not want to subsidize those beliefs?

At best, Wendt's conception of a "good" world state offers no answer to this question. But we can easily see how in a "good" world state, those whose identity beliefs are threatened would see this threat to be not to their deeply held beliefs, but to the whole order of the state; they would consider this threat—which is really a threat to their beliefs—as the threat to the happiness and security of all. After all, for the non-natural span adherents, the whole order on which the Planetary state in our imagined world is based is that of the existence and functioning of life-preserving machines: if the latter are threatened, so is the order of the whole world.

Under these conditions, those who extol the values of human life and its preservation may be ready to justify the use of lethal force or its equivalent against those who threaten their conception of human life. Their situation thus becomes similar to the idealistic Bolsheviks who are ready to kill those who threaten the future egalitarian society—the belief in which shapes the Bolshevik identity. And so the "good" world state of promoters of life slips into a "bad" state of those who kill people in order to preserve life.

All in all, Wendt's imaginary world state neither rules out successfully all the causes or motivations for secession nor provides sufficient either utilitarian or moral grounds for criminalizing secession. Moreover, the

criminalization of secession in the world state may only be a symptom of its fundamental moral ambivalence and its potential to become, as many previous organizations which attempted to create a world state had become, a “bad,” that is, a murderous, agency.

* Wendt, A. 2003, *European Journal of International Relations*, vol. 9(4)

WORLD GOVERNANCE:
CAN IT HAPPEN IN A GOOD WAY?
NOT LIKELY!

JAN NARVESON

For those of us who have our doubts about government as such, at whatever level, the prospect of world government is likely to be looked at with something approaching stark horror. Is there good reason for this aversion? I think so. World government inherits the problems of government generally, but it adds a serious further level of problems. And the alternatives are at least better, if not very good. That is the general thesis for which I will try to provide some basic support in this essay.

It is tempting to think of world government as a noble ideal, and very easy to succumb to that temptation. Think of all the great things such a government could do! —So enthusiasts are likely to say. But those who do think that are thinking of government as it ideally might be, in their views. Most of us, I daresay, are benevolent despots at heart: if *we* were in charge, things would be terrific! Each such theorist thinks about the subject through his or her own particular shade of rose-colored glasses. The problems begin right there. The various ideal visions of world government are mutually incompatible, and how would agreement be achieved among them, and at what cost? In any case, however, what matters even more is that no such vision is remotely likely to be achieved. We must think, not about what conceivably in the best case *could* be or *should* be, but rather, about what to hope for and expect given what we know about people, their states, and their histories. It is in that spirit that the following reflections are set forth.

Obviously all this assumes certain things about the purposes of government. I am one of those who has doubts that governments can actually serve any of the good purposes for which they are presumably supported, or at least tolerated, by those subject to their powers, but at least it will be useful to consider whether a *world* government could be expected to achieve all or any of them even as well as, let alone better than, a collection of disparate, separate countries with assorted mutual connections and

relations, bilateral or low-number-multilateral treaties and other agreements.

Why Government? The Liberal Perspective

What, then, might we hope governments would do? Of course there has been much disagreement about this. However, we can pare down the disagreement usefully, and considerably, by making a general distinction between what I will presumptively call “liberal” and, to be bland and broad, “nonliberal” views. The general distinguishing feature of liberalism, I hold, is that it holds that

(1) Government is justified only if and insofar as it governs for the good of the governed, rather than of the governors; and

(2) The “good of the governed” is the good of people *as seen by themselves* rather than according to some purportedly objective, or idealistic theory not embraced by the individual concerned. Government, then, is concerned with *enabling people to get what they want*.

All other views of government declare either, in the manner of Thrasymachus, that the purposes of government simply are the purposes of the rulers, whatever the governed may think, or else, in the manner of Aristotle, that The Good is such-and-such and government is to promote that, like it or not. There are, of course, innumerable variants stemming from both views. The first, indeed, can hardly be called a “view” in the relevant sense—no sane philosopher is going to hold that we should all be rooting for the despot irrespective of his aims. The second, on the other hand, is very widely held and, I think, still more widely put into practice, usually by persons claiming to be liberals.

What is clear is that the first kind of view, which I call by the somewhat misleading but accurately enough name “conservatism” has no chance of achieving world government. If world government could be achieved and then maintained by force, of course, then the vision of the successful conqueror could in some measure be instantiated. But it isn’t going to happen, nor should it. Conservatism as a unifying force for all is hopeless. The following treatment assumes, therefore, the correctness of liberalism without further argument.¹ Of course liberalism too has had its diverse exponents and disciples in the last few centuries and especially in the past few decades, and the kind of divergences they have had plays some role in the following discussion. But with liberalism, at least the

prospect of unity is not a virtual non-starter, as is the case with the assorted conservative views.

My general, fairly bland generalization about the legitimate purposes of government is that the idea is to help make people better off—to live better lives. On our liberal view, however, these “better lives” are lives that *those very people*—the to-be governed—must *see* to be better for themselves—not just better according to some pundit or some supposed authority. The vision of the good life on the basis of which they are governed needs to be that of a life that they *want to live*. But of course, this is very indeterminate in its implications for practice. Indeed, some of us, sympathizing with Henry David Thoreau in spirit, wonder whether the best way for government to contribute to the important general goal of everyone’s achieving the best life they reasonably can hope to achieve, given the nature of their fellows and of their current environments, is to stop governing altogether. But still, the general outlook of liberalism at least suggests certain quite general more concretely specifiable purposes for governments to pursue.

At any rate, we can conveniently categorize these as follows:²

(1) *Peace*, both internal and external: that is, to keep people from murdering and otherwise molesting each other—both fellow citizens (domestic peace) and people from other countries (international peace). At the top of every list is the control of civil violence. Governments are to provide the police who will punish interpersonal assaults, robbery and murder. They are also to organize such defence as may be necessary for the special case of foreign invasion, of course. But obviously the very agency that enables such defence also enables, and has been used since time immemorial for, offense. Thus an implied further purpose is to minimize violence against citizens by governments themselves.

2) *Welfare* promotion, specifically in the way of health, education, and the production of the necessities and luxuries of life. People have supposed, and expected, that governments would promote our health, education, and welfare: at least to keep people from dying of the most prevalent curable diseases, to make them literate, and to enable the neediest among them to stave off starvation.

3) Large-scale *services*: infrastructure, such as roads and bridges, and what a long-ago student helpfully refers to as “sandbox.” (Aquinas mentions “community festivals” and more generally “acting well by the community.”) In the second of those capacities, people have looked to gov-

ernment provision of public facilities such as parks and the organization of public festivals and the like—the Olympic Games come to mind.

For each of these objectives, it is worth observing that government is not literally *necessary* for achieving any of them. People can refrain from injuring their neighbours, they can help them when in need, and they can form associations such as businesses or cooperative societies for the creation of infrastructure, entertainment facilities and areas of all kinds. The defender of government needs to show us that governments can be expected to do these things better than independently acting individuals, proceeding only by voluntary means, can manage. There is, of course, no intention of attempting to show that here. Rather, the point is to add further to the background of our topic here, one world government, for all. The question is whether there is any serious hope of improvement from a world government relative to what a loose and voluntary association of separate states might be likely to do.

Nations have achieved enormously variable degrees of success in promoting these three general objects. Regarding the first, they have, for example, generated an enormous number of wars, small and large, and to murder their own citizens in horrendous numbers. Regarding the second, they have sometimes managed to bring their people to the brink of starvation, and occasionally over it; their populations have achieved highly variable degrees of literacy, wealth, and health. The best ones do pretty well; the worst do miserably. And how you size up the third depends partly on matters of taste. Self-glorificational display, for example—if you go in for that sort of thing—has certainly been one of the State’s major achievements over time, from the Pyramids to imposing palaces and the like, as well as frequently heavy subsidies to various of the arts. But the achievements of non-governmental organizations and individuals are at least as impressive. Nor should we overlook the tendency for governments to crowd out the private sector associations’ attempts in these directions.

Enter World Government

When we move to World Government, what difference does that make? The Stanford Online Encyclopaedia, in a helpfully typical vein, tells us that “Proponents of world government offer distinct reasons for why it is an ideal of political organization. Some are motivated negatively and see world government as the definitive solution to old and new human problems such as war and the development of weapons of mass destruction, global poverty and inequality, and environmental degradation. More

positively, some have advocated world government as a proper reflection of the unity of the cosmos, under reason or God.”

It is interesting that advocates would lump these together, for they are extremely different. World peace is the absence of war. Global poverty need not lead to war, though it might, neither need global inequality, though the perception that the state on the other side of the line offers easy pickings for desperate seekers of goods has no doubt contributed to some wars. And then, the adoption of equality as a goal can itself easily lead to war, and probably often has done so, in one way or another. Environmental degradation is a recent addition, and rather an odd bedfellow in this group, but nevertheless one that can readily be plumped for by enthusiasts, who might see world government as the way to handle *global* environmental issues, such as “global warming,” which currently leads the pack by a considerable margin.

As to global unity, it is, to put it mildly, not clear that the right way to reflect any “unity” that the cosmos may have is to establish a world government. For one thing, if we really had unity, then surely we would be united without world government. But if, as is far more plausible, we are in fact diverse and disunited, then we should arguably forget about the “unity of the cosmos” and go our different ways. Anyway, the plausible view is that we are disunited in fact, and indeed, that the sort of problems inducing us to set up a world government stem precisely from that fact.

I submit that there is little reason to hope for anything helpful on the second or third fronts from a world government—though I will expand on that point below. In any case, we already have the Olympic Games, without a world government, and innumerable other international or global organizations and recognized festivals and so on. The focus falls all but entirely, then, on the first. World government, above all, is supposed to keep the peace. If it is neither necessary nor sufficient for greatly improving our expectation of peace, then there is not much reason to pin our hopes on any of the others.

From the point of view of a world government, keeping what is currently international peace would be a matter of keeping world-domestic peace, as it were. The question is whether there is any really decent reason for believing (1) that it would accomplish such an objective, and (2) that it would confine itself to that function. I shall pursue both points—briefly but, I think, sufficiently to support a negative answer.

World Government=World Federation

As things stand, World Government is necessarily going to be a sort of Federation, a la Kant. One reason for this is that if the world were made into one huge state, with democracy in place, countries like the United States would become small minorities, while my own country, Canada, would be a barely discernible speck on the political horizon. It is essentially inconceivable that any State, even the very large ones, would go along with an indissoluble union of the world that subjected its government and citizens to the uncertainties of world-wide majority voting.

This is hardly unique. Canada and the United States are federal. A dozen states preceded the United States; a couple of Provinces preceded Canada, with more assembling in the lobby all ready to be added. In both cases, powers are divided between these smaller political entities and the larger ones. But that doesn't keep both of these countries' federal governments from doing a whole lot of the sort of thing that inspires critics of government with alarm. Are Ontario and British Columbia doing better because they are subordinate to the federal state of Canada? Quebec and Newfoundland may think they are: the Federal Government imposes taxes to "equalize" the situations of those two relative have-less provinces with the have-mores. Arguably, all would do better with sheer free trade among themselves. Once political democracy sets in, however, that's unlikely to get wide recognition by the people who count—namely, The People. Think now of the 200 or so governments in today's world, in relation to World Government and *its* prospects for elaborate programs of "equalization" among them, as compared with its prospects for promoting real free trade among them.

A world government's components would be national units all of whom have been accustomed, and supposedly entitled, to be regarded as "sovereign" states. That is a notion difficult to define and the status of a state as "sovereign" is one that is very hard to sustain in the modern world, even if we can make sense of it. But in whatever workable meaning it may have, it is obviously going to be a major obstacle in the path of any higher level of what claims to be government. If your subordinates claim to rank equally with you, your authority over them is questionable. But if they clearly are subordinate, their enthusiasm to join the institution is likely to be modest at best.

In a recent press opinion column in Canada, a columnist addressed the question of what we can do about the government of Burma's refusal even to permit foreign aid workers to help out the numerous victims of a major typhoon in the Irrawaddy delta. His answer was discouraging, but surely

correct: nothing. “There is much talk at the world’s jaw-jaw organizations such as the UN and the Commonwealth about “responsibility to protect” and “soft power,” but for all this high-minded sentiment and flowery rhetoric, nothing short of hard power is going to save most victims of humanitarian crises. And the West, quite rightly, is reluctant to go around invading sovereign nations each time some generalissimo or president-for-life decides to use a cyclone, drought, tsunami or social unrest to keep his people down and weaken his opposition” (Gunter, 2008). Robert Mugabi, the government of Sudan, Fidel Castro—not to mention Mao Zedong and Stalin—all of these stunningly evil people remained immune from the world’s more decent regimes for whole lives or at least for many decades, despite the U.N., despite immense power, economic and military. Why so? It’s hard to resist the conclusion that nations accustomed to thinking that they have sovereign power will refuse to give up that power short of anything but war, and meanwhile, the nations that possibly could make war on them in the interest of the rights of their inhabitants will be difficult to budge in the direction of doing that very expensive and risky thing. And it is easy to believe that rather than run the risk of losing sovereign power at the hands of a strong overarching government, they’ll prefer not to accept the latter in the first place.

It might be thought that world government could make a difference here. But that is, I fear wishful thinking. Every war in a world with a world government would be a civil war, and civil wars have a way of being worse than the international wars with which the world has been amply plagued. The thought, perhaps, is this: that in an official world federation, there would be an overall nanny who could keep her unruly charges in line. But this is an analogy that runs out of plausibility fairly soon. Nannies are usually large in relation to their charges, but would world governments be? On paper, yes. But would they be willing to risk their members’ resources for these purposes if, as I think inevitable, they “ruled” with little behind them but such force as moral suasion can muster?

A world government would not, in anything like current circumstances, come about in the usual way, viz. by conquest. Alexander the Great, Caesar, and Genghis Khan are not where it’s at any more (if they ever really were, for that matter.) Instead, world government would originate in some sort of constitutional convention, rather as the United Nations did. Now, with such an entity, we have a chain that is about as strong as its weakest link. If every member is such by agreement, then the terms of association will be extremely weak, else the ones we really want to get at will not join, or will do so only on meaningless terms—as when, in the U.N., Libya ends up in charge of Human Rights, for example. And if the

“rogue” states do join, the terms will be weak enough so that we can’t get at them. Indeed, it will make matters worse. In the world as it has been, NATO forces could make war against Serbia on behalf of Kosovo, for example. The UN wouldn’t have done such a thing—the opposition of Russia by itself is enough to guarantee that.

So the question is whether world government might indeed enable a “definitive solution to... problems such as war...” to say nothing of world poverty or inequality. And on this, it seems to me, the plausible view has to be resoundingly in the negative. The reason for this is familiar: either the problem of war is such as to make effective world government impossible, or else, if soluble at all, it makes it unnecessary. Both horns of the dilemma deserve some further comment.

How would a world government prevent war? Will the member states be happy to contribute troops (for example) to a military expedition on the basis of a majority vote of the members? Not likely. If they will only be asked to approve the sending of them by somebody else, then what about the member against whom the expedition would be directed? Would it have a veto, or not? If it would, that’s the end of our police action. If it wouldn’t, what nation would join an organization with such powers?

On the other hand, let’s suppose that the various nations are ready to seek peace with others, to engage in trade, and to respect negotiated agreements. In that case, though, what need is there of a world government? To be sure, some might say: to enforce those agreements. I reject this argument altogether, though discussing it at length is beyond the purview of this discussion. A shorter way with it is to observe that those who make agreements and then disregard them pose a problem that can amount to a declaration of war, and if that is a serious problem, then the condition I’m envisaging here simply isn’t met.

The Stanford Encyclopedia cites Kai Nielsen thus:

“when the winning conditions exist for establishing a desirable form of world government or global governance—one that will guarantee human security with individual liberty, protect the environment, and advance global social justice—it will no longer be necessary” (Nielsen, 1988:276). Of course, on Nielsen’s view, on which an appropriate object for pursuit by world government is, say, “environmental protection” and what he claims to be “social justice,” the “desirable form of world government” is one for which “winning conditions” will never exist, leaving the question whether he would favour world government *beforehand*. He there echoes Marx’s distinction between pre-ideal socialism, which would call for enormously heavy government, and “ideal” communism, which he supposed would be anarchic. Discussion of the latter option is academic:

given the way people have always been, communist goals will not be achieved in anarchic conditions, period. Capitalist goals, on the other hand, apparently could be, so far as I can see. Mutually beneficial exchange among voluntarily acting individuals does not require the sort of compulsory “distribution” that communism does. But what will happen at the international level?

It is at such a level that, it seems to me, the problems facing global anarchy are far less severe, as compared with world government. That the states of the world might cooperate to the extent of not making war on each other is far from inconceivable, and indeed for the most part happens—among most of them—most of the time. World government is unnecessary among those ready to respect agreements, and ready to make those agreements with like-minded others. So insofar as the world is like that, no world government is needed to achieve that desirable state of affairs. But insofar as it is not like that, the prospects for forming a world government via effective federation are roughly nil.

There is also the question whether world peace would actually be promoted by world government. The tendency of government is to gang up on the relatively weak. Knowing that the relatively weak have an incentive for becoming relatively strong thus inhibiting the bullying tendencies of the world government. Of course, at the same time this relative strength is going to encourage the very behaviour that it was the point of world government to inhibit. Not good!

From the behaviour of member states in the United Nations, we may also safely infer that a world federation any more robust than that relatively toothless organization would be characterized by squabbling among its members. If, as with the Security Council, some states have an effective veto, this will, as it has done so far, inhibit effective action to secure peace. Everybody wants peace, of course—so long as it’s on *their* terms. But they disagree hugely over terms. And then what?

Democracy

A further important aspect of the problem of international peace is the argument, due to Immanuel Kant in (so far as I know) the first instance, that if the world’s nations were all what he called “republics”—contemporary democracy being a tolerably good approximation—then war would, in all likelihood, not happen. Where the populace elects the government, Kant reasoned, people wouldn’t stand for expending their money and children on foreign adventures. They would instead confine themselves to defence. If all significant players on the international scene rea-

son similarly, then there would be no aggression; but without aggression, there is no need of defence, and so Kant's further desideratum, the absence of large standing armies, would probably also obtain.

Democracy is the political system of choice in the contemporary world, and while it might be overly optimistic to suppose that all the world's nations are destined sometime soon to become genuinely democratic, that possibility is at least not to be dismissed out of hand. Again, the point is that world government would be unnecessary to achieve general peace in a world of democracies.

The Tendency to World Nanny-Statism

This brings us to a problem that is, I think, very much more ominous. For a tendency to erect government is evident, in social groups almost everywhere, and an aspiration will surely arise of forming a world government despite the lack of the most urgent reason for having one. We may expect that world government certainly can and certainly would take to its bosom all sorts of popular political goals—world health, welfare and “equality” especially. And it would certainly do so in even more inefficient and counterproductive ways than the several separate governments in the world do at present. It will decree that all sausages should be precisely 23 mm in length, that all children will be vaccinated against diseases that have never existed in the area, and innumerable other things of that kind, all the while staffing departments and committees with secretaries, under-secretaries, under-undersecretaries, and so on indefinitely. We can expect world government to have at least all of the vices of actual governments everywhere, and very likely have them in much higher degree. Who, as young folks say, needs it?

Kant, anticipating the above, says that what he calls a “pacific federation ... does not aim to acquire any power like that of a state, but merely to preserve and secure the freedom of each state in itself, along with that of the other confederated states” (Kant, 1983:104). Experience suggests that we should not be too optimistic about this. States always seek to acquire power, and organizations with quasi-statelike powers want to grab their share when they can. The example of the United Nations does not encourage us in this regard. Despite the decidedly non-pacific nature of various of its members, the UN, with all its many internal committees and associations, certainly tries to do considerably more than what Kant suggests. And it in general does not do it well, and does what it does do at enormous extra expense. Even if we only look at lesser super-national organizations, such as the European Union, the situation borders on the ridiculous. We

look to the EU for spectacular examples of bureaucracy gone berserk, with an incredible welter of highly arbitrary regulations about nearly all aspects of life.

Governments are touted for instantiating and promoting the “rule of law.” Yes, indeed, but here we need a distinction: between the rule of the *idea* of Law, and the rule of *laws*, that is, the statutes and ordinances and operating procedures of the innumerable agencies of governments. The Rule of Law properly speaking would be the rule of the basic laws of society, above all that of mutual noninterference. But governments are not in fact very good at confining themselves to that. While they devote some time to dealing with robbery and murder, they devote a lot more of it to controlling the drug traffic, enforcing speed laws, building monuments to various parts of itself, and other such things—not to mention fairly freely breaking their own laws in various ways.

The true view of the Rule of Law is that the actions of people are to be brought under a common rule that is in the common interest. Given the diversity of people, that common rule is going to be the general rule of liberty, that is, of non-harm. That people are not to assault, rob, or murder each other is the bottom line for the rule of law. And this basic level of law does not obviously require government for its administration, though it does require some kind of enforcement mechanism. Indeed, we all administer this rule, to greater or lesser extent, and in any case much of the administering is really judicial in nature. People engaged in ongoing relations will in general see the wisdom of this general rule, and generally abide by it.

For a recent interesting example of how things can work even at the international level without world government, consider a recent article by Leif Wenar on international state robbery and what to do about it (Wenar, 2008). Wenar observes that on almost anybody’s view, many contemporary resource transactions are in principle invalid. They involve stealing from the people of countries that happen to have sizable amounts of valued resources, such as oil or diamonds. Merchants and governments trading with the rogue regimes that engage in this activity should desist from doing so. But they won’t, very likely, and so, what to do? His proposal is that any regime that does trade with the rogue state should in turn be subject to a tariff of suitable size, the proceeds from which would go into a fund that ultimately will be used to enhance the situations of the defrauded people in the original countries. This is an interesting idea, and in the case of a very large, very wealthy, and moderately liberal state—the U.S. in this instance—it could even, conceivably if not likely, work, and work without resort to world government. But if we had world government, we can be

sure that nothing at all would be done. Since most governments participate in the kind of robbery that Wenar deplors in his article, we may also have our doubts that they would even try to engage in a program of the kind he describes. But without world government, it's possibly feasible; organized economic boycotts have had some effect in recent years, for example. All such, however, require independent decision-making, not top-down rules.

A final note should be added concerning the "loftier" goals set for the United Nations and about which most proponents of world government are enthusiastic—the promotion, especially, of health, education, and welfare. I would argue that government in general is not competent to manage any of these things, as compared with private provision. There is a comparable case against provision by world government as compared with provisions by many separate states. Romania will do better trying to take care of Romanians than a world government centred in Brussels (or maybe New Delhi or Shanghai, in a not entirely unlikely future.) Individual states may suggest that they do not know much, but they generally at least know their own people better than foreign states with different languages and cultures. Diseconomies of scale are the expected order here, and a world government would show the greatest diseconomy of all.

Conclusion

World government is a terribly mistaken idea. The way that real-world states are and have been for a long time suggests that achieving world government by a unanimous federation is all but impossible, and that if any such thing really were possible, by virtue of the relative reasonableness of the constituent states, then it would also be entirely unnecessary since peace would be in everyone's interest and would be maintained as such. But such an institution as could possibly happen would inherit all the worst features of government, while proving unnecessary for the primary purpose of government—to maintain peace. On the other hand, a world government would certainly attempt to impose a welter of wrongheaded laws about any number of things, ineffectually but expensively enforcing them, dampening the world commerce that is its main contributor to general prosperity, and in general making life more difficult for everyone. Those who think world government a shining ideal need, I believe, to think again.

Notes

1. My recent book, *You and The State* (2008), explores politics generally on the basis of this general division of theories.
2. I here help myself to the classification made by St. Thomas Aquinas in his interesting little treatise, *On Kingship*, (1982:§15).

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KANT'S VISION AND HIS CONCERNS

APPROACHING *PERPETUAL PEACE*:
KANT'S DEFENCE OF A LEAGUE OF STATES
AND HIS IDEAL OF A WORLD FEDERATION

PAULINE KLEINGELD

The standard view of Kant's position on international relations is that he advocates a voluntary league of states and rejects the ideal of a world federation of states as dangerous, unrealistic, and conceptually incoherent. This standard view reigns in both the Kant literature and the debates among Kantian political theorists. However much John Rawls and Jürgen Habermas, for example, may disagree over whether Kant is right to defend a voluntary association of states, their dispute is premised on the standard interpretation of Kant's position. In *The Law of Peoples*, Rawls's appeal to Kant's purported reasons for rejecting the ideal of a world government serves as a theoretical short-cut, relieving him of the task of discussing the desirability of a world federation of states.¹ In Habermas's 1995 essay on Kant's *Perpetual Peace*, the case for transforming the United Nations into a cosmopolitan democracy with strengthened coercive powers is preceded by a lengthy argument showing that Kant's position in *Perpetual Peace* is riddled with contradictions and that Kant's own principles should have led him to argue for a federative state of states with coercive powers.²

In this essay I argue that the standard view of Kant's position is mistaken and that he in fact holds a third position that combines the defence of a voluntary league with an argument for the ideal of a world federation with coercive powers. I do so via an examination of the three main criticisms that are usually levelled against Kant. These criticisms can be found throughout the Kant literature and in the writings of Kant's opponents, but they are particularly central to recent attempts to use Kant against Kant to advocate the establishment of a world government. First, he is criticized for scaling back, on empirical grounds, the ideal of a state of states to that of a voluntary non-coercive league of states, while still maintaining that pure practical reason demands a state of states. Critics charge that consistency requires that he advocate a federative state of states with coercive powers, and that Kant's appeal to the fact that states do not *want* to join such an institution makes for a decidedly un-Kantian line of argument.³

Second, critics object that a state of states is not a contradiction in terms and hence that Kant should not have rejected it on grounds of conceptual incoherence (Carson, 1988:177, 202; Guyer, 2000:416; Kersting, 1996). Third, critics regularly object that a mere league would not help bring about peace because there is no practical difference between a voluntary non-coercive league and no league at all.⁴

I here defend Kant against all three of these charges and argue that they rest on misunderstanding of Kant's argument for the league of states, in particular a misunderstanding of the relationship between his defence of the league of states and his claim that reason demands a state of states. Kant does advocate the establishment of a non-coercive league of states,⁵ at least in his mature political writings (such as *Perpetual Peace* and the *Metaphysics of Morals*), but he does so for reasons that both make good sense within the framework of his political theory and are compatible with the stronger ideal of a state of states.

Even though the argument presented here concerns the interpretation of Kant's theory of peace, it has implications for both lines of Kantian political theorists mentioned above. Against those who claim that their plea for a federative state of states with coercive powers is merely a Kantian improvement of Kant's own argument, I show that Kant's reasons for advocating a voluntary league instead of a state of states are not inconsistent and deserve to be taken seriously. Against those who use Kant, as for example Rawls does, to justify sidestepping a discussion of the ideal of a federal world government, I show that it is in fact inappropriate to do so.

In the first section I show why exactly Kant holds that states in the state of nature do not have a right to coerce other states into a state of states against their will, even though the analogy with the state of nature among individuals might seem to require such a right. In the second section I argue that Kant does not regard the state of states as conceptually contradictory and that his own defence of the ideal of a state of states is compatible with his view of state sovereignty. In the third and fourth sections I explain how, according to Kant, the voluntary league of states serves to bring a state of states nearer to realization, despite the league's lack of coercive authority. I end by indicating how Kant's revised view can be made productive for present-day philosophical purposes, suggesting several amendments to current Kantian political theories.

Before starting, I should make a terminological comment about the use of "states" and "peoples." It is clear and uncontroversial that Kant is discussing the relations among states, not nations or peoples in an ethnic, cultural, or nationalist sense. The term *Völkerstaat* refers to a state of states, despite the fact that *Volk* is generally best translated as "people."

Nowhere does Kant advocate the dissolution of existing states in favour of the formation of a single world state under which individuals would be directly subsumed. In the present case, Kant uses the term “people” in the political sense of a group of individuals who are united under common laws, hence who form a state (cp. PP VIII:344). Accordingly, Kant indicates at the beginning of his discussion of international right⁶ in *Perpetual Peace* that he is discussing “peoples as states” (*Völker als Staaten*) (354), and in the subsequent discussion he refers to a league “of states” and a league “of peoples” interchangeably. Elsewhere, Kant notes that “right of peoples” (*Völkerrecht*, international law) is a misnomer and that the appropriate term would be “right of states” (*Staatenrecht*, MM VI:343; a people with alleged common ancestry he calls a *Stammvolk*, MM VI:311). To keep the discussion below focused on the relationships among “peoples as states” and to avoid nationalist misunderstandings, I use “state of peoples” as synonymous with “state of states.” This should not in turn lead to a statist misunderstanding. One should keep in mind that Kant conceives of the state as the political self-organization of a group of individuals and that he does not regard the rights granted to the state as independent from the rights of these individuals.

I. The Potential Despotism of a Coercively Established State of States

One of the most infamous passages in which Kant defends the establishment of a league instead of a state of states is the following:

As concerns the relations among states, according to reason there can be no other way for them to emerge from the lawless condition, which contains only war, than for them to relinquish, just as do individual human beings, their wild (lawless) freedom, and to accustom themselves to public, binding laws, and to thereby form a (continually expanding) *state of peoples* (*civitas gentium*), which would ultimately comprise all of the peoples on earth. But they do not want this at all, according to their conception of the right of peoples (thus rejecting *in hypothesi* what is right *in thesi*);⁷ therefore, instead of the positive idea of a *world republic* (if not everything is to be lost) only the *negative* surrogate of a lasting and continually expanding *league* [*Bund*] that averts war can halt the stream of law-shunning and hostile inclination, but with a constant threat of its breaking out... (PP VIII:357)

Kant here mentions the state of states (“state of peoples”) as an idea of reason. Central to Kant’s political theory is the view that the state of nature

among individuals can be overcome only by their subjecting themselves to common public laws in a state. In the quoted passage, he claims that reason demands that states do the same and leave the international state of nature by giving up their external sovereignty, subjecting themselves to the public laws of a state of states (also called a “world republic”). To the consternation of his readers, however, Kant nevertheless goes on to advocate the establishment of a voluntary league of states without coercive law enforcement.

The passage is generally regarded as inconsistent, and its standard interpretation leads directly to the first objection against Kant’s advocacy of the league of states. Some commentators criticize Kant, others commend him for scaling back what reason demands on the basis of the empirical consideration that states do not want to join a state of states. But all agree that this argument is a decidedly unKantian move.⁸ Kant is seen as arguing that the idea of a state of states is a good one in theory but unrealistic in practice, and this is exactly the kind of argument that he himself repeatedly repudiates, most notably in “On the Common Saying: This May Be True in Theory, But It Does Not Apply in Practice.”

I would like to propose that the importance of the states’ *wanting* to join a federative state of states can and should be interpreted differently, and that their not wanting to join is a good reason for Kant, given his other theoretical commitments, to advocate the establishment of a voluntary league. Let me point out first that Kant is not saying (as he is often thought to be) that one should *reject* the idea of the state of states. Nor does he claim that states *will never want* to join such a body. What he does say is that because states *do not want* to join a state of states and (mis)interpret international law as a right to remain in the state of nature, such a body is not able to “halt the stream of law-shunning and hostile inclination” that is characteristic of the state of nature, and that the only thing that can halt it is a continually expanding league. Therefore, he claims, a league, not a state of states, is necessary for the purpose of leaving the state of nature (in order to “halt the stream...” of bellicosity). Kant presents us with a view as to how to start leaving the international state of nature; he does not say that we should reject the idea of a world republic as such.

In fact, Kant defends the state of states as ideal not only in the quote discussed here, but also in other, often-overlooked passages. In *Perpetual Peace* he expresses the hope that “distant parts of the world can peaceably enter into relations with each other, relations which can ultimately become publicly lawful and so bring humanity finally ever closer to a cosmopolitan constitution” (PP VIII:358).⁹ He writes that justice requires “an internal constitution of the state in accordance with pure principles of right, and

then further, however, the union of this state with other neighbouring or also distant states for the purpose of a lawful settlement of their conflicts” (PP VIII:379). Similarly, he writes in the *Metaphysics of Morals* that before states leave the state of nature all international right is merely “provisional,” and that international right can come to hold definitively and establish a true *Perpetual Peace* only “in a universal union of states [*Staatenverein*] (analogous to that by which a people becomes a state),” a body which Kant here also calls a “state of peoples” (*Völkerstaat*, MM VI:350).

Turning now to the question of how to square Kant’s advocacy of a *league* of states with his defence of the *state* of states as an ideal, I start with a few words about the analogy between the state of nature among individuals and that among states. Many commentators claim that because Kant holds that the state of nature among individuals can be overcome only by establishing a state with common laws and law enforcement, he should also use the state as the model for overcoming the international state of nature.¹⁰ Hence, he should have advocated a federation of states with coercive public laws and granted states the authority to force each other to join such a federal state of states.

Interestingly, in the texts from the 1780’s (such as the “Idea for a Universal History from a Cosmopolitan Point of View”), Kant himself defended this strong interpretation of the analogy between the two states of nature (cp. VIII:24–5). But he later came to realize that the analogy fails in an important respect. As a result, he gave up this earlier view, explicitly denying that the analogy runs deep enough to yield a defence of a state of states as a matter of international right (right of peoples).

The disanalogy, he writes in *Perpetual Peace*, is that “states already have an internal legal constitution, and thus they have outgrown the coercion of others to subject them to a broader legal constitution according to their [viz., others’] conceptions of right” (PP VIII: 355–6). This passage is cryptic, and Kant’s growth metaphor is not helpful. One might be tempted to invoke the second and fifth Preliminary Articles in *Perpetual Peace*, which formulate versions of the principle of non-interference. But an appeal to this principle does not yet explain *why* Kant regards it as wrong to coerce states to join a state of states, especially given that he also believes that a state of states is mandated by practical reason.

There is, however, a way of understanding the importance of states *wanting* to join that makes good sense of the problematic passages and explains in what sense states have “outgrown” the coercion by others. This reading is more plausible than the standard view because it does not require us to regard Kant as blatantly contradicting himself in one and the

same paragraph and instead enables us to find a coherent line of argument that fits well with other major tenets of Kant's theory.

When *individuals* exit the state of nature, the state they form may not be perfect. Kant believes that it is always better than the state of nature that they left behind—since, on his view, any juridical condition, even one that is only partially in accordance with principles of right, is better than none at all (PP VIII: 373n)—even though it may (and is likely to) be the case that the most powerful individuals or groups are legislating and ruling in a despotic way. (Kant also holds, however, that such a despotic state can transform itself into a republican one, and that this improvement is propelled by the self-interest of peoples and their rulers, if not by their good will.)¹¹

At the international level, however, the situation is quite different. When *states* exit the state of nature, a state of states with coercive powers is not necessarily better, in terms of *right*, than the international state of nature. There is an important disanalogy that explains why Kant advocates a voluntary and noncoercive league instead of a coercive state of states.

The disanalogy comes to light when one realizes that granting states a right to force other states into a federation with coercive powers, analogous to the right of individuals to force others into a state would mean, by analogy, that the strongest state (or group of states) would end up setting the terms, subjecting other states to its laws and interests. Kant believes that in the case of individuals leaving the state of nature, there is progress even if the newly formed state is despotic. In the case of states leaving the state of nature, by contrast, a despotic state of states might quash any already existing rights that are secured internally by the subjected states, and hence a despotic state of states can severely violate lawful freedom. After all, there is no reason to assume that the strongest state (or group of states) acts in accordance with the requirements of right (or that it acts *more* so than the dominated ones). The states with less power may be the ones that are the most in accord with justice. The state of states may be governed by laws that are inconsistent with the freedom (autonomy) of the member states, and a despotic federal state of states could, for example, destroy the “republican” institutions through which the citizens of a particular member state give laws to themselves. (This is suggested by Geismann, 1983:367).

Yet it does not seem that the risk of bad consequences is itself the reason why Kant objects to coercing unwilling states into a federation. Kant does not say that it is, and indeed if it were, this would open him up to the objection that this consequentialist line of argument would commit him to endorsing cases in which a group of powerful “republican” and rights-respecting states coercively forces unwilling despotic states into the fed-

eration. After all, such coercion would expand the external freedom of the population of such despotic states and it would seem that if the risk to freedom is a reason not to coerce just states into a federation, the chance to expand freedom would be a reason to coerce unjust states. But this is a strategy which Kant clearly does not endorse.

What does explain the importance of states *wanting* to join, and what does find support in the texts, is Kant's view of the ideal state as the union of individuals for the purpose of being under common, self-given laws, along with his conviction that forcing states to join a state of states against their will would violate the autonomy of these individuals as well as the autonomy of the people they compose collectively. Kant regards states primarily as unions of individuals, and ideally as republican unions of politically autonomous (i.e., self-legislating) individuals. Forcing them into a state of states would run counter to the basic idea of the polity as a self-determining and self-legislating unity.

This is most clearly illustrated by cases in which a despotic state of states would destroy rights and freedoms secured within relatively just states. But it holds true even in cases in which the coercion is intended to be for the sake of the population's own good. For even if it seems that citizens of brutally oppressive states would prefer to live under a republican federation rather than their oppressive rulers, and hence that their autonomy might be served by coercing their state into a federation, it may in fact be that what they really want is to be in a position to decide for themselves in this matter. The people may well want to get rid of their despot, but it does not follow that they will want to join a particular state of states with its particular conception of justice. Thus, coercive inclusion of a state for the good of the population comes down to an essentially paternalistic line of reasoning that passes over the political autonomy of the people it purports to serve, and Kant's objections to paternalism are well-known. The individuals within despotic states may not want to join the coercing state (or group of states) on the latter's terms. This is also illustrated by the various unsuccessful attempts on the part of strong states that understand themselves as "republican" or "democratic" to impose their version of republicanism or democracy on the populations of heretofore despotic states—this was the experience of, for instance, revolutionary France at the end of the eighteenth century, and also of the Soviet Union and the U.S. in the twentieth century.

This seems to be what is meant by the passage, already quoted above, in which Kant claims that states have "outgrown the coercion of others to subject them to a broader legal constitution according to their [viz., others'] conceptions of right" (PP VIII: 355–6). This claim does not mention

risks, but rather indicates that the autonomy of the individuals that make up states puts normative constraints on the way that states exit the international state of nature.¹² Thus, there is no parallel at the international level to a right that is granted to individuals in the state of nature, namely, the right to force other individuals to either enter into a state with them or leave them alone (cp. PP VIII: 349n).

Kant's point is not that a state of states is more likely to be despotic (or likely to be more despotic) than its constituent states. Rather, his point is that the starting assumptions in the state of nature among individuals are relevantly different from those in the case of the state of nature among states. In the first case one starts with a universal state of nature, whereas in the second case the state of nature exists only in the external relations among states that internally already have a civil condition. Forcing *individuals* to leave the state of nature in order to have them subject themselves to common civil laws leads only to improvement (in Kant's normative terms), because it establishes a civil condition where there was none before. Forcing existing *states* into a state of states with coercive powers, by contrast, violates their people's autonomy (and may also lead to violations of rights and freedoms they have secured within their state). Therefore, there is no right to *coerce* unwilling states into a state of states. As Kant puts it in the *Vorarbeiten*, states are allowed to resist the attempt by others to force them to join a federative state of states "because within them public law has already been established, whereas in the case of individuals in the state of nature nothing of the kind takes place" (XXIII: 168).

Kant's argument does not depend on any particular assumption about the motivation of states to avoid joining the coercive state of states. It is valid regardless of whether the reason states do not want to join is the conscious attempt to protect the political autonomy of their citizens *vis-à-vis* an existing internally despotic state of states, or the states' stubborn or self-interested attachment to their external sovereignty on the basis of a mistaken view of international right. Moreover, it applies both to states that comply with the principles of right to a small degree and to those that are near-perfect republics. Kant's point in stressing the disanalogy is *not* to defend the isolationism or self-interested policies of imperfect states; rather, the point is that there is no general right to coerce unwilling states into a state of states. This does not imply that he approves of isolationism or of self-interested foreign politics, of course, and one should keep in mind that Kant also holds that duty requires that states join a league of states with an eye to promoting international peace, so they *ought to do so* even though they should not be *forced to do so*.

It is worth noting here that commentators who criticize Kant for downplaying the analogy between the state of nature among individuals and that among states often themselves fail to take seriously the problems connected with a strict analogy. Most of them (inconsistently) allow for voluntary joining and secession. The few authors who do follow the alleged analogy to its logical conclusion expose the dangers connected with this view. According to Thomas Carson, for example, in an essay entitled “*Perpetual Peace: What Kant Should Have Said*,” neither democracy nor consent are required for the creation of a state of states:

[I]f... the creation of a world government would require that all nations have democratic or “republican” forms of government, then the prospects for the creation of a world government are not good. It may seem unlikely that all nations would ever agree to a particular form of a world government. But this is not necessary for the creation of a world government. It would be enough if all great powers (or all nuclear powers) agreed to the idea of a world state. They could then unite and compel other nations to join.¹³

If the state of states is based on the sheer power of a few states with the weaponry that can compel all others, it is clear that the political autonomy of the citizens of the states that are so compelled has evaporated, and the despotic nature of this process is apparent.¹⁴ Kant has good reason then, given his broader commitments, not to advocate the coercive formation of a state of states and advocate a league instead.

I believe that this reading of Kant’s argument makes good sense of the passage quoted at the beginning of this section, but it does so in a way that departs from the received view that Kant settled for a league rather than a state of states on “realist” grounds. Kant actually never gives up the ideal of a federal state of states for reasons of feasibility. Instead, his defence of a league of states is inspired by a concern that a state of states that is established by coercing unwilling states into it runs counter to the political autonomy of the citizens of the member states. True and durable peace does indeed require that states form a state of states (by analogy with the formation of a state), but Kant denies that the *way this goal is achieved* should be analogous as well. Kant’s positive views as to how this goal ought to and can be achieved will become clear in sections III and IV below.

II. Sovereignty and the Importance of Political and Moral Development

Kant presents a second argument in favour of a league of states (and against forcing states into a coercive state of states). It too is generally thought to be highly problematic, though I will again argue that the criticism rests on a misinterpretation.

In an important passage, at the beginning of his discussion of the principle of international right, Kant seems to reject the establishment of a state of states citing a “contradiction” that would then ensue:

Peoples, as states, can be judged as individual human beings who, when in the state of nature (i.e., when they are independent from external laws), already harm one another by being near one another; and each of whom, for the sake of his own security, can and ought to demand that the other enter with him into a constitution, similar to that of a civil one, under which each is guaranteed his rights. This would constitute a federation/league of peoples [Völkerbund], which would not, however, need to be a state of peoples.¹⁵ Therein would lie a contradiction, because every state involves the relation between a superior (who legislates) to an inferior (who obeys, namely, the people), whereas many peoples within one state would make only one people, which contradicts the presupposition (since we have to consider the right of peoples vis-à-vis each other, insofar as they make up so many different states and should not fuse together into one state) (PP VIII:354).

Interpreters often assume that Kant’s phrase “therein would lie a contradiction” refers to the conceptual incoherence of the very notion of a state of states.¹⁶ In his widely used translation, H. B. Nisbet reinforces this assumption by rendering the clause as follows: “For the idea of an international state is contradictory, since...” (MM:102). According to this reading, Kant regards it as part of the concept of a state that it has full sovereignty. If states were to join in a state of states they would have to relinquish their sovereignty and hence cease to exist *as* states in the proper sense of the term. Abolishing their statehood in the act of joining, the states would actually form only *one* state, and not a state of *states*, and hence, Kant is thought to argue, the very idea of a state of states is contradictory.

On the basis of this interpretation, critics have complained that Kant neglects the possibility that states transfer only *part* of their sovereignty to the federal level of the state of states. They would have to give up only their sovereignty in their relations towards each other, and they could retain sovereignty in internal affairs. Kant is said to have been under the spell of a Hobbesian prejudice about sovereignty, a prejudice which, for-

tunately, is easily obviated without requiring any structural changes in Kant's political theory. The resulting (and purportedly more consistent) Kantian position would then be to advocate a world state (Kersting, 1996:437–8).

I would like to argue that the contradiction lies elsewhere. First, it is worth pointing out that the second objection sits very uneasily with the first one, although many commentators bring up both. If Kant rejects the state of states as a contradiction in terms, the argument targeted by the first objection would not only be bad but *also* entirely superfluous. If one can show that a square circle is conceptually contradictory, it is not necessary—indeed it is rather odd—also to argue that there are empirical reasons why people will refuse to draw one.

More importantly, Kant does not actually write that the concept of a state of states is contradictory. Rather, he claims that there is a contradiction between the concept of a state of states, on the one hand, and a fundamental “presupposition” of international right, on the other. Conceptually, a state of states constitutes only one state. It is a presupposition of international right (right of peoples, right of states), however, that it concerns the interactions of a plurality of states. As *international right*, then, it cannot be grounded in the ideal of a world-wide state of states, because if there were such a global political body, there would strictly speaking be only one state, and then international right would not be applicable. Similarly, Kant starts off the follow-up discussion later in *Perpetual Peace* by saying “The idea of the right of peoples presupposes the separation of many neighboring states that are independent of each other” (VIII:367, see also XXIII:168). In short, when one is talking about *international right* one should address the legal regulation of the interactions among a plurality of different states, not the internal laws of a single world state.¹⁷

If this is Kant's argument, however, one might object that he could have gotten rid of the contradiction by replacing the “right of peoples” with something like the “right of a state of states.”¹⁸ One might then regard his very assumption that it is important to establish international right as a questionable premise.

Kant's answer lies in his at first sight curious remark, in the quote at the beginning of this section, that states “should not fuse together” (PP VIII:354). This belief motivates his insistence on the establishment of international right (“right of states,” as opposed to the establishment of the “right of a state of states”). But it is not immediately clear *why* states should not fuse together, especially given Kant's conviction that the state of states is demanded by reason.

Kant's reason for believing that the states should not fuse together is not that they should preserve their sovereignty but that the kind of fusion he has in mind here is dangerous. He explains his objection to the fusion of states by asserting that it would be bad if states formed a so-called "universal monarchy." By the latter term he means a global empire that is formed when states "fuse together" by being absorbed into a single strong hegemonic state (PP VIII:367). *This* kind of non-federal world government, established by one imperialistic state that swallows all others, leads to "soulless despotism" and the peace of a graveyard (PP VIII:367).¹⁹

Kant's objection to the formation of a universal monarchy does not imply the rejection of a federal state of states. In the passages under consideration, Kant explains his rejection of the fusion of states in terms of his rejection of the formation of a coercive universal monarchy. It does not mean that he rejects the ideal of a global federation of states. If he were opposed to *any* transfer of external sovereignty, one would expect him to criticize strongly the creation of the United States of America, which he does not do (cp. MM VI:350), and of course it would be odd for Kant to claim, as he does repeatedly, that the state of states is demanded by reason. As Sharon Byrd has pointed out (Byrd, 1995:186–87n58), however, many commentators mistakenly read Kant's arguments against the "universal monarchy" as arguments against all forms of world government.

Thus, Kant can consistently reject the "fusion" of states and yet defend the ideal of a global federation. In fact, on his view, the initial separation of states, reinforced by differences in language and religion, furthers the internal development within states (also called "culture" by Kant), and this development will prepare humankind for the future establishment of a world federation of the right kind. Kant expects that cultural development within states will lead to "greater unanimity on principles" (he presumably means moral and juridical-political principles, including the principles of international right). According to Kant, this increased consensus on normative principles will facilitate a nondespotic peace that peoples (as states) enter into willingly and autonomously (VIII:367). Once enlightenment has progressed far enough and people have learned to see beyond their cultural differences and achieved a proper understanding of and respect for the universal principles of human rights, republicanism, and international and cosmopolitan right, *then* the time will be ripe for the transition to a global juridical condition.²⁰

III. Whether the League of States Would Make a Difference

If we take Kant to endorse the state of states only after a certain level of development has been reached, then it becomes crucial to determine how he envisions the role of the league in the development toward a more secure peace. He clearly sees the league as promoting peace, but it is a point of contention in the literature whether it can actually do so.

The third common objection against Kant's views on peace (according to the standard interpretation) is that the league of states is not able to make any practical difference for promoting peace. The charge is that if the league is merely voluntary and non-coercive, only those states will join it that would not wage war anyway; moreover, if and when these states later change their position and do become bellicose, they will simply quit the league (as happened with the League of Nations in the 1930's).²¹ Strong states will behave opportunistically, subjecting the interests of weaker states to their own, using the league as an instrument of foreign policy when this is useful to them, and quitting or simply disregarding the league when it is not. Thus, the league does not add anything substantive that goes beyond the mere subjective intention of the member states not to wage war, and hence it does nothing to promote peace. As Friedrich Gentz put it in 1800, "A free treaty among states will be honoured merely as long as none of those who signed it possess both the will and the power to break it; in other words, as long as peace, which the treaty is supposed to establish, would exist also without it" (Gentz 1953: 479).

Kant nowhere provides a detailed explanation of how the league of states is supposed to work. This is quite remarkable given the crucial role he accords to it, and it is hard not to agree with Gentz when he complains about this lack of detail (Gentz 1953: 478n). However, we do find the beginning of an account in the *Metaphysics of Morals*, and it provides the rough outlines of a reply to the third objection.

In the *Metaphysics of Morals*, Kant conceives of the league on the model of a "congress of states," where the ministers of courts and republics present their complaints and reports of hostilities in order to submit their conflicts to arbitration (MM VI: 350–51). The league of states would create a permanent institutional structure for conflict mediation, opening up channels for communication and offering structures for neutral arbitration and negotiation that would otherwise not exist or would have to be arranged on an ad hoc basis.

There *is*, then, a practical difference between a world with and one without a league of states, however sketchy Kant may be on specifics. The league goes beyond a mere treaty not to wage war. Without the league,

states with conflicts have to work these out between themselves, and they may fail to seek out impartial mediators and resort to violence instead. Third party states may offer themselves as mediators, of course, and Kant says as much in *Perpetual Peace*, where he points out that because a war may well go against the interests of third party states, these may do their best to bring about a settlement (PP VIII:368). To point out that negotiations and mediation may also take place without a league of states, however, is to underscore rather than refute the potentially helpful role of a league. This is not to say that the league will always be successful, as we already saw acknowledged in Kant's hint at the constant threat of hostilities that would exist even with a league (PP VIII:357). But one should not flatly dismiss the potential of the league as an institutional framework for helping states keep the peace. Furthermore, the League of Nations and the United Nations have shown that such a league can encompass a good deal more than a mere court of arbitration, including the regulation of trade and labour laws; support for economic and political development; educational, scientific, and cultural exchange, and more.

Such considerations shift the burden of proof onto those who imply that there is no value at all in creating channels for negotiation and mediation (and any other peace-promoting institutions that the league might provide for). It is easy, of course, for Gentz and later sceptics, to point to the failures of voluntary leagues to stop wars. These failures are clearly visible to all. But for the evaluation to be fair, sceptics need to take into account instances in which the league's mediation resolved a conflict that would otherwise have resulted in war or in which it shortened the war's duration. The empirical question is not whether voluntary international associations will themselves put an end to all international conflict: Kant agrees that they will not. Rather, the question is whether mediating institutions (even if voluntary) can prevent, postpone, or mitigate conflicts in a way that allows for internal improvement within states, and the gradual development toward a more peaceful world. This empirical assessment of the efficacy of a league of states is considerably more complicated than Kant's critics admit.

IV. The Process Toward Peace

Kant's well-known view is that peace is in every state's interest and that states will be moved to join a voluntary league out of sheer self-interest if not out of nobler motives. Underlying this confidence is his long-held assumption that the consequences of war will eventually become so costly and destructive that states have an interest in avoiding war (368).

Even though they initially do not yet want to relinquish their sovereignty to a state of states, their self-interest will nevertheless move them to join a league.

In addition to the older theme that peace is in the states' interest, *Perpetual Peace* expresses Kant's further convictions that self-interest moves states internally in the direction of a republican government (see above, n. 13), and that republics, in contrast to despotic states, are naturally inclined to peace. This is so because rulers of despotic states easily declare war, and they will simply make their subjects shoulder the burdens. Despotic states are therefore more prone to war, but they are also likely to succumb from within when these burdens get out of control, as in Kant's eyes had happened to the *ancien régime* in France. Once they start to crumble, they provide opportunities for reform, as Kant also thought had happened in France (MM VI:341, cp. TP VIII:311). By contrast, the government of a republic, in which the citizens themselves decide whether or not to go to war, is more pacific. Kant believes that citizens will realize that offensive wars go against their self-interest, and hence that a republic will not start such a war. Furthermore, once a republic has been formed, this may constitute a crystallization point or anchor for a pacific league, Kant writes, expressing a rosy view of the French conquests during the revolutionary wars (PP VIII:351, 365–7). Thus, he believes that there are several factors that move humanity in the direction of peaceful republicanism.

Self-interest alone is not enough to make this peace durable, and Kant is the first to admit as much, mentioning the constant threat of the outbreak of hostilities that afflicts the league (357). Truly *Perpetual Peace* is a "moral task" and peace is desired "not just as a physical good but also as a condition that arises from the recognition of duty" (377), and only then can peace be truly perpetual. Kant believes, however, that the league of states does make a positive difference, however small perhaps initially, and that over time it will lead to more stability.²²

Starting with his first writings on history, Kant's view was that the less war there is among states, the more this will allow for further political and moral development within states (cp. IUH VIII:20–31; TP VIII:311–12, see also below). As long as states have to use large amounts of their resources for protection against threats by others, they cannot use these resources for, say, improving the education of their citizens. Moreover, war and the threat of war tend to curtail the external freedom of the citizens and distract efforts to improve the political system within the state. The absence of war will free up resources and enable a focus on the internal development of republican (current Kantians would want to say "democratic") political institutions. This development will then reinforce the

peace process and make it more secure. The idea behind this conviction is that a reduction of warfare is conducive to political and moral progress within states and that this progress in turn contributes further towards peace among states, and so on.²³ Once there is agreement on universalist normative principles (such as a republican constitution, human rights, etc.), then a voluntarily created state of states can be actively pursued.²⁴ Thus, when critics claim that Kant's peace theory is problematic because the league of states will not last,²⁵ they overlook the larger framework of Kant's view of history in which the role of the league is embedded.

As a final step, once legal peace is established, the prospect is opened up for ever more moral learning. In a particularly salient passage on the relationship between the Doctrine of Right and the Doctrine of Virtue, Kant writes that when laws secure freedom externally, inner freedom (morality) will "liven up" and this, in turn, will enhance obedience to the laws. Thus, the legal peace is gradually made more secure because peaceful behaviour will no longer be inspired merely by anxious self-interest but be backed up by peaceable dispositions:

A firmly established peace, combined with the greater interaction among people [*Menschen*] is the idea through which alone is made possible the transition from the duties of right to the duties of virtue. Since when the laws secure freedom externally, the maxims to also govern oneself internally in accordance with laws can live up; and conversely, the latter in turn make it easier through their dispositions for lawful coercion to have an influence, so that peaceable behavior [*friedliches Verhalten*] under public laws and pacific dispositions [*friedfertige Gesinnungen*] (to also end the inner war between principles and inclinations), i.e., legality and morality find in the concept of peace the point of support for the transition from the Doctrine of Right to the Doctrine of Virtue. (XXIII:354–5, *Vorarbeiten* to the *Metaphysics of Morals*).

We find this developmental view in many other texts from the 1780's and 1790's (e.g., the 1784 essay, "Idea for a Universal History from a Cosmopolitan Point of View,"²⁶ the third essay in "On the Common Saying," 1793).

Current Kantian theorists do not share all of the particulars of Kant's teleological assumptions regarding the historical development of humankind, but significant aspects of the view are still present. For instance, Rawls maintains that the more *The Law of Peoples* is observed, the more 'moral learning' takes place. By this he means a psychological process by which peoples will tend to accept *The Law of Peoples* as an ideal of conduct and transform what once was a mere *modus vivendi* into something more stable (Rawls, 1999: 44–45).

One might wonder, though, whether Kant's developmental perspective does not indirectly undermine his own argument for a state of states. If self-interest leads to the formation of republics, and if republics are naturally peaceful, then it would seem that a league of republics would forever do away with war even in the absence of any federal coercive authority. Or, put differently, it is unclear why *Perpetual Peace* would require a state of states instead of a mere league of republics. Kant's claim that republics are naturally peaceful is often quoted in contemporary theories of international relations, ever since Michael Doyle showed that it is confirmed empirically when narrowed to the thesis that democracies do not wage war against each other (rather than in the broader version that they do not wage war in general) (Doyle, 1983 and 1993). On the basis of this assumption, then, one might believe that a global democratization would be enough to durably do away with war, as indeed Rawls holds in *The Law of Peoples* (Rawls, 1999:8).

Kant has several answers to this question. For one thing, truly *Perpetual Peace* should be backed up by the appropriate normative convictions, not just by the fact that it is in everyone's interest, because a peace that is based merely in self-interest is not really secure.²⁷

Furthermore, the fact that humans are *free*, coupled with the propensity towards evil that is rooted in human nature, means that they in principle pose a threat to each other's external freedom, and this threat needs to be countered with a system of public and coercive laws. Kant believes that this last point also holds at the level of the interaction of states, as is clear from the passage quoted at the beginning of section II above.

Finally, even a general "moralization"²⁸ of humanity would not make the state of states superfluous. This is clear from Kant's handling of a related worry with regard to the state. Kant argues that the state is morally necessary even for "goodnatured and justice-loving" individuals (MM VI:312). The reason for this is presumably because their unrecognized prejudices or one-sided perspectives might be at odds with the demands of justice or produce conflicts that need to be settled. Hence, true peace requires not just the absence of hostilities, but also the lawful arbitration of conflicts by an authority established over the individuals; the same argument would hold in the case of states.

In the *Metaphysics of Morals*, Kant invokes the problem of size (not the problem of states never wanting to join) as grounds for ruling the perfect realization of the ideal of a state of states impossible. Echoing a widely held view, he writes that if a state of states becomes too large, it becomes impossible to govern it and to protect each member; but if there were more than one such body this would reintroduce war, and therefore

Perpetual Peace is an “unrealizable idea” (MM VI:350). But he does not give up the idea, stating that the “continual approximation” is possible and a duty (350). Thus, even if one disagrees with Kant’s assessment that a global federal state of states is impossible for reasons of size, as some recent commentators do,²⁹ one should not accuse him of inconsistently having given up the ideal on the basis of its impracticability.

V. Kant and Kantian Theories of International Relations

The core of Kant’s argument, then, is that the full realization of *Perpetual Peace* does require a federal state of states backed up by the moral dispositions of the individuals within the member states, but that this goal should be pursued mediately, via the voluntary establishment of a league, and not via premature attempts to institutionalize a state of states immediately. Out of concern with the protection of autonomy, Kant holds that the right way to approximate the state of states is to develop a league of states first. Citizens and politicians ought to work practically towards the establishment of a league, but the ultimate goal they should have in mind in doing so is a situation in which all states have become republics and their citizenry has become enlightened enough to *want* to submit to the public and enforceable laws of a republican state of states. This ideal of a fully realized *Perpetual Peace* may well remain out of reach—indeed Kant thinks it will—, yet it remains for him an ideal that one can and ought to strive for and that can be approximated.

Kant’s position as presented here is thus much more consistent and more nuanced than is usually thought. He does fail to provide sufficient details regarding the preferred structure of the league and the federative state of states, however, and regarding the question of how one determines whether the time is ripe for moving from a league to a federative state of states. At one point Kant expected the process toward the state of states to take “thousands of years” (Lectures on Anthropology XXV:696–7), and hence he may have viewed the second issue in particular as not pressing. Current Kantian theorists have developed accounts to amend this deficit, in light of the real achievements and real disasters of the past hundred years. The current world is very different from the one Kant had in mind. There already is a league of states, comprised of the vast majority of states on the globe. The UN certainly has its problems, as Kant expected it would, but it can also boast some important successes. Furthermore, in significant respects the world is already engaged in a process of transition towards more binding structures (as indicated, for example, by institutions such as the International Criminal Court and the World Trade Organiza-

tion, and the fact that states can now be punished for violating human rights). Any appropriation of Kant's theory of peace needs to take these changed circumstances into consideration, as most Kantian theorists are well aware (see especially Habermas, 1997). If my interpretation is correct, however, Kant's own argument is not only compatible with these developments but also suggests some interesting amendments to current Kantian theories of peace. I will merely give some hints here. I do not aspire to defend the Kantian position *per se* but only to show how Kantian theories might be affected if one takes into account Kant's arguments as presented in this essay.

Those who, like Rawls, reject any type of world government can no longer justify their view by an appeal to Kant. Rawls now *lacks* an argument for the rejection of the ideal of a world republic of the sort that Kant holds up as ideal. The reasons Rawls adduces to motivate his rejection of world government in general and that he borrows from Kant are actually, for Kant, merely reasons to reject a hegemonic state (i.e., a "universal monarchy," see above). Although this does not of course mean that a Rawlsian could not craft an argument for rejecting the Kantian ideal, at the least there is a need for more discussion.

While Rawls's theory "makes room for various forms of cooperative associations and federations among peoples" (Rawls 1999:36), a world federation of states is explicitly not part of the ideal, and peoples are to remain "free and independent" (Rawls 1999:37). The realist utopia he outlines includes what he calls a mere "confederation" of independent states ("peoples," in his terminology), and when Rawls mentions the possibility and permissibility of states joining together to form federations, he always speaks of such federations in the plural (e.g., (Rawls 1999:70). In light of Kant's theory as interpreted above, what is missing here is the *ideal* of a lawful and enforceable global arbitration of conflicts. Rawls believes that the lack of enforcement of *The Law of Peoples* is not a problem, because in the realist utopia as he envisions it the members of the confederation will not have reasons to wage war against each other ((Rawls 1999:9;19). As we saw above, however, on Kant's view a "league of republics" is not enough, because even law-abiding peoples may find themselves in disagreement on important matters and hence in need of a lawful and enforceable settlement of their disputes. So Rawls still faces the problem that if the confederation he envisions arbitrates in a binding and enforceable way, this significantly diminishes the independence of the constituent states and makes the confederation assume traits of a federation after all; if, on the other hand, it does not arbitrate in such a way, there is no mechanism to settle disputes among "well-ordered peoples."

Furthermore, the interpretation here proposed also shows that consistent Kantian theorists need not and should not accept the view that states should be coerced into a federative world state. In fact, the interpretation here proposed outlines a third Kantian answer (Kant's answer) to the traditional dilemma of global order, viz. the dilemma that without a world government one cannot cure the ills of anarchy but that with it one faces the risk of world-wide despotism. This answer, moreover, shows that Kant takes the risk of despotism very seriously.

To those who still defend the ideal of state-like political structures at the global level but who steer clear of the view that these should be established coercively, Kant's position suggests an increased focus on the proper emergence of these structures and their democratic legitimacy. In this connection it is interesting that in his more recent work, Habermas distances himself from his 1995 position mentioned at the beginning of this essay. His focus is no longer on bringing about state-like political structures at the global level. He now believes that doing so is impossible because of the lack of a cosmopolitan consciousness on the part of the populations of the world's states. In fact, he now believes that a federative world state is *never* possible, on the grounds that successful political integration requires a particular kind of collective identity, and no *particular* collective identity could ever be available at the global level. Only universalist morality would be available to motivate people to act as citizens of the world, and as a matter of empirical psychological fact, Habermas claims, this is not enough. What is left then is the promotion of a "world domestic policy without a world government" (*Weltinnenpolitik ohne Weltregierung*). Habermas suggests that a dynamic array of deliberative democratic processes and organizations, at the national, international, and transnational levels, can greatly increase the level and legitimacy of binding regulation concerning matters of global concern. Thus, it is possible to continue the transformation of international law into a cosmopolitan order (a process that Habermas recognizes is already underway) without leading to a centralized world government (see Habermas, 2001:110–1).

Habermas's shift towards viewing the *attitudes* of the populations of the world as a crucial factor in assessing the feasibility of the federative state of states is very much in line with Kant's argument as presented above, especially with Kant's emphasis on the importance of peoples *wanting* to join. But instead of making this shift on the basis of an appeal to empirical psychology and an assessment that a political world organization will always and structurally lack sufficient legitimacy for more than a very elementary role, Habermas might be advised to draw more closely on Kant to revise this into a stronger argument. A stronger version would be

something like the view that any expansion of the reach and powers of currently existing globally regulating institutions (such as the UN, WTO), or the establishment of additional ones, should proceed only via fully democratic processes. Indeed, what Kant's argument as presented in this essay suggests is that this is the only way to secure the legitimacy of such global political structures. Even if the states of this world may not (or not yet) want to sacrifice their external sovereignty by subjecting themselves to a global political system, there is still much that can be done to move in the *direction* of a legitimate world government. A fully legitimate world government may remain out of reach. The extent to which the necessary cosmopolitan will and consciousness on the part of the world's population will actually develop, however, and hence the extent to which a non-despotic global legal order can be realized, should not be limited in advance on grounds of empirical psychology but can rather be treated, in typical Kantian fashion, as an open question.

The thoughts expressed in this final section, however, are just a few tentative suggestions as to how the re-interpretation of Kant's theory of peace that I advocate in this essay might affect Kantian political theory. In the present context, I cannot discuss them in sufficient detail nor do justice here to the complexity of current Kantian political theory. Whether or not these speculations are plausible, they should not distract from the main thesis of this essay: that Kant's argument for the league of states is different and much more consistent than is usually thought. According to Kant the creation of a league of states is not itself the ultimate ideal. Rather, it constitutes a first important step on the road towards an ever greater transnational regulation of the interaction among states, a process that should be guided by the ideal of a global federative state of states.³⁰

Notes

1. Rawls (1999:36). Strikingly often Rawls writes that he is "following Kant's lead," endorsing what he sees as Kant's rejection of world government (1999:36) and the argument for the *foedus pacificum* (e.g., 1999:10;19;21;22;54).
2. Habermas (1997:114–126). On Habermas's more recent shift away from this position, see section V below.
3. For example, Allen Wood claims that the argument of *Perpetual Peace* would seem to require a state of states but that the account is riddled with perplexities. Thomas Pogge similarly calls Kant's account "extremely unsettled" and portrays Kant as experimenting with one argument after another without developing a single one successfully, trying to evade the demand for a world state that his theory commits him to (Pogge, 1988:427–433; Wood, 1995:11. See also, Carson, 1988; Cavallar, 1999:123; Dodson, 1993; Habermas, 1997; Höffe, 1995 and 1998; Lutz-Bachmann, 1997).

4. This criticism was formulated as early as 1800 (see Gentz, 1953). Cp. also Habermas (1997:117–8).
5. There are a few authors who have (rightly) argued that Kant defends the ideal of a state of states; but they go too far in the other direction, saying that the “impression” that Kant “seems to favour the League of Nations” is “misleading.” In arguing that Kant defends a state of states instead of a league of states these authors tend to appeal to what they believe would be consistent for Kant to say, less to what he does say. Cp. Byrd (1995:178–9); Axinn (1989:245–9).
6. I follow common practice and translate Kant’s “Recht” in this context as “right,” to indicate that it does not connote a legal claim but a complete condition of external lawfulness (“external” lawfulness here in contrast to “inner” moral lawfulness).
7. In “On the Common Saying,” Kant explains this terminology: “*in thesi*” means “in theory,” “*in hypothesis*” is equivalent to “in practice,” TP VIII:276. On the states’ interpretation of international right as a right to remain in the state of nature, see the *Vorarbeiten to Perpetual Peace*, XXIII:169.
8. Dodson’s formulation is representative: “This argument, however, explicitly accepts the subordination of considerations of justice to empirical judgments of what is realistic in the near future... In putting forth this argument, Kant succumbs to the very same weakness that he so often warns us against—leaving us with only a ‘surrogate’ arrangement so that something can be salvaged” (Dodson, 1993:7).
9. In the comments to the third Definitive Article, VIII:358. Earlier in the text Kant made clear that a league of states would not have public laws, hence this quote suggests the ideal of a state of states.
10. See note 3 above.
11. See the famous passage in which Kant states that the problem of creating a good state can be solved “even for a people of devils (if only they have understanding)” (PP VIII:366).
12. One may want to disagree with the strong non-interventionist conclusions that Kant draws from this line of reasoning, but the reasoning itself does not need to be read as flagrantly inconsistent. For a critique of Kant’s non-interventionism, see Teso’n (1991:67–8).
13. Carson (1988:211). The world government would have “military forces sufficient to dismantle and defeat any national army in the process of creation” (1988:185—note also the “far reaching intelligence network” of the world government, and Carson’s assumption that one can prevent a military take-over just by having rules against it (988:203–4). Cp. also Axinn (1989:249): “We may use violence to compel membership in an international federation. Things seem quite unKantian, yet we have merely put together Kant’s own positions.”
14. Commentators who criticize Kant’s defence of the league of states on the grounds that the league is likely to have many flaws and who argue that only a state of states would be able to solve these problems often overlook the fact that the state of states itself, if pursued instead of a league, is also likely to be flawed.
15. This remark indicates that the term *Völkerbund* itself is neutral as to whether or not the institution has the power to enforce its laws (cp. *Idee*, VIII:24, line 23–28, where the term is clearly used to refer to an international federative union with public binding laws and the authority to enforce them). This neutrality is hard to

preserve in the English translation. “Federation” has the connotations of a strong centralized government; “league,” on the other hand, suggests a loose association. I have translated *Völkerbund* as “league of peoples” wherever it is clear that Kant is speaking of a voluntary association without coercive powers, but in this particular case it seems good to point out the ambiguity in the term. The same ambiguity is found in Kant’s use of the latinized versions of the term, e.g., the word “federalism” in the second Definitive Article of *Perpetual Peace*. Here too, however, the larger context dispels this ambiguity.

16. See above, note 4.

17. Kant’s argument here underscores once more that the term “people” should be read in the political sense. After all, if the term were used in the nationalist sense one could easily conceive of a state comprised of multiple peoples.

18. See MM VI:311, where Kant himself uses this term (*Völkerstaatsrecht*).

19. On the concept of the “universal monarchy” in the eighteenth-century discussion, see Cavallar (1992) and Brosbach (1998).

20. This developmental view also underlies Kant’s view in the Religion, where he warns against “the premature and therefore (since it comes before people have become morally better) harmful fusion of states” (Rel VI:123n); cp. “Conjectural Beginning of Human History” VIII:121. For a discussion of Kant’s attempt to reconcile national differences with global unity, see McCarthy (1999).

21. See also Habermas (1997:117). Despite the many parallels that do indeed exist between the league proposed by Kant and the twentieth-century League of Nations one should not forget that the latter failed to follow Kant’s proposal in important respects, for example, because its members did not give up their standing armies.

22. This role of the league is hinted at by Pogge (1988:430) and Cavallar (1999:ch. 8).

23. The developmental perspective here also explains why Kant does not discuss the worry that the members of a state of states might lapse back into hostility. On the foundations and epistemic status of Kant’s belief in progress, see Kleingeld (1995).

24. PP VIII:367. This is also Fichte’s interpretation, in his review of *Perpetual Peace*. Fichte presents Kant’s view as being that the league is merely an intermediate stage on the way to a state of states. Fichte (1971:433).

25. This critique too found its classic formulation in Gentz (1953:478).

26. According to the “Idea for a Universal History,” the development of the use of reason, over the course of human history, culminates in the self-transformation of society into a moral community. The peace that was initially established out of self-interest will eventually be endorsed for moral reasons and thereby made durable. On the coherence of Kant’s notion of moral development, see Kleingeld (1999).

27. See also Paul Guyer’s explanation of why a republic is not sufficient for peace in Guyer (2000:415–420).

28. This is a term used by Kant, cp. C1, A748/B776; IUH VIII:26.

29. See Dodson (1993:8) with appeal to technological developments; Axinn (1989:248).

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Abbreviations: C1=*Critique of Pure Reason*; IUH=*Idea for a Universal History from a Cosmopolitan Point of View*; MM=*Metaphysics of Morals*; PP=*Perpetual Peace*; Rel=*Religion within the Limits of Reason Alone*; TP=*On the Common Saying: This May Be True in Theory But It Does Not Apply in Practice*.

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KANT'S REASONS AGAINST A GLOBAL STATE: POPULAR SOVEREIGNTY AS A PRINCIPLE OF INTERNATIONAL LAW

INGEBORG MAUS*

Allow me to begin by mentioning that the main section of this paper (II), which focuses on Kant's reasons against a global state, has been taken from an unfinished book manuscript that was written in 1996 and should not therefore be understood as a reaction to the current attempt to establish global peace by means of unlimited war; but it has indeed acquired an unexpected contemporaneity in this context.

The introductory part of the paper (I) is new and deals in all brevity with the connection of the Second Definitive Article of "To Perpetual Peace" to arguments from the theory of popular sovereignty in other parts of Kant's text. Here it is to be shown that for Kant state sovereignty is simply the exterior aspect of inner-state popular sovereignty and because of this latter dimension requires protection at the level of international law. The concluding passages (III), which are also new, briefly confront contemporary prevailing models of a global state or other global organizations of politics with the rationality of Kant's defence of state sovereignty, a rationality that takes its orientation equally from human rights, democracy, and peace. The same observations will be applied to the present discrepancy between the UN Charter, which is understood as the positivization of Kant's text on peace in international law, and the practice of military intervention. In the process, reflections in Part II are supplemented by functional determinations of Kant's "law of permission" (Kant, 1983:111. Published translations of Kant's texts have been modified).

* I thank John Farrel for translation.

I

Kant's reasons against a global state in the text on peace are prepared by arguments for the principle of popular sovereignty in such a manner that neither his option solely for the league of nations nor his defence of state sovereignty can be understood as a provincialism that contradicts cosmopolitan principles. The Preliminary Articles 2 and 5 already make clear that state sovereignty is essentially popular sovereignty. According to Kant, it is not permissible for a state to be acquired by another one in a peaceful manner on the basis of private Right; nor does a state have the right to "forcibly interfere with the constitution and government of another." The reasons in both cases are the same: the state "is" the people, it "is a society of human beings" that, in accordance with the "idea of the original contract," has been formed into a nation of citizens. Acquiring a state on the basis of private Right does not damage it as such, it damages the state in its attribute as a "moral person" (in current usage: as a legal person), that is, the state as an association of citizens. These citizens would be mistreated in such a transaction as "things" and would lose their self-determination as citizens—as happened in the sale of Corsica to France by Genoa, for example. In the case of forcible interference, the "scandal," which "would render the autonomy of every *state* insecure," is located in the violation of "the rights of an independent *people* struggling with its internal ills" (Kant, 1983:109, italics added). When Kant applies his republican epigram—"where state and people are two different persons, there you will find despotism" (Kant, 1968:193)—to questions of international law, it is clear that peace should not be established at the cost of the citizens' freedom.

The close connection between freedom and peace acquires a stronger wording in the First Definitive Article. Here, the republican constitution of "lawful freedom" is the precondition for a state to act peacefully toward other states; it is in fact "the only [constitution] that can lead to perpetual peace."¹ The "lawful freedom" intended here is clearly demarcated by Kant from forms of juridical calculability in an authoritarian state. For citizens, it means "the privilege to obey only those external laws to which I have been able to give my consent" (Kant, 1968:112n). The right of equality before the (equal) law mentioned in the same context anticipates the later formulation in the *Metaphysics of Morals*:

Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, that is, only the general united will of the people can be legislative (Kant, 1991:125).

Realized popular sovereignty within the state is thus the precondition for a peaceable state sovereignty *vis-à-vis* other states. Establishing a “perpetual peace” that is based on a “republicanism of all states” and on their association as laid down in treaties (Kant, 1991:156-161), can however be attained only in continual approximation. We turn to the time requirements of this project later (Part III). These time requirements are in any case indebted to Kant’s central presupposition that popular sovereignty is itself an inalienable human right (Kant, 1968:112n), and for this reason the autonomous learning process toward a republican constitution must not be interrupted or dominated by external forces.

In this conception, the goal—establishing a republic in all states—and the means to this goal—tolerating the interaction between states in various stages of their progress toward this goal—are cosmopolitan. Kant’s cosmopolitanism does not therefore have to depend on the levelling of borders between states because he keeps them open for people’s freedom of movement, the exchange of ideas, and a global public sphere. His “cosmopolitan Right” is thus free of contradictions when it provides the rules to be observed in cross-border exchanges between the jurisdictions of various national legal systems; it thereby actually presupposes the existence of borders.

II

The fact that Kant’s peace project is not determined by the goal of realizing a global republic but develops the supposedly weaker notion of a federation of sovereign republics is regarded by recent interpretations almost as a scandal of his practical philosophy. From this viewpoint, however, Kant’s actual option is precisely determined, and that is why it is presumed that any recourse to his peace text, for instance for the purposes of supporting arguments for reorganizing the UN into a global state, calls for a far-reaching reformulation of his theory (Habermas, 1997:113-153;114-119). At present there is a stronger tendency to see the current need for a global state as being already present in Kant’s theory. The spectrum of interpretations is broad and includes: (a) the tentative attempt to subsume Kant’s federation of states at least under the concept of an “ultra minimal global state” that, going beyond Kant, would however have to be expanded to the subsidiary order of an “extremely minimal global state” (Höffe, 1995:109–132;115n;119n;122); (b) the most prevalent reading, namely, that Kant actually defends the idea of a world republic but in reverting to a mere federation of states yields to the superiority of the facts;² (c) the interesting thesis that Kant regards the federation of states as

just a transition stage in the process of founding a world republic.³ Not only occasional fluctuations in the terminology employed but also the hypercomplexity of Kant's argument do of course contribute to this situation.

A "confusing passage" in Kant's text on peace has been correctly identified as the true challenge for interpreting the principal goal (Cavallar, 1992:209). It runs:

Reason can provide related nations with no other means for emerging from the state of lawlessness, which consists solely of war, than that they give up their savage (lawless) freedom, just as individual persons do, and, by accommodating themselves to the constraints of statute law, establish a *nation of peoples (civitas gentium)* that (continually growing) will finally include all the people of the earth. But as they do not will to do this because it does not conform to their idea of international law, and consequently they discard in *hypothesis* what is true in *thesis*. So (if everything is not to be lost) the place of the positive idea of a *world republic* must be taken only by the *negative* surrogate of an enduring, ever expanding *federation* that prevents war... (Kant, 1983:117–18).

At first glance, Kant seems here to favour a world republic as the true idea so unequivocally that no further objections to prevailing interpretations would be permissible—were it not for the fact that this place (in this prevailing interpretation) is in blatant contradiction to all of the arguments presented in the Second Definitive Article. Thus, the "most important task of interpretation" does indeed consist in resolving the (alleged) contradiction that dominates the "heart of the entire text on peace" (Höffe, 1995:109–110). Here, Kant argues for a "federation of free states," a "league of nations," "not a state consisting of nations." In a state consisting of nations Kant sees a contradiction to his own assumption of treating the establishment of peace analogously to the founding of a state, whereby in the latter individuals do not have to disappear in a collectivity. He specifies this contradiction as follows:

a number of peoples forming one state would constitute a single people, and this contradicts our initial assumption, as we are here considering the right of *peoples* in relation to one another insofar as they constitute a lot of separate states and *are not to be welded together* in one state (Kant, 1983:115 second italics added).

Kant's strong justification for state sovereignty as popular sovereignty asserts itself at this point. It is further supported by other statements in "To Perpetual Peace." He argues no less than that "it is possible to make poli-

tics commensurable with morality only in a federative union [of states] (which is therefore necessary and given *a priori in conformity with the principles of Right*)” and underscores at the same place that “a federative organization of nations whose only purpose is to prevent war is the *only* juridical organization compatible with the freedom of these nations” (Kant, 1983:138 italics added).

Kant regards the universal state so unreasonable that, compared to it, even the bellicose state of nature is to be preferred:

The idea of international Law presupposes the existence of many separate, independent, adjoining nations; and although such a situation is in itself a state of war (assuming that federative union among them does not prevent the outbreak of hostilities), yet this situation is, according to the idea of reason, preferable to their being overrun by a gradually developing superior power that melds them into a universal monarchy in which the effectiveness of the laws decreases and a “soulless despotism” spreads (Kant, 1983:124–125).

In complete accordance with this, he writes in “On the Proverb: That May Be True in Theory, But Is of No Practical Use” that the duress of constant war ultimately brings states either to the point of entering into a cosmopolitan constitution, even against their wills. Or, if such a case of universal peace is for its part even more dangerous (as in outsized nations it has indeed more than once been) to freedom because it leads to the most terrifying despotism, this duress must compel nations to a condition in which, while there is no cosmopolitan commonwealth under a single head of state, there is nonetheless a lawful instance of federation that conforms to commonly accepted international law (Kant, 1983:61-92;87-88).

In *The Metaphysics of Morals* too, the federation of free states is explicitly endorsed as an institution “in accordance with the Idea of an original social contract... not in order to meddle in one another’s internal dissensions” but to end the state of nature between states (Kant, 1991:151).

At first glance, there is therefore a remarkable finding. On the one hand, the global state with its public coercive laws (*Zwangsgesetze*) conforms to the demands of reason, with the federation of states appearing only as negative surrogate; on the other hand, the selfsame reason, the principles of Right *a priori*, and the idea of a social contract call for a federation of states in which the legislative sovereignty of individual states is maintained. The problem cannot be resolved by claiming a mere wavering in Kant’s terminology—for instance, *Religion Within the Limits of Reason Alone* speaks of a “league of peoples as a world republic,” of a “league of nations” as a “republic of federated free nations” (Kant, 1960:29n;30). In

Kant's reflections on the federation of states and the global state, it seems that reason opposes reason. Nor is the often asserted historical development of Kant's thoughts on this matter helpful as an explanation when his ostensible wavering between the two conceptions can be found in the same writings—a wavering, incidentally, that begins in the “Idea for a Universal History with a Cosmopolitan Intent” of 1784. More helpful is the view that two conflicting notions of the organization of global peace can be found in Kant's work (Cavallar, 1992:73), even though these notions are precipitately assimilated to the assumption of a stage model: from a federation of states to a global state. In view of the unresolved enigma there arises the question of what Kant in fact means when he says in the “confusing passage” that the individual states (according to their idea of international law) do not accept a global state, and thus “discard in *hypothesis* what is true in *thesis*,” which is why a federation of states emerges as a surrogate for a world republic.

Kant's contrasting of “in thesis” and “in hypothesis” is generally identified in commentaries with the distinction between theory and (empirically guided) practice (see Williams, 1983:255; Mulholland, 1987:34n.; Cavallar, 1992:178–79;210), from which there follows the rash equation of the world republic with the idea of peace and the characterization of a federation of states as a second-best concept, one merely assimilated to empirical conditions (see, for example, Bohman, 1980:180). These ascriptions are however untenable in view of Kant's arguments in “On the Proverb” concerning the relation between theory and practice in general and the project of a global state in particular. The concluding sentence of the text runs: “Thus, even on the cosmopolitan level the assertion is upheld: What, on account of reason, applies in theory applies also in practice” (Kant, 1983:89). If the global state is defended unequivocally here (with reference to Abbé de Saint-Pierre) against the empirical arguments of the “politically practically minded” (*politische Praktiker*), then, ironically, just a few paragraphs before we find the reflection, which has already been cited, that reason calls for “*either ... entering into a cosmopolitan constitution Or, if such a case of universal peace is for its part even more dangerous (as in outsized states it has indeed more than once been) to freedom,*” to bring about a “federation.” This “either/or” indicates that both solutions, global state and federation of states, can comply with reason and that it is other aspects that decide the matter.

Thus, even though the global state is correct “in thesis,” that is, complies (like a federation of states) with reason, it is discarded “in hypothesis.” This latter characteristic contains the other aspects. Since Kant derives the categorical obligation to work toward perpetual peace solely from

the fact that the impossibility of attaining this goal cannot be proved (Kant, 1983:87), all judgments on the means to attainment are necessarily “hypothetical.” It is not the narrow-minded refusal of power-obsessed politicians that is decisive for these hypothetical considerations; rather, the search for the appropriate model of peace is determined exclusively by the criterion of the greatest possible approximation to the idea of peace in the attempt to realize this idea; it is determined purely normatively. The idea of a world republic and the idea of a federation of states are themselves only means and models to be scrutinized as to whether they fit the realization of the paramount idea of peace, the “final end of the doctrine of Right” (Kant, 1991:161)

As norms for this scrutiny Kant introduces the “principles of politics” that, in the matter of establishing republics, already served to determine the closest approximation to the *respublica noumenon*. There the “principles of politics” as nonempirical principles mediated between the idea and the (yet to be actualized) reality of the republic in a way that corresponds completely to the function of the “principles” in Kant’s theoretical philosophy. If the “principles of politics” make it possible in the first place to apply a priori principles of Right “to cases of experience” (Kant, 1997:641), they then function like a “transcendental scheme” that steers the procedure of “judgment” (*Urteilstkraft*) the subsumption of an object under a pure concept of the understanding (Kant, 1973:169–75;176–87). The “principles of politics” had thus—analogue to the (theoretical) subsumption of a plate under the pure concept of a circle—served to distinguish (like plates from nonplates) real republics, which have the factual legislating authority of the people, from non-republics, where the procedures of popular legislating are merely simulated in the minds of authorities, but at the same time specified the difference between ideal and “attainable” republics, between legislation by all, on the one hand, and legislation by majority rule and (in large states) by representation, on the other.⁴

If the same operation is examined in Kant’s comprehension of the philosophy of peace, then it quickly becomes evident that with respect to the idea of peace it is not the federation of states that is determined as the attainable but imperfect “plate” in relation to a global state. The *locus classicus* for the function of the principles of politics in the philosophy of peace runs:

But if such a *state* made up of nations [*Völkerstaat*] were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war. So perpetual peace, the ultimate

goal of the whole international law, is indeed an unachievable Idea. Still, the political principles directed toward perpetual peace, of entering into such *alliances of states*, which serve for continual approximation to it, are *not unachievable*. Instead, since continual approximation to it is a task based on duty and therefore on the Right of men and of states, this can certainly be *achieved* (Kant, 1991:156. Original italics omitted, others added).

Here too, one could get the wrong impression that Kant identifies perpetual peace and the global state even though it is clear that the political principles do not aim at a second-best solution since the global state is, according to this statement, not in a position to guarantee peace. Kant's synoptic view of "international law" (*Völkerrecht*), however, makes clear that perpetual peace is in itself "a thing" that can neither be proved nor disproved (Kant, 1991:160) and is "unachievable" only in the model of a global state. The political principles urge us not to surrender the idea of peace but to realize the "most suitable" version of peace, which Kant considers here to be "a republicanism of all single states" (Kant, 1991:160). He thus investigates—"in hypothesis"—only the suitability of the models for realizing global peace, tests the one that had the greatest approval in discussions of the time and that was identified with the idea of peace, dissolves this identification and rejects the model itself as inappropriate. The global state proves to be a four-cornered plate, as it were.

Equating world peace and a global state dominated the peace project of Abbé de Saint-Pierre, which attracted great attention in the extract prepared by Rousseau. Kant's many references to this project (Kant, 1983:35;89) do not distinguish between the intention of Abbé de Saint-Pierre and Rousseau, even though he adopts exactly the same position as Rousseau when he defends the peace plan against the ridicule of the "practicians" but locates its unresolved problem in its achievability. In his own commentary on Abbé de Saint-Pierre's peace plan, which was published (in 1782) more than twenty years after the publication of the extract, Rousseau also defends the plan "in thesis" and rejects it "in hypothesis," as it were. What Rousseau wrote in his commentary sounds like a statement from Kant's "On the Proverb":

Let us examine at the outset the difficulties of those who on grounds of reason judge not according to reason but according to the facts and who have nothing to object to this plan other than it has not been realized (Rousseau, 1981:393n;395).

This defence "in thesis" is already set up by a remark of Rousseau's in the Extract: "We will leave to windbags those expressions that generated

so much ridicule for the originator and his plan in the chambers of ministers, but unlike them we will not scorn his reasons" (Rousseau, 1953: 343n;360).

Only for fact fetishists and with irony does Rousseau develop the means for realizing the plan—already thematizing the “cunning,” tense relation between the interests of historical actors and the realization of the idea of peace (Rousseau, 1981:399n). Rousseau’s presentation of the historical failure of the peace protagonists Henry IV and Sully, introduced by Abbé de Saint-Pierre, represents an important reason for the rejection of the plan “in hypothesis,” which plays a crucial role in Kant’s further arsenal of arguments against a global state: its establishment through force, that is, war. Before going into the overhasty equating of founding a state and establishing peace by an initial act of force as construed by some interpreters of Kant (for instance, Mullholand, 1987:38) it is worth taking another brief look at Rousseau. Rousseau’s playful circumscription of the thesis-hypothesis relation—“One does not therefore say when his [Abbé de Saint-Pierre’s] system has not been implemented that this is because it is not good; on the contrary, one says that it was too good to be implemented” (Rousseau, 1981:400)—is based upon an assessment of Abbé de Saint-Pierre as being naive in his choice of means for realizing his idea. On the basis of the belief that the narrow-minded natural interests of individual states and actors have greater force than the general interest in a very artificially generated peace (Rousseau, 1981:399;404), Rousseau considers preparing for war in order to establish a hegemonic global state to be the most probable way to realize the peace project. In this context we find the interesting epigram referring to Henry IV’s politics, an epigram that is gladly put forward by Carl Schmitt and his adherents to denounce every form of pacifism: “A war that was to be the last one made way for perpetual peace” (Rousseau, 1981:403). In contrast, it is precisely this perspective that leads Rousseau in summation to accept the abbot’s peace plan “in thesis” but reject it “in hypothesis”: “let us admire instead such a beautiful plan, yet console ourselves that we will not see its implementation; for it can be implemented only by violent means that are terrible for humanity.”⁵ In view of the current production of suggestions for the peaceful establishment of a global state, which (like the abbot’s project) ignore the question of the peaceable global acceptance of the envisioned institutional arrangements and modes of representation, let us cite Rousseau’s sceptical observation: “these were the [military] means that Henry IV assembled in order to create the same institution that Abbé de Saint-Pierre wanted to found with help of a book” Rousseau (1981:403-404).

There does not seem to be any evidence that, besides Rousseau's "Extract," Kant also knew his "Comment" ("*Gutachten*") on the said peace project, but Kant's (at least objective) agreement with the "Comment" is so apparent that further proof is not necessary. What is still interesting substantively is, however, Kant's commensurate treatment of the violent foundation of a global condition of law. As we know—regarding the juridical conditions within states—Kant's justification of a categorical juridical duty to realize the idea of a republic in asymptotic approximation is connected to the acceptance of a crude beginning. The "difference between the particular wills of all" is an obstacle not to the established republic (on this, see Maus, 1992) but to the foundation of an initial juridical condition, so that "realizing this juridical condition... can begin only with force, and this coercion will subsequently provide a basis for public Right" (Kant, 1983:123, italics omitted). Leaving the state of nature obtaining between individuals leads first to the establishment of a state, which in the extreme case is solely the executive or, better, solely the monopoly of force that in the course of historical development is increasingly constitutionalized in law until finally, with the establishment of a republic, the state apparatus can be subjected to democratically legislated law. Neither this gradualism nor the violent beginnings exist in Kant's conception of peace. Leaving (Kant, 1991:121;124) the state of nature with respect to constitutional law has an equivalent regarding international law: states find themselves like savages in a "lawless condition" from which they are "under obligation to leave" (Kant, 1991:151). Thus, corresponding to the categorical imperative of law there is a categorical peace imperative.⁶ Leaving the state of nature between states is enabled not by initiating a juridification through coercive laws but by a treaty on constituting a federation of peace. The following statement by Kant refers to this difference:

nor can one say of states what one can say of men in a condition of lawlessness, according to natural law, that 'they should abandon this condition. (For as states they already have an internal, legal constitution...)' (Kant, 1983:116).

With the help of this latter aspect one can explain the contradictory counterpointing that Kant, on account of the systematic structure of his *Doctrine of Right*, has to introduce between the (acknowledged) violent foundation of a state and the (rejected) violent establishment of peace: without individuals entering into an initial "constitution as such," development toward a future republic is unthinkable. In contrast to that, existing constitutions within states would be destroyed by the transition to a global state, while the functioning of a global constitution would be uncertain.

There would—to use Kant’s customary formulation—“be an intervening moment in which any rightful condition would be annihilated” (Kant, 1991:161), that means, the return of the state of nature.

Thus, according to Kant’s conception, establishing peace by setting up a global state would be the opposite of founding a state. It would lead not out of but back into a state of nature. Establishing peace in this manner is analogous not to founding a state but to a revolution which fails and leads to a state of nature because it does not succeed in preserving legislative and constitutional sovereignty as a presupposition of the new constitutionalization.⁷ If Kant demanded of every revolutionary practice that the choice of means not conflict with its goals (democracy—to put it in modern terms—is never to be established using undemocratic means),⁸ then the same applies to every step going beyond constitutions that found individual states: Kant’s requirement that “the realization [of an Idea] is restricted to the condition of accord of its means with ... morality” (Kant, 1992:157n) applies to the idea of peace too. When establishing a global order of peace, the risk of war must be avoided. Precisely because *practice* must correspond completely to *theory*, it was possible for the conflict to arise that the global state is approved “in thesis” but rejected “in hypothesis.”

Kant’s giving preference to a federation of states over a global state has a further, purely normative justification. The global state contradicts Kant’s philosophy of freedom in general and the principle of civil (*staatsbürgerlich*) autonomy, that is, popular sovereignty, in particular. The proposed federation of states serves, according to Kant, not the acquisition of power but the securing of freedom (Kant, 1983:116-117), whereas creating a global monopoly of force leads to a “soulless despotism” because the functioning of laws becomes progressively uncertain with a continuous enlargement of the state (Kant, 1983:125); what makes up the core of the republic is thus destroyed: the subjection of the state apparatus to democratic law. The “graveyard” painted on the Dutch innkeeper’s sign as a variant of perpetual peace—with the mention of which Kant commences his peace text—symbolizes not only the victims of the last war to establish peace, which Kant rejects, but also the despotism of a global state—it is the “graveyard of freedom” (Kant, 1983:125).

As the pejorative equating of global monarchy and global republic demonstrates,⁹ Kant’s strong judgment is directed not against a specific structure of a global state but against its size as such. The thesis of the inevitable despotism of “oversized states” was well known in the 18th century, in which—as with Montesquieu or Rousseau (1973: book II ch. 9; book III ch. 1)—forms of government were determined in close correlation

to the expansion of states. Over and above this, Kant has a specific case in mind. As demonstrated by his explicit reference to the American foundation of a union as a counterexample of his own concept of a congress of states (Kant, 1983:156), Kant's international-law arguments are exactly analogous to the constitutional-law arguments of the American Antifederalists. Their defence—motivated largely by concerns of grassroots democracy—of the North American confederation of states on the basis of the Articles of Confederation of 1777 against the federation set down in the Constitution of 1787 was directed at the ultimately victorious alternatives of the Federalists, which brought about a considerable shift of political competence from the individual states to the federal state. The Antifederalists' argument referred to the "oversize" of the Union: Only in the small political communities of the individual states is it possible for the people to steer political decisions; the sheer expansion of the Union makes efficient democratic control impossible. In this context, the Antifederalists forecast that the central authorities would become increasingly independent of the rest of the Union; above all they predicted the continuous undermining of the competencies of the individual states still granted by the Constitution; this then took place by means of the constitutional jurisprudence of "implied powers." Kant's strong republicanism, which aims at a complete juridification of the monopoly of force and the subjection of the state apparatus to the legislature of the people, had to agree objectively with the arguments criticizing the Union; it also found its justification in the structural contradictoriness of the types of constitution in discussion. While many constitutions of the individual states in America, Pennsylvania's in particular, are characterized by a consistent mistrust of all state apparatuses and officials and attempt to prevent them from becoming independent of popular will, the Constitution of 1787 is characterized by the converse mistrust of the people. It is not desired that the people and their representatives in the legislature control government authority by the laws enacted; rather, the President and the Supreme Court are empowered to engage in a corrective manner in the legislative process. The vertical control of all government authority by the law-making people—as it corresponded to the logic of some state constitutions and the separation of powers in John Locke, Rousseau, and Kant—was replaced by the horizontal balancing of semi-sovereign government powers—as in Montesquieu's model. It is above all this structural difference from Kant's principles of constitution that foreordains the Constitution of 1787 to be the counterexample to his own conceptions of state and international law. It is also why Kant speaks only of one, already established republic that could be the departure point for the gradual development of a peace confederation of

republics, even though the constitutions of the French Revolution fail to meet in some respects Kant's requirements for an "attainable" republic.

The fact that his text on peace begins with a possible tension between peace and freedom—by way of ironic reference to the image of graveyard stillness—is a first indication of a further, central aspect in Kant's normative construction. Perpetual peace is the "final end of the doctrine of Right," the "highest political good" (Kant, 1983:161), but for that very reason a material principle that is directed by the "highest principle," freedom, as a formal principle. Perpetual peace is an "end" that we are simply obligated to realize, but this obligation can be derived not from the end itself but only from the purposeless principle of freedom (Kant, 1983:132). What applies to all goods subject to the doctrine of happiness applies to the highest ethical good, peace, namely, that they can be more easily attained, the more the principles of freedom have already been realized. This explains why Kant believes that peace cannot be realized under the even temporary suspension of freedom; on the contrary, it is only to the "moral politicians," who take their orientation from the principles of public law and the idea of republicanism, that the "end (the blessing of perpetual peace) will come ... of itself" (Kant, 1983:133). Kant's determination of the relation between formal and material principles justifies once again the high *normative* position of a federation of states in contrast to a global state. This distinction reaches its high point in the passage already cited: the agreement of politics and morality is possible "only in a federative union" that serves the avoidance of war without affecting freedom (Kant, 1983:138). The relationship between republican freedom and peace in Kant is therefore not at all like the one frequently determined from the perspective of current globalization tendencies. The normative requirement of republicanism in Kant is so strong not because it remains the sole guarantee of peace—in the absence of an international coercive authority (Mull-holland, 1987:36); rather, the opposite applies: because republicanism is given such a strong normative status, peace cannot be realized in a global state.

III

Kant's strong republicanism is discomfoting for current conceptions of the global organization of politics that either defend a model of the global state or favour an intermediary solution between a league of nations and a global state. Popular sovereignty, which cannot be realized at a global level, is thereby ignored or identified as a tyrannical principle. The "undivided" sovereignty of the people, that is, the exclusive right of the

people (or its representatives) to make its laws and the rigid separation of the state's monopoly of force, remain unrecognized in their freedom-securing intention when global (and supranational) conceptions of politics envision sovereignty-sharing arrangements that are based on network structures and neutralize accountable political responsibility and appropriate control functions. The recent prominence of the medieval idea of a Reich in these contexts (Held, 1991:223–24; Cf. Held, 1995; Möllers, Ch. 2003:19) indicates—contrary to its advocate's intentions—that democratic forms of legitimation and decision making are being questioned radically.

The fact that the category of sovereignty is cast aside as “antiquated” (in favour of premodern forms of politics) is reflected in the present-day treatment of the UN Charter, which is to be understood as the positivization of Kant's text on peace. His philosophical project and the current codification of international law have been reinterpreted on pressing occasions in recent years to justify intervention—while pointing to human-rights violations, which have nonetheless remained way below the crimes perpetrated in Nazi Germany.

Yet, the same connection between state sovereignty and popular sovereignty that Kant laboriously justified can be found in the UN Charter. The Charter refers to the sovereign equality of all member states, which is valid independently of their size, and contains the ban on acting with force against the political independence of any state. Military intervention is permitted for protecting the sovereignty of every state, that is, it is allowed in accordance with Chapter 7 if a state has been attacked by another. As with Kant, “sovereign equality” is related to the given principle of the “equal rights and self-determination of peoples” (Art. I. 2 and II. 1). All this explains why the UN Charter at no point authorizes the enforcement of human rights but presents the goal of “promoting and encouraging respect for human rights.” (Art. I. 3).

This strong emphasis on sovereignty has historical reasons and systematic presuppositions. The UN Charter was drafted after the Second World War as a peace order that as such reacted equally to violations of human rights and violations of sovereignty that were directly connected to German war conduct. Holocaust research is largely in agreement that the planned murder of Jews—that is, the most extreme violation of human rights—was possible only under the canopy of war. In that the sovereignty of states was violated by the occupying Germany forces, all civil autonomy and democratic self-determination were annulled. That is why the UN Charter assumes, like Kant's text on peace, that human rights, democratic freedom, and peace are not isolated from one another but can be realized only by way of reciprocal optimization. If the Charter wishes not to en-

force but to “promote” human rights, then this is an indication of an additional time factor, one systematically justified in a complex manner by Kant. It has to do with the resolution of the alleged paradox that both Kant’s categorical requirement of reason—every state ought to be republican—and the high human-rights and democracy standards of the UN Charter fail in their *immediate* implementation when it comes to the sovereignty of individual states.

In this connection Kant introduces a theoretical construct that, analogous to the schematism of pure reason or the principles of politics, enables a mediation between pure concepts or a priori principles and the objects of the world of experience. It is a construct that takes on an additional mediation in the dimension of time: reason’s “law of permission.” Kant’s law of permission states that bad social institutions, poor conditions of Right, and weak political constitutions are to be tolerated as long as they cannot be changed without the risk of a return to a “state of nature” that is barbaric (i.e., completely lawless and without a constitution). It is this law of permission that mediates in a temporal respect between the ideal of a republic and the poor reality of autocratic systems, without acknowledging this reality as such.¹⁰ The law of permission shaped Kant’s evaluation of revolutions and contributed to the judgment against the global state on the basis of the “principles of politics” in that it justified the acceptance of considerable time requirements for establishing republics in all individual states. It is important to recall this peace-oriented time perspective in view of a current interventionism that has so far destroyed bad (or just inadequate) constitutions in individual states and has left behind the horrors of the “state of nature.”

Kant’s law of permission urges us to be patient with the temporary deviations of existing political systems from our projected goals of democracy, the rule of law, and human rights, so that the means—impatient intervention—do not harm the goals themselves. Today, there seems to be a lack of “*Urteilkraft*” (judgment) to correctly apply normatively correct principles to real conditions.

Notes

1. Kant (1968:113). Kant answers the question posed in the text affirmatively in the succeeding passages.
2. As a representative of many others, see Mulholland (1987:34;25n).
3. See Williams (1983). Likewise, Cavallar (1992:211). Similarly, Lutz-Bachmann (1997:74). More nuanced is Bohman (1997:179–200), who sees development toward cosmopolitan democracy as being present in an innovative cosmopolitan public sphere.

4. Kant (1983:77); Kant (1997:641–42). For more details on this argument, see Maus, (1998:96–97), “Volkssouveränität und das Prinzip der Nichtintervention in der Friedensphilosophie Immanuel Kants.”
5. Rousseau (1981:404). The “instead” in this sentence rejects the reverse option mentioned a little earlier.
6. As Höffe has fittingly put it, (Höffe, 1995:19;21) for a somewhat weaker formulation.
7. For more details on this, see Maus (1992:81n;115n).
8. Thus, for instance, Kant's publicity principle rules out not revolution as such but revolution by an “enlightened *avant garde*” that must shrink from the publicity of its plans because it does not have the mass of the population on its side; that is, it has to assert its principles against this majority and is therefore in danger of provoking either “anarchy,” that is, a “state of nature” or civil war concerning the legal order that is to be constituted. On this, see Maus (1992:125n).
9. At the same time, Kant suspects a “cosmopolitan constitution,” like a global monarchy, of being a “most terrifying despotism” (Kant, 1983:88).
10. Thomas McCarthy raises the objection of such an acknowledgement against John Rawls' lowering of the human-rights standards that qualify a political system as a “well-ordered society.” While Rawls' generalizing statements neglect *prima facie* the universalist character of human rights but implicitly raise the threshold for military intervention, McCarthy's critique emphasizes the standards and eliminates the peace aspect. Here, it is a matter of a difference that can scarcely be resolved outside a temporal perspective. See Rawls (1993:41–82); McCarthy (1997:201–217).

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KANT'S VISION, EUROPE, AND A GLOBAL FEDERATION

THOMAS POGGE

In "Perpetual Peace," Kant officially endorses the ideal of a pacific federation of sovereign states, but then also states that such a federation is only a "negative surrogate" for a world republic and cannot make peace truly secure. The reason for his ambivalence is that both models are flawed: A federation fails to achieve a thoroughgoing juridical condition, while a world government is unrealistic and dangerous. Had Kant been able to shed his unsound belief in the indivisibility of sovereignty, he might have endorsed a superior intermediate ideal of a vertical (and horizontal) dispersal of sovereign powers. The emerging European Union exemplifies this intermediate model—though, from a Kantian point of view, it still needs to be perfected in four important respects before it can serve as a ideal for the world at large.

I

In his 1795 essay "Perpetual Peace," Kant considers two ideas for overcoming the state of war among states. The first is a federalism of free states (*Föderalism freier Staaten*) or pacific federation (*Friedensbund, foedus pacificum*). The second is an international state (*Völkerstaat, civitas gentium*) or, more specifically, a world republic.¹ For Kant, these two ideals are sharply distinct: With a federation, each member state continues to have its own sovereign, while in an international state there is only a single, global sovereign.

Kant conceives sovereignty in the traditional way prevalent also in Hobbes and Rousseau: A sovereign is a person or group of persons having ultimate political authority within a particular jurisdiction (normally defined in territorial terms). Its authority is (almost) unlimited and extends, in particular, to the promulgation/recognition, to the interpretation/adjudication, and to the enforcement of laws. It is crucial for this notion of sovereignty that political power be exercised through and under

laws. Without laws, persons can subject others to their will, but such subjection without legal rights and duties does not count as sovereignty or political authority: Rule without rules still counts as a state of nature (as opposed to a juridical condition).²

Ideally, in a republican constitution, sovereignty rests with the people, who should legislate through representatives and should delegate executive and judicial authority to magistrates and judges (whom they retain the right to depose and replace). Constitutions under which sovereign power, including the power to decide about war and peace, does not rest with the people, and also constitutions under which executive or judicial authority are not delegated by the sovereign, are despotic. All constitutions exemplify one of these two forms of government (*Regierungsform, forma regiminis*): republican or despotic.

While it is clear that Kant meant to endorse republicanism over despotism, it is much more difficult to determine whether he meant to endorse the ideal of a pacific federation of free republics or that of a world republic. His Second Definitive Article of *Perpetual Peace* demands that international law be founded upon a federalism of free states. But Kant's discussion of this article nonetheless ends with a ringing endorsement of a world republic:

For states in their relation to one another, there cannot be any reasonable way out of their lawless condition which entails only war except that they, like individual human beings, should give up their savage (lawless) freedom, adjust themselves to public coercive laws, and thus establish a continuously growing international state (*civitas gentium*), which will ultimately include all the nations of the world. But under their idea of the law of nations they absolutely do not wish to do this, and so reject in practice what is correct in theory. If all is not to be lost, there can be, then, in place of the positive idea of a world republic, only the negative surrogate of an alliance which averts war, endures, spreads, and checks the force of that hostile inclination away from law, though such an alliance is in constant peril of its breaking loose again (EF 357/105).

The tension in Kant's text can be explained. The highest ideal is that of a world republic, because only through a world state with a single, global sovereign can humankind achieve that which alone can make peace truly secure: a fully juridical condition. A fully juridical condition is one in which each person's domain of external freedom is legally delimited against that of every other person (with whom he might come into contact) and in which there are common enforcement mechanisms through which these domains (legal rights) can be protected, and common adjudication mechanisms through which disputes about (the alleged violation of) legal

rights can be authoritatively settled. A federation of free states falls short of achieving a fully juridical condition, because any enforcement and binding adjudication mechanisms governing disputes among such states would be inconsistent with their sovereignty (i.e. with each of them having its own sovereign). To see this, suppose the contracting states commit themselves to a body of international law and institute an international court to adjudicate international disputes. Then disputes are possible about whether some particular dispute falls under the jurisdiction of this international court or under that of some national authority. If the international court is decisive in such meta-disputes, then it can arrogate all decisions to itself, thereby annihilating national sovereignty. If national authorities are decisive, then the international court can settle disputes only insofar as the relevant national authorities in all of the states involved recognize its authority and decision. One might think that this dilemma can be solved through a higher court authorized to decide which disputes fall under the jurisdiction of the international court and which under the jurisdiction of this or that national authority. But such a higher court merely repeats the dilemma on a higher level: It can fulfil its role only if it is authorized to overrule national claims to jurisdiction; but such authority would annihilate national sovereignty.

While a federation of free states leaves some relations—namely relations among sovereigns and international relations among national authorities backed by their respective sovereigns—unadjudicated and unpoliced, it is nevertheless far superior to a pure state of nature in which *all* relations among persons are of this kind. I have called it a *semi-juridical* condition: a condition that is juridical insofar as each person is subject to some sovereign (and thereby stands in well-regulated relations with the other subjects of this same sovereign) and nonjuridical insofar as persons are subject to diverse sovereigns (and thereby fail to stand in well-regulated relations to the subjects of other sovereigns) (Pogge, 1988:428;430).

If Kant considers a fully juridical condition to be morally superior to a semi-juridical one, then why does he not endorse the former clearly and unambiguously? One possible reason is indicated in the passage I have quoted: States “absolutely do not wish” to “give up their savage (lawless) freedom [and to] adjust themselves to public coercive laws.” With the road to a world republic blocked for the foreseeable future, Kant thought it important to develop the morally inferior but far more realistic ideal of the best possible semi-juridical condition: the ideal of a pacific federation of free states. He may even have thought that dwelling too much on the best but, for now, unrealistic ideal of a world republic would make it too easy to dismiss his thoughts as a philosopher’s pipe dream (as, he realized, had

been the fate of the similar proposals formulated by St. Pierre and Rousseau, IAG 24/47, GTP 312f/92).

This would explain why Kant, in an essay primarily addressed to present and future rulers and politicians, firmly endorses the ideal of a world republic and yet also conceals this endorsement by confining it to a brief, marginal passage and by seeming to join in the dismissal of a world state: “While natural law allows us to say of men living in a lawless condition that they ought to abandon it, international law does not allow us to say the same of states. For as states, they already have a juridical constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution” (EF 355f/104). A multiplicity of independent states “is still to be preferred to their amalgamation under a single power which has overruled the rest and created a universal monarchy. For the laws progressively lose their impact as the government increases its range, and a soulless despotism, after crushing the germs of goodness, will finally lapse into anarchy” (EF 367/113).

I speak of concealment, because I believe that Kant is not convinced by either of these arguments. Concerning the former, he writes two years later: “the state of nature among nations, just like that among individuals, is a condition that should be abandoned in favour of entering a juridical condition” (MS 350/§61); states must not remain in “the condition of natural freedom [but have] the right to compel each other to abandon this condition of war [and thus must seek] a constitution that will establish an enduring peace” (MS 343/§53). The latter argument could succeed only if an amalgamation of states were *bound* to result in a (despotic) universal monarchy rather than a universal republic. But this we cannot possibly be sure of; and Kant clearly is deeply committed to the view that we must never assume that something unachieved in the past is therefore unachievable, nor abandon a morally mandated project unless it is “demonstrably impossible” (GTP 309f/89, cf. MS 354f).

Thinking about Kant's discussion now, over 200 years later, we can see its two most serious flaws: Kant was blind to an intermediate possibility between his two extreme options of vesting ultimate political authority in a world sovereign and of leaving it, territorially divided, with national sovereigns. And Kant paid very little attention to economic factors which—much more open and controllable than he realized—importantly influence the politics and policies of states as well as the welfare and ambitions of persons. My next two sections will discuss these two flaws, respectively.

II

Kant stands in a long line of distinguished thinkers—reaching from Aquinas *via* Dante, Marsilius, Bodin, Hobbes, and Rousseau all the way to John Austin in this century—who claimed that sovereignty, by its very nature, must be absolute: unlimited and undivided.³ The reasoning behind this claim is straightforward: Imagine an agency (person or group), A, exercising political authority that is limited in some way. Who has the authority to judge whether A is acting within its mandate? If this authority rests with A itself, then A's authority is really *unlimited*, because A then has the authority to declare itself to be in charge of any matter whatsoever. If this authority rests with some other agency, B, then A has really *no* independent authority at all because any exercise of authority on its part depends on B's acquiescence. To find the true sovereign, one must then follow this line of authority from A to B and perhaps farther. Doing this, one may arrive at an agency that does have the authority to adjudicate its own authority, and thereby also that of any other agency—and this agency is the sovereign. One may also find a circle: a plurality of agencies authorized to limit one another's authorities. This would indicate a state of nature: a condition in which there is no authoritative way of settling disputes among these agencies.

The conclusion that sovereignty must be absolute is consistent with the idea that the sovereign, too, has religious or moral obligations, so long as these obligations are ones that no one else is authorized to adjudicate or to enforce. They are then, in Hobbes's terms, obligations *in foro interno*, which do not in any way constrain the sovereign's ability to function as the last court of appeal which authoritatively determines each agent's or agency's domain of external freedom: what it is legally authorized to do or to omit. *In foro externo*, in the public realm of legal determination, every act of the sovereign must *ipso facto* count as right and lawful.⁴

Though backed by an impressive argument that many of the best minds of the last millennium have found convincing, the claim that sovereignty must be absolute has now been shoved aside by the plain historical fact that modern democratic regimes based on a genuine division of powers can actually maintain themselves over extended periods. What cannot work in theory does work quite well in practice. There is, to be sure, the possibility of *ultimate* conflicts: of disputes in regard to which even the legally correct method of resolution is contested. To see this, one need only imagine how a constitutional democracy's three branches of government might engage in an all-out power struggle, each going to the very brink of what, on its understanding, it is constitutionally authorized to do:

The President might order the arrest of all opposition members of Congress, the Congress might vote the Supreme Court out of existence, or the Supreme Court might depose the President and declare itself constitutionally authorized to do so. Such possibilities show that we are not insured against, and thus live in permanent danger of, a breakdown of our juridical condition. But this possibility no longer undermines our confidence in a genuine separation of powers: The mere possibility of ultimate conflicts does not ensure that they will in fact arise. And even if they do arise, they need not lead to a breakdown of the juridical condition: One of the authorities involved in the dispute may eventually retreat, impelled perhaps by what Habermas has aptly called the forceless force of the better argument, by moral suasion, by widespread moral condemnation, by the desire to avert a crisis for the benefit of the whole society, or by a sober calculation that it would lose if the dispute were to be decided by the force of arms. There are some examples of such retreats in the American experience: *Marbury v. Madison* (where the U.S. Supreme Court successfully claimed for itself the authority to interpret the U.S. Constitution), the 1937 constitutional crisis concerning the New Deal (where Franklin D. Roosevelt abandoned his attempt to “pack” the U.S. Supreme Court with six additional judges and the Court abandoned its practice of invalidating Roosevelt’s New Deal legislation), and the 1973-74 crisis surrounding the Watergate tapes, which ended with Richard Nixon’s capitulation and subsequent resignation.

These examples show that, with some integrity and good will on the part of most of the relevant political actors, law-governed coexistence is possible without one supreme political authority. We have learned that such crises need not be frequent or catastrophic. From a practical point of view, we know that constitutional democracies can endure and can ensure a robust juridical condition.

This same point applies in the vertical dimension as well: We no longer suppose that, in a regionally differentiated society, ultimate political authority *must* be concentrated at the centre. As history shows, a genuine federal division of powers can work well in the real world, even while such a division must always be incomplete by leaving some possible conflicts over the precise allocation of powers without a legal path of authoritative resolution. Such deep constitutional crises may not in fact arise or, if they do, they may end in a practical resolution in which all relevant disputants in fact acquiesce.

The practical possibility of a genuine vertical division of powers shows that Kant—quite understandably, of course, in light of the more limited historical experience available to him—is operating with a false dichot-

omy. We need not choose between an international state, in which ultimate political authority is concentrated in a single world government, and a loose association of free states, each of which is ruled by a government that retains full ultimate political authority over the state's people and territory. We can avoid both the danger of a "soulless despotism" (EF 367/113, cp. GTP 310f/90), which Kant associates with world government, and the danger of bellicose inclinations breaking loose again, which he associates with a voluntary association of sovereign states (EF 357/105). There is an intermediate paradigm that Kant did not consider to be a genuine possibility: a multilayered scheme in which ultimate political authority is vertically dispersed. In such a scheme, there would indeed be a world government with central agencies that fulfil certain legislative, executive, and judicial functions.⁵ But there would also be smaller political units—such as the European Union, Great Britain, Scotland, and the City of Edinburgh—whose governmental agencies would also have some ultimate political authority over the unit's internal affairs and over its relations with other units of all kinds. The existence of many independent political units on several levels greatly reduces the danger of despotism by affording plenty of checks and balances which ensure that, even when some political units turn tyrannical and oppressive, there will always be other, already fully organized political units (above, below, or on the same level) which can render aid and protection to the oppressed, publicize the abuses, and, if necessary, fight the oppressors.⁶

III

We have before us now three paradigms of global order, which differ concerning where ultimate political authority ought to be located. The first is Kant's *centralized* paradigm of a universal state, in which ultimate political authority is concentrated in a world government which, ideally, should be republican in form. The second is Kant's *associative* paradigm of sovereign territorial states, in which ultimate political authority is vested in national governments which, ideally, should be republican in form. The third, finally, is my *federal* paradigm, in which ultimate political authority is vertically dispersed over (ideally: republican) governments on a plurality of levels.⁷ Ideally, such authority would be roughly evenly distributed over these levels (global, regional, national, provincial, local), so that none of them would have anything like the overwhelming dominance currently located at the level of states. In fact, the number of levels could vary in different parts of the world, so that there would not even be a fact of the matter whether Luxembourg, say, is on the same level as Pata-

gonia, or below, or above. There would, in any case, be a genuine difficulty about how to colour a political map of the world, seeing that no territorial political units are clearly more important than those within them or those of which they form a part. And there would be a corresponding diversity in political loyalties: Most persons would likely develop a plurality of *quasi*-patriotic sentiments for the various nested political units to which they belong, and even those few who would develop one dominant allegiance would probably differ in regard to its object. (I. e. some of the more single-minded residents of Edinburgh would feel primarily Scottish, others British, others again would think of themselves as Europeans, as Edinburghers, or as citizens of the world.) No political unit would therefore be able to mobilize a large majority of its citizens to fight for its honour or territorial expansion. Differences among political units would be resolved in a law-governed way, securing what Kant sought: perpetual peace.

In his essay, Kant concentrated on exploring the chances for perpetual peace held out by the associative paradigm. He concluded that perpetual peace through a free association of independent states is possible, though such an association could never be secure against a renewed outbreak of “that hostile inclination away from law” (EF 357/105). The hope for perpetual peace through a free association of independent states is realistic, if the states, or most of them, are republican and therefore are, in particular, so organized that “the consent of the citizens is required to decide whether or not war is to be declared” (EF 351/100; cp. GTP 311/90f, MS 345f/§55). Few states today are so organized as to satisfy this requirement, and modern warfare technologies make it doubtful that states could be moved to organize themselves in this way, could be moved to forego the substantial advantages of surprise (e.g. in a preemptive strike). Since Kant’s alternative paradigm of a universal state seems as unrealistic and undesirable as it did at Kant’s time, it is worth examining whether the third paradigm, made available by the rejection of the doctrine of absolute sovereignty, might offer superior prospects for perpetual peace.

In order to evaluate the relative merits of my federal paradigm as compared to those of Kant’s two more extreme alternatives, we will need to examine whether the suggested vertical dispersal of sovereignty is practicable on a global scale and how a world order of this kind might peaceably be approached from where we are now. The best historical model we have with respect to both these questions is the current stage of the European Union and the process of European integration since World War Two which has led up to it.⁸ Reflecting on this experience suggests that economic factors are of crucial importance for the realization of the federal paradigm—though they may be less important for maintaining it in exist-

tence than they would be for the maintenance of a Kantian free association of states.⁹

Until recently, the integration achieved in Europe has been primarily economic and has been motivated primarily by the hope for economic gains. It has been well understood for quite a long time that an international division of labour with increasing specialization would enhance productivity by exploiting comparative advantages and economies of scale. Thus it is hardly the case that European governments have only recently come to appreciate the mutual gains that can be realized through a reciprocal reduction of trade barriers. Rather, what is only recent is the urgency of achieving these gains in order to compete successfully against—a new phenomenon—potentially superior rivals such as the US, the USSR, Japan, and other emerging economic powers in Asia. This competitive context has also heightened the motivational importance of mitigating various (quasi-economic) collective action problems: European integration can help avoid tragedies of the commons (e.g., excess pollution), prisoners' dilemmas (e.g., bidding wars among governments to attract or keep companies through tax incentives, loopholes, etc.), and coordination problems (e.g. those that can be solved by standardizing measures, currencies, product specifications or by unifying interest rate policies).

The process of European integration has recently moved from its first main phase of increasing economic interdependence into its second main phase characterized by an increasing scope for collective political decision-making on matters of common, regional concern. The gains of this second phase reinforce those of the first by enhancing and stabilizing various collateral collective benefits: The economic and political integration of Europe tends

- to facilitate travel, association, and scientific cooperation across borders as well as access to information, art, culture, and entertainment;

- to facilitate cooperation in law enforcement (though crime is also made easier through the factors listed under the preceding point);

- to decrease the likelihood of war in Europe by reducing incentives toward aggression as states gradually lose autarky, face increasing costs from foregone cooperation, and must expect concerted opposition from the rest;

- to engender partial demilitarization with considerable savings in blood and treasure (even though preparedness against *outside* threats is still perceived to be necessary);

—to increase the political and military, as well as economic, weight of Europeans in world affairs (though whether this is desirable on the whole depends on how this increased power is used—more on this later).

Of all these gains, the reduced likelihood of war is morally by far the most important in its own right. But, if I am correct to emphasize its empirical connection with reduced incentives toward aggression, then its importance does not detract from, but underscores, the importance of some of the other features.

The gains of European integration discussed so far are by and large intended and welcomed by European citizens and politicians. They are obvious gains in the dual sense of being easily foreseeable and clearly beneficial. In judging the success of European integration as a model of the federal paradigm, we will have to attend to four additional, unobvious features that, though often ignored by the politicians, are crucial for the model's moral success. (We should help bring these features into existence, if we want it to succeed.)

The first of these additional features is the development of an independent and truly democratic organ of supranational decision-making—as opposed to the central cadre of government ministers and government-appointed bureaucrats which was dominant during much of the EU's history. There are various reasons why this feature is important. Officials at several removes from democratic procedures are likely to develop bureaucratic interests of their own, to be corrupt, wasteful, and less than committed to the common interests of Europe's citizens. They also lack the prestige and independence to push through common solutions and concerted actions against reluctant national governments. And they are unlikely to be equally responsive to all citizens of Europe. It is therefore desirable that there be a financially and politically independent European government, including a legislature, executive, and judiciary. These institutions exist in outline, but they are still too weak financially and too indirect politically. The European parliament, for example, could be greatly strengthened by being staffed not by national delegations but by members who are elected, without regard to borders, by all Europeans on the basis of proportional representation. The authority of such governmental institutions should be strictly limited to matters of transnational concern. Other matter should remain decentralized in the interest of diversity, pluralism, and meaningful democratic control.

The second additional feature is a decentralization of political decision-making within the states of Europe. This is desirable to offset the homogenizing influence of European unification in the interest of pluralism and diversity, and is necessary also for giving full effect to the central rationale

of democratic decision-making, which is to enable persons maximally to shape the circumstances that shape their lives. The parameters of our social world should be shaped equally by those whom they affect: local parameters by the locals, national parameters by the citizens of the relevant country, and European parameters by the citizens of Europe at large.¹⁰

The third important additional feature is a deep institutional commitment to human rights, which should include, of course, the right to political participation and hence much of what was said under the first two headings.¹¹

The fourth important additional feature (which, like the first two, could be integrated into a full account of human rights) is a firm institutional commitment to economic justice and the eradication of severe poverty. This is not much of an issue within the current European Union, though it may gain importance as the organization expands Eastward. It is important, however, for the relations of Europe with the rest of the world—most importantly, perhaps, Africa—and also for future global institutions on the European model. It would be a (hardly far-fetched) moral disaster if the increased strength (through concerted action e.g. in collective bargaining and in the solution of internal collective-action problems) of a unified Europe were used to impose upon poor African states more onerous terms of trade or to maintain the subservience of African governments to European interests through political and economic pressures or bribes of one kind or another.

The fourth feature brings out a second important historical precondition for the real success of European integration thus far (the first one being the new competitive challenge faced by the European states): The countries involved have been rather similar to one another in stage of economic development as measured, approximately, by *per capita* GDP. In the absence of such similarity, integration would have been far more difficult, because the distribution of its collective benefits would have been less foreseeable and less equal. Poorer countries are likely to benefit more from integration, as increased trade and mobility across borders tend to reduce wage rate differentials and as increased cooperation intensifies moral demands for development aid to the poorest areas in the region.¹² Since these inequalities in the distribution of collective gains are at least roughly foreseeable, the more affluent countries will tend to be more reluctant to go along with integrative projects (as witnessed by the very strong opposition to NAFTA within the US). The citizens and politicians of such (relatively more affluent) countries may well doubt whether the uncertain gains they can expect from integration are worth the risk, and

also whether there might not be geographically more far-fetched options of economic cooperation with relatively more affluent countries. For the time being, these doubts have been overcome as the US has narrowly decided to commit itself to NAFTA in addition to the OECD. This has been possible on account of the very same factor that served as a catalyst in the case of European integration: the competitive challenge from potentially superior rivals (specifically: a united Europe and the fast-growing South East Asian region).

IV

We have found that the European experience provides a reasonable model for what a federal world order might look like and how it might peaceably be approached, step by step, from where we are. The great obstacle is motivation, in particular on the part of the more affluent states and regions. The two preconditions for integration are simply not fulfilled on the global plane: International economic inequalities are huge, and increasing, with *per capita* GDP differentials well in excess of 100:1. And the world at large is not facing a competitive challenge from potentially superior rivals. Does this mean that there is little realistic hope for perpetual peace along the lines of the federal paradigm?

Whether perpetual peace is achievable through economic and political integration along the lines of the federal paradigm crucially depends on whether the wealthier and more powerful states (US, Europe, Japan) and their governing "elites" have sufficient incentives to support such integration. For the reasons given, such global integration is likely to benefit the poorest populations the most. This gives the more affluent states a *moral* incentive to support integration, as it would dramatically alleviate the plight of the global poor—the appallingly widespread and severe deficiencies in Third-World nutrition, health care, and education. But this moral incentive does not seem to have much impact by itself. Whether integration will benefit the affluent states economically is at least doubtful: It would certainly tend to reduce their *relative* share of world product; and, even if this reduction were to be made up for by an increase in the absolute size of world product (through faster growth), the loss in relative economic share would entail a loss in political (and in potential military) strength. Is it prudent, then, for the wealthy and affluent states to preserve a world of independent, sovereign states?

I believe that, to the contrary, resisting global integration would be imprudent. The growth in world population and, much more importantly, the increasingly rapid pace of technological development are greatly augment-

ing the extent to which events within one national territory affect and endanger persons elsewhere. One very obvious example of such cross-border externalities is pollution and environmental degradation, which adversely affect our health and quality of life in evident ways. But much more important are the less obvious dangers of major disasters, of which those associated with nuclear, chemical, or biological weapons and accidents are only the most dramatic. Such disasters could easily reach beyond national borders. If the responsibility to guard against such disasters remains territorially divided over more than 200 sovereign national governments, their occurrence is a near-certainty even in the medium term (50-100 years). No state or group of states can protect itself unilaterally against all externally induced gradual or catastrophic deteriorations of its environment.

It may be said that an examination of the national institutions, governments, religious sects, cultures, and emotions prevalent in the developing countries today, should indeed inspire fear, but that this fear is a reason to keep these countries as poor and undeveloped as possible. But this response is surely inadequate. We can perhaps slow the technological advancement of these countries, but we cannot delay it indefinitely. Sooner or later, they will join the club of states that have access to weapons of mass destruction, genetic engineering, and the like (not to mention the even more advanced technologies we will acquire in the next few decades): China, India, Pakistan, Indonesia, the Philippines, Vietnam, North Korea, Brazil, Mexico, Argentina, Chile, Nigeria, Iran, Iraq, Egypt, Algeria, Libya, and so forth, one after the other. If present trends continue, all of humankind, including the developed West, will be facing unprecedented dangers (outcomes that are both worse and more probable than those we faced during the Cold War) within just a few decades. While continuing the status quo may have the relative advantage of postponing the problem, global integration has the much greater advantage of being, at least potentially, part of a lasting solution. It would, for one thing, tend to expand education (literacy!) and reduce socioeconomic inequality within the developing countries and thereby tend to make these countries less susceptible to primitive ideologies and autocratic rule.

The present geopolitical constellation offers a unique opportunity for bringing the more dangerous and harmful technologies under central international control. If the most powerful states were to try to impose such control unilaterally, they would likely encounter determined resistance and would have to resort to force. This scenario is morally and politically unfeasible. It seems compelling, then, to pursue the same goal in a multilateral fashion, by relaxing the notion of state sovereignty in a more balanced

way: We, the most affluent societies, give up the claim that all our great wealth is ours alone, fit to be brought to bear in our bargaining with the rest of the world so as to entrench and expand our advantage. They, the rest, give up the claim that each state has a sovereign right to develop and control by itself all the technological capacities we already possess.

I am not naive enough to believe that global integration with a corresponding decline in national sovereignty would be popular in all developing countries, let alone with all their current governments. Implementing it could well require economic sanctions and even military interventions. My point is that its implementation would at least be morally and politically feasible (assuming I am right to believe that it could gain significant support in many developing countries), while instituting a technology control regime unilaterally would be neither. So long as the developed world shows itself essentially indifferent to extensive and severe poverty abroad, it will be much easier for hardliners in the developing countries to gain and hold power and to win support for ambitious weapons and technology programs. "Only through such programs," they can plausibly say to their compatriots, "can we become a potential threat to the peoples of the affluent states, and only if we constitute a potential threat to them will they pay any attention to our society."¹³

This is my main reason for believing that perpetual peace can really be achieved through global integration toward a European-style model of the federal paradigm. The affluent and powerful states have sufficient prudential incentives to support such global integration once they appreciate that we, too, like the global poor, have a strong interest in a gradual erosion of the doctrine of absolute state sovereignty and a strengthening concern for the welfare of humankind at large—though our interest is somewhat less immediate than theirs. We want to leave to our children and grandchildren a world in which they can feel secure. And the best way to do this, I think, is to convince the populations and governments of the developing world of our vision of a global federation in which they would enjoy security, respect, political influence and material sufficiency *without* controlling their own arsenals of mass destruction (and would not be threatened by the arsenals of others). That our governments will in fact appreciate that we have these prudential incentives is, however, by no means a foregone conclusion. Here we, academics and intellectuals, have an important task: to clarify the relevant moral and prudential incentives toward global integration to our compatriots and governments. If we can succeed with this task, perpetual peace may be within reach. If we fail, our grandchildren will likely lead worse lives and face much greater risks and dangers than we do now.

Notes

* Earlier versions of this essay were presented at a conference organized by ARENA (*Advanced Research on the Europeanisation of the Nation-state*) in Oslo, Norway, and at a conference celebrating the 200th anniversary of the appearance of Kant's "Perpetual Peace" in Benicàssim, Spain. I am grateful for comments there received, especially from Andreas Follesdal, Dagfinn Follesdal, Jon Wetlesen, Adela Cortina, Thomas Mertens, and Vincent Martínez Guzman. One version of the essay under the title "Kant's Vision of a Just World Order," appeared in 2009, *The Blackwell Guide to Kant's Ethics* edited by Tom Hill, Oxford: Wiley-Blackwell.

1. The phrase "federalism of free states" occurs within the second definitive article (EF 354/102), and "pacific federation" in the accompanying text (EF 356/104). Kant says clearly that such a federation is not based on coercive laws (EF 383/127). Kant speaks of an international state and also of a world republic at EF 357/105, and of a universal state (*allgemeinen Staat*) at EF 378/123.

2. It becomes clear here that the distinction between juridical conditions and states of nature cannot be drawn as sharply as Kant often suggests. Laws cannot be so precise as to settle every conceivable dispute in advance. How precisely, then, do domains of external freedom have to be delimited for there to be a juridical condition? There are indefinite gradations between the rule of law in a modern democracy and the rule of a wholly capricious tyrant (as more or less power may be exercised through laws and these laws may be more or less vague).

The distinction between juridical conditions and states of nature is vague in three other dimensions as well. Laws cannot be so effectively enforced that they are never violated, or never violated with impunity. How well enforced, then, must they be for there to be a juridical condition? Once again, there are indefinite gradations.

A society cannot be so organized that there can never be any doubt as to who is to exercise political authority. Even in an absolute monarchy it can be doubtful whether a given person is indeed (say) the deceased monarch's eldest son. How clearly, then, must the holder(s) of political authority be singled out for there to be a juridical condition?

Humankind might be organized as a single global society in which all disputes are resolved through a single structure of political authorities. Or we might be territorially divided into hundreds, or Millions, of territorially defined "sovereign" societies. How large must societies be for there to be a juridical condition? (Here Kant might say that even two-member societies create small internal juridical conditions within an encompassing state of nature.)

3. This claim is most fully stated in chapters 14, 26 and 29 of Hobbes (1981); Rousseau (1968) endorses it in Book 1, Chapter 6, and Kant states it most clearly at GTP 291/75, 299/81 and MS 319. For a detailed history of the idea, see Marshall (1957) part 1; Benn and Peters (1959), chapters 3 and 12; and Hart (1961).

4. Yes, even Hobbes acknowledges that laws promulgated by the sovereign—though *just* by definition—are not always *good* (Hobbes, 1981:Chapter 30, especially the 20§). Of course, Kant postulates far more significant obligations upon

those exercising political authority. But he, too, like Hobbes, insists that their compliance with these obligations must not be judged by the subjects: “even if [the supreme legislative] power or its agent, the chief of state, has violated the original contract [...] the subject is still not permitted to offer counter-resistance. The reason for this is that the people, under an existing civil constitution, has no longer any right to determine how the constitution should be administered. For suppose it did have this right, and that it disagreed with the judgment of the actual chief of state, who is to decide which side is right? Neither can act as judge of its own cause. Thus there would have to be another chief above the chief of state to decide between the latter and the people, which is self-contradictory” (GTP 299f/81; cp. EF 382/126f; MS 320). Rousseau takes an analogous position by asserting that the general will, though it is not always enlightened, must always be obeyed (Rousseau, 1968: Book IV, Chapter 2, in conjunction with Book II, Chapter 6).

5. Such agencies might well grow out of ones that already exist today—the UN General Assembly and Security Council and the International Court of Justice—if their powers became less dependent on national governments which, as things stand now, are free to quit the UN and to exit the jurisdiction of the International Court at their discretion.

6. I present a detailed case for the desirability of such a scheme in “Cosmopolitanism and Sovereignty” (Pogge, 1992:48-75). Kant would surely have envisioned a world republic as containing smaller political units. But his commitment to the doctrine of absolute sovereignty prevented him from thinking of these units as having any *ultimate* political authority. In several of his political writings, however, Kant seems at times to be on the verge of overcoming this constraint upon his thinking. Thus he once suggests (MS 311/§43) that public law (*Staatsrecht*) and international law (*Völkerrecht*) might together lead to the idea of a public law of peoples (*Völkerstaatsrecht*). He writes that a civil society (*bürgerliche Gesellschaft*) “would require—if only human beings were smart enough to discover it and wise enough willingly to submit to its coercive power [*Zwange*—a *cosmopolitan* whole [*weltbürgerliches Ganze*], i.e. a system of all states that are in danger of affecting one another detrimentally” (KU 432/§83). He envisions (IAG 26/49) as the final step of human progress a unification of states (*Staatenverbindung*), which involves a united power (*vereinigte Gewalt*) that enforces a law of equilibrium among states and thereby introduces a cosmopolitan condition of public security of states (*einen weltbürgerlichen Zustand der öffentlichen Staatssicherheit*). And he asserts that “there exists no other remedy against this [oppressive burden of military expenditure] except an international law (in analogy to the civil or public law of individual men) which is founded upon public and enforceable laws to which each state would have to subject itself” (GTP 312/92). The last three passages seem especially suggestive, because they clearly juxtapose the continued existence of states with the existence of a central coercive mechanism of law enforcement.

7. I have switched terminology here to conform to modern usage. Kant’s second model is today better described as a free association of states rather than a federation, because there is no genuine division of ultimate political authority as each state is bound by common decisions only so long as it chooses to be.

8. This is not a perfect model of my paradigm, for two reasons. First, the model is regional rather than global. And, second, while it does involve a desirable transfer of ultimate political authority from states to the Union and thus nicely exemplifies supranational federalism, the model does not (yet) provide for a balancing devolution of ultimate political authority from states to smaller units.

9. Kant speaks in this context of “the *spirit of commerce*, which cannot coexist with war, and sooner or later takes hold of every people” (EF 368/114).

10. More support for the desirability of these first two additional features is offered in Part III of “Cosmopolitanism and Sovereignty.”

11. In “How Should Human Rights be Conceived?” (Pogge, 1995), I have argued that such a commitment can best be expressed through an institutional conception of human rights. The basic idea is that asserting that some person P has a human right to X amounts to asserting that the society or social system within which P lives ought to be so (re-)organized that P has secure access to X and, in particular, so that P is secure against being denied X or being deprived of X officially, i.e. by her government or its agents or officials. Avoidable insecurity of access—beyond certain reasonably attainable thresholds—constitutes official disrespect and tarnishes a society’s human-rights record (and significantly more so when it is due to official denial or deprivation, i.e. to human rights violations).

12. Such demands have made significant headway in the European context.

13. They might adduce as an illustration the technical and economic aid recently promised to the North Koreans in exchange for scrapping their fledgling nuclear weapons industry. And they might also point out how quickly India and Pakistan were “forgiven” their acquisition of nuclear capabilities.

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WORLD GOVERNMENT, INTERNATIONAL COSMOPOLITANISM: GLOBAL GOVERNANCE WITHOUT A GLOBAL STATE

SHARON ANDERSON-GOLD

Introduction

Immanuel Kant is often credited with foreseeing the emergence of a world wherein the economic and security issues of nations have become “globalized”. In such a world, the solutions to problems impacting all nations require coordinated and cooperative political action. Kant appears to have two models for how such an interdependent world should be organized. The one presumably correct “in theory” would have nations give up their independence to a world sovereign with coercive powers to implement its laws. The other, the “negative surrogate” of the world republic, would organize independent nations into a voluntary defensive league based upon republican principles of governance and committed to cosmopolitan principles of right.

I will not go into the complex literature concerning the relationship between these two models but will instead investigate the question: what does cosmopolitan right add to the model of a defensive league of republics that can help us understand how global governance is possible in the absence of a global state?

This paper investigates the foundational character of cosmopolitan right as one of the three forms of public right in Kant’s theory of right and its role in making global governance possible without a global state. While on the face of it cosmopolitan right is clearly a significant aspect of Kant’s theory of right, appearing in both the *Metaphysics of Morals* as a form of public right and in *Perpetual Peace* as the third definitive article, traditional interpretations of Kant’s theory have placed primary emphasis on national or political right without sufficient appreciation for the systematic context within which all law must develop. Cosmopolitan right, as the normative principle that shapes the development of public law regarding

the interaction of individuals and states, must in turn shape national and inter-state law. I conclude that not only must all law, according to Kant, have a foundation in cosmopolitan right but that cosmopolitan right requires the development of democratic institutions at the global international level in order to universally secure the public rights of all individuals and bring about the “cosmopolitan community” that is the ultimate goal of history and politics.

Kant’s Theory of Public Right

According to Immanuel Kant all persons or organized groups (states) capable of mutual influence must either be governed by principles of right or be at war. It is the duty of all such persons to enter into the appropriate juridical conditions. The juridical principles governing human relations are threefold, i.e. political right forming individuals into states, international right regulating the interaction between states and cosmopolitan right regulating the interactions between individuals and states and individuals across states. Cosmopolitan right extending universally to all individuals is the most controversial because it entails a form of global governance constructed upon the basis of independent states. Many have puzzled over this three-fold system of principles holding that the third level of “right” is incompatible with traditional conceptions of “sovereignty” on which the independent existence of states depends. They argue that cosmopolitan right cannot have strong juridical status because it cannot be coercively implemented and that therefore his federation can be nothing but a stepping-stone to a world state.

Clearly, Kant’s tripartite juridical system challenges traditional notions of sovereignty build upon “atomistic” concepts of state-independence wherein each state defines and defends its “rights” in its own terms. In contrast to the traditional “atomistic” conception of state sovereignty I shall adopt Kant’s model of a plurality of interacting independent states. This model, I shall argue, requires the universal principle of cosmopolitan right to balance the contrasting forces of interaction and independence (dynamic equilibrium/community). It is this form of law that ensures the independence of interdependent states.

My thesis has three points: that a society of states by virtue of being in a juridical condition of dynamic equilibrium is necessarily founded upon cosmopolitan right; that cosmopolitan right necessarily has universal jurisdiction; that the implementation of norms of hospitality require global institutions based upon democratic representation.

First, I maintain that any society of states that has entered into juridical relations must acknowledge cosmopolitan right as a condition of their association. In addition to the fact that each state must have its borders recognized by others as a condition of peaceable federation, all states must accept the (moral) fact that offers of commerce remain-part of the original right of all individuals. Kant maintains that “the right to present oneself for society, belongs to all human beings” as a consequence of the fact that originally no one had more right than another to settle any part of the globe. All possession of land prior to ratification by a legally constituted federation is provisional. Because potential individual activity puts each individual in “constant relations with all the rest” and because this remains true even after civil society provides internal rules to determine internal property the federation has to concern itself with both definitions of borders and criteria for universal individual-to-individual interactions.

This right, in so far as it affords the prospect that all nations may unite for the purpose of creating certain universal laws to regulate the intercourse they may have with one another, may be termed cosmopolitan (*ius cosmopolitanicum*) (Kant, 1970:172).

It is this right “*ius cosmopolitanicum*” that provides the basis for universal laws regulating international intercourse. Kant’s insistence on the juridical (*a priori*) status of cosmopolitan right does not appear to be contingent upon nor subordinate to the recognition of borders. It is derived from a more fundamental individual right implicit in the universal and innate right to external freedom, which allows us to do anything that does not detract from the right of others. Presenting oneself for society does not violate anyone’s fundamental rights.

Cosmopolitan right thus shapes the nature of rightful relations between states and thus provides constraints on the form that the federation can take. The federation is prohibited by cosmopolitan right from becoming a “closed system” of isolationist communities or communities that trade only upon conditions of nationalist interest. Isolationist communities might be non aggressive but, per argument, would not be committed to cosmopolitan norms of hospitality and could slide into violence and war should foreigners appear on their borders. Nationalist interests might support commerce but principally on terms of power, which could result in exploitation leading to conquest and war. Kant links peaceable association to principles that are universally rooted in individual liberty and cosmopolitan community.

The federation then by virtue of forming a juridical association requires specification in positive law of the norms of hospitality implicit in

cosmopolitan right. Therefore some form of global law is entailed by the very condition of a plurality of interacting independent states aspiring to peaceable relations. Secondly, given specification in a global form of positive law, cosmopolitan right opens states to the development of juridical institutions with universal jurisdiction such as a world court with the authority to determine violations of cosmopolitan right. Judgments from a world court must be self-implemented on pain of loss of membership in the (cosmopolitan) society of states and restitution of the state of war between the federated association and the dissenting state.¹ I will discuss later in this paper the conditions under which the federation may collectively enforce the norms of cosmopolitan right upon dissenting or dissociated states. Finally, given the norms of hospitality internal to the concept of cosmopolitan right the federation must evolve international institutions based upon democratic representation to guide the development of international law. Cosmopolitan democratic representation is required so that the form of public law that arises from inter-state interactions does not permanently solidify structural exploitation on the part of dominant states.

If my interpretation is correct, that a cosmopolitan society of states is completed by the adoption and implementation of cosmopolitan right, then it is unclear in what sense a world state can add anything to Kant's peace project. We may indeed continue to hold that "a republic of republics" is a regulative ideal that assists in the formation of practical principles to guide political development but any attempt to "jump over" the federation and directly consolidate all states under a single executive misconstrues how the ideal is to be realized. The republican ideals of freedom, equality and independence within and between states must be products of a cosmopolitan principle shaping behaviours at all levels but not imposed from a singular power. If the main function of a world state is to produce a system of public law that could guarantee to each individual and/or state a specific sphere of freedom, adjudicate conflict and avoid war then we need not envision this system as the product of the coercive imposition of universal law from the top-down. Given the collective acceptance of the duty to strive toward the end of peace with all of its moral constraints and barring the catastrophic destruction of the species, a cosmopolitan system of law can emerge from the bottom-up process of historical development under the principle of cosmopolitan right.

Cosmopolitan Right, Hospitality and Democratic Representation

International institutions alone however, do not constitute a cosmopolitan community. International institutions as we know them do not fully instantiate the principle of cosmopolitan right because they do not incorpo-

rate democratic principles of representation which are required by the principle of hospitality upon which cosmopolitan right is based. The principle of hospitality regulating all commerce between individuals and states prohibits fraud, force and exploitation. By providing rich and powerful states with positions of permanent power within most international institutions, these institutions solidify policies of economic exploitation and military dominance of developed states over underdeveloped states. Since the ideal of a republic of republics cannot take the form of a universal state under a single ruler, we cannot appeal to a centralized authority to legislate the values necessary for a republican system flourish. Rather, the system of positive law, international political right, which must accompany and supplement the development of international right within the federation, must be guided by what is just in the relationship not merely between states as “powers” but in the relationship between individuals “as citizens of the world.”² Kant maintains that international right developed under the principle of cosmopolitan right transforms the former (national right) and produces international political right as “a universal right of humanity” (Kant, 1970:103). How does cosmopolitan right transform national right and produce international political right? Clearly the cosmopolitan context defined by the three definitive articles within which states are portrayed as constructing global public laws and global public institutions to regulate their interactions is not the former context of power politics but one where respect for human right has been internalized in the positive legal systems created by the associated states. The need for global institutions which can secure universal republican values becomes clearer if we investigate the principle of hospitality, the form of cosmopolitan right that Kant stipulates in *Perpetual Peace* as the third “definitive article” of the federation from the perspective of what type of interactions violates this principle.

What Does the Principle of Hospitality Require?

Hospitality, Kant insists, is a juridical principle, a legal duty (Kant, 1970:105). Individuals have the right to offer to trade and to communicate as part of the original community of land understood as a community of reciprocal action (Kant, 1972:172). Kant did not attempt to provide a detailed legal code for these interactions but his examples of what constitutes inhospitable interactions provides some guidance on the norms that would be constitutive of rightful interactions. Therefore I will unpack the norms inherent in these examples to explore the possibility that cosmopolitan right must be accompanied by institutional supplements to the federation of free nations, in the form of global institutions based upon democratic

representation. Cosmopolitan democratic representation is required so that the form of public law that arises from inter-state interactions does not permanently solidify exploitation on the part of dominant states in violation of the norms of cosmopolitan right.

While the principle of hospitality would have no bite without Kant's assumption of a fundamental right to offer to interact with others through trade and travel (Kant, 1970:106), Kant's analysis of the ethical limits of expansion into new territories was shaped by his concern for exploitation in the relationship between European states and non state peoples in the "new world". In his concern that Europeans not take advantage of their superior form of organization to dispossess native peoples Kant appears to grant to non state peoples moral standing and rights over the property entailed by their ways of life. In asking whether or not states may create new settlements as a consequence of exploration in the vicinity of a nation (not organized as a state) already settled Kant maintains that the right to do so is incontestable with the provision that the new settlement not interfere with the use of the land of those already settled. He warns that in many cases this will require consideration of the fact that non-state cultures may conceive of rightful possession and use of the land differently than states that have evolved legal standards for permanent title. He says:

But if the nations involved are pastoral or hunting peoples (like the Hottentots, the Tunguses, and most native American nations) who rely upon large tracts of wasteland for their sustenance, settlements should not be established by violence, but only by treaty; and even then, there must be no attempt to exploit the ignorance of the natives in persuading them to give up their territories (Kant, 1972:173).

The social organization of non-state peoples may not yet be "rightful" (satisfy Kant's definition of civil society) but apparently they do have some form of provisional (claim) right in relation to peoples not yet settled and coercion and exploitation in interactions with them remain moral evils that cannot be justified. The inhospitable conduct leading to subjugation Kant maintains arose from considering the newly discovered lands as "ownerless territories: for the native inhabitants were counted as nothing" (Kant, 1970:106).

Even the potential for "development" (economic and cultural) extending to future generations does not justify dispossession. "But all of these supposedly good intentions cannot wash away the stain of injustice from the means which are used to implement them" (Kant, 1972:173). The argument that violence was used in the foundation of states themselves, which Kant accepts to be generally the case, does not move Kant from his

position that cosmopolitan right absolutely forbids the imposition of order by coercion. His comparison of this argument to the so-called right of revolution for the improvement of political organizations (which he resoundingly rejects) again suggests that the social organization of non-state peoples is not to be regarded as a merely anarchic condition of individuals who can be absorbed into another state. The conditions of right are universal and cannot be annulled and cover every individual, civilized or not.

Kant subjects commercial interactions as well as settlements to criticism on the grounds of the principle of hospitality. In discussing the inhospitable conduct of the commercial states he goes so far as to equate “visiting” foreign countries and peoples with “conquering” them. He states:

America, the negro countries, the Spice Islands, the Cape, etc. were looked upon at the time of their discovery as ownerless territories; for their native inhabitants were counted as nothing... This led to oppression of the natives... and the whole litany of evils which can afflict the human race (Kant, 1970:106).

Given these experiences Kant concludes that the decisions of China and Japan to restrict the interactions between their states and people with European commerce is both justified and “wise.” From these examples we can infer that for the principle of hospitality to take effect, all forms of coercion and exploitation must be excluded. Those who accept the offer of interaction must do so not only freely but also with the expectation of fair outcomes.³ But coercion and exploitation are not limited to the 18th and 19th century relations between non-state and state peoples. Exploitation clearly can and does occur in modern state-to-state relationships particularly between highly developed and underdeveloped states. Such exploitative interactions I would argue violate the principle of hospitality and are contrary to cosmopolitan right.

In the 21st century, non-state peoples have been generally incorporated into states and states have been organized in various ways within international organizations. Thus our contemporary political system would seem to more closely approximate the Kantian ideal of a cosmopolitan condition. Yet states do not uniformly represent the interests of their people/s and within the state the interests of different groups are often given differential weight. In *World Poverty and Human Rights*, Thomas Pogge claims that in underdeveloped states a rich store of natural resources is systematically correlated with dictatorships and poverty. He argues that within underdeveloped states the lure of personal power and wealth corrupts political leadership and that this corruption is supported by the current terms of

the international recognition of sovereignty (Pogge, 2002). In this context national right provides no disincentives to the development of dictatorships thereby securing for those in power continuous access to great personal wealth at the expense of internal development. Indeed, by allowing that whoever holds power has the right to sell the nation's resources, current international law and practice tends to support this type of political corruption.

This alliance of international recognition of dictatorial power with internal underdevelopment is no mere accident of history. Given the manner in which developed nations tend to use their superior military and economic power to gain advantages in all international forums it is to the advantage of developed nations to continue to support regimes willing to provide access to natural resources on terms favourable to themselves regardless of the "representative" character of the government in power. Thus, the economic gap between developed and underdeveloped countries has grown despite the efforts of some international organizations to provide funds for "development." These organizations are not constituted in a manner to offset the effects of the dominance of developed nations and therefore cannot genuinely affect the type of internal development that would systematically reduce global poverty.⁴

Given the negative impacts of the policies of these organizations on the most vulnerable, global theorists such as David Held have argued that in addition to international law founded on state based international organizations; cosmopolitan law must be founded directly upon international democratic institutions whose representatives would be accountable to individuals as "world citizens" (Held, 1997; see also Held, 1995). Such institutions would provide a forum within which ordinary citizens could critique the policies of their governments and could form alliances with the citizens of other states to address issues of global concern particularly in the areas of peace, poverty and environmental degradation.

Power politics, Held argues in Kantian fashion, affect the capacity of any and all states to develop their internal values. Internal democracy has little chance to develop where autocrats have the power to offer natural resources on favourable terms to developed nations. Power elites within underdeveloped states thus reflect the overall power differentials between states. While Kant stressed universal republicanism and the equality of states under international law as necessary conditions for the evolution of cosmopolitan law, Held adds to these two conditions the need to establish international democratic institutions. A level of cosmopolitan democratic law is required if cosmopolitan right is ultimately to be achieved because commerce (at least under the conditions of global capitalist markets) tends

to have differential effects across states with respect to individuals/groups that undermines the ability of those adversely affected to have equal standing (as republicanism requires) in their respective political communities.⁵ In a system of interaction shaped by powerful elites, Held argues, democracy (or republican equality) within must be supplemented by democracy without.

Clearly the current organization of international relations does not reflect the principles of a cosmopolitan federation. Structural exploitation, economic and cultural, underlies many contemporary struggles for political realignments as well as movements primarily aimed at retribution and destruction.⁶ If Kant is correct in his theory concerning the way to peace, and granted that peace is accepted as the desirable goal (which some have rejected both in theory and practice)⁷ then the nature of the reforms required is clear.

But in what sense does a cosmopolitan federation once given appropriate institutional form “guarantee” peace? Because such a federation, even in its cosmopolitan formation, retains a dynamic character with potential for dissent leading to dissociation and war it can be objected that it cannot fulfil Kant’s imperative of perpetual peace. It has been argued that only the republic of republics, or world state, can fully realize perpetual peace and in rejecting the world state Kant violates his own principles. Is there then an inconsistency in Kant’s own theory? In “Kant’s Arguments for a League of States”, Pauline Kleingeld provides an interesting and sensible defence of the league. She argues that the republic of republics is best understood as the ideal, which can only be approximated through the use of practical/juridical principles such as cosmopolitan right. She concludes that the cosmopolitan federation is not a “second best” solution that is substituted for the republic or republics but the form that the latter takes in the historical world (Kleingeld, 2006). Perpetual peace may not be fully realizable but it is possible in a practical sense to strive for it.

How Can Cosmopolitan Right Be Implemented?

One of the most innovative features of cosmopolitan right is that through this principle individuals become juridical persons (citizens of the world) and are guaranteed the right to have rights without recourse to a world state. But what institutional mechanisms are appropriate to the implementation of these rights? Does cosmopolitan right go beyond public criticism and open up the possibility of military interventions into the internal affairs of states which would seem to be prohibited not merely by

preliminary article 5 of *Perpetual Peace* but also by the defensive purpose of the Federation which is to secure the freedom of each state? Given a commitment to cosmopolitan right would the internal violation of human rights on the part of one state authorize the military intervention of other states? Would such a “pre-authorized” intervention count against the prohibition on interference? Alyssa Bernstein supports the enforceability of cosmopolitan public law by arguing that for states who remain signatories to the cosmopolitan league but also engage in systematic violation of the basic rights of their citizens, interventions to end such violations are not external aggression but simply “law enforcement” (Bernstein, 2009).

Although the cosmopolitan federation may not be without conflict I would argue that it is a different configuration than other forms of association built on self-interest and power. Because of its juridical character such an association can rightfully defend itself against “unjust enemies.” The thorniest issue arises from those states, internally powerful, whose publicly expressed policies are hostile to cosmopolitan values and international law of any kind and who refuse to join or remain within any peace oriented league. Applying a notion developed by Georg Cavallar, Bernstein takes her argument for the enforcement of cosmopolitan public law a step further stating that openly hostile states stand in a relation to international right as that of an “unjust enemy” (Bernstein, 2009). This is I believe an interesting distinction which draws our attention to the fact that such an enemy could only be *recognized and defined from inside the condition of international right* (from the perspective of a pacific federation) and not from the traditional assumption of a state of nature between nations wherein such a concept would be at best a redundancy. With the cosmopolitan federation we find Kant finally accepting a type of just war theory, a theory he could not accept in so far as states refused commitment to cosmopolitan principles and insisted on their individual rights to determine the justice of their causes.

An unjust enemy then is one whose publically expressed policies are hostile to cosmopolitan values and international association. Should such a “rogue” state simply be isolated and left alone? Clearly, if a state simply prefers a condition of dissociation and expresses no hostile intentions towards the federation, the federation would have no “just” grounds to coerce its continued association. However the price of such dissociation is that no interaction between such a state and any member of the federated association would have any juridical foundation and such dissociated states would in effect become closed and isolated systems. While the principle of hospitality appears to permit such dissociation as long as it re-

mains non hostile, such a state does others a high degree of “wrong” because it refuses to allow the exercise of the right of “*commercium*” and blocks the path to permanent peace and a cosmopolitan community.

But what if such a dissociated state engages in violence against its subjects? Should that be viewed as simply internal discord? It can be argued that the refusal to recognize human rights internally on the part of states that have already rejected international law and association can be taken as a sign that this state cannot be trusted to respect the external peace and can therefore be treated as an imminent threat to all. States with expressed hostile intentions whether those intentions are internally or externally expressed become “unjust enemies” because the denial of rights is not simply “internal discord” but a form of violence that cannot be expected to have simply an “internal intention.” It is as though such violations given the values of cosmopolitan community, is a direct challenge to rights everywhere. It was clearly the connection between genocide and Hitler’s war of European domination that motivated the *UN Declaration of Human Rights* and subsequent treaties internationalizing genocide as a crime against humanity.⁸

When faced with an “unjust enemy” Kant argues that other states are permitted to deprive the unjust state of its power “to act in a similar way again.” While Kant does not discuss the full range of permissible means of redress against such a state he does mention the institution of constitutional change (but not dissolution of the civil union of the people) that presumably would be designed to eliminate the despotic qualities of the constitution responsible for the aggressive tendencies of the state. Without the assumption that the despotic qualities of such a state indicate a general disposition against the peace, externally initiated constitutional change would clearly violate the strictures of non-intervention. Action against an unjust enemy cannot be based merely upon aggressive rhetoric but must be a response to actual unjust conduct of a serious and threatening kind. Thus UN condemnations and other responses, such as sanctions, to abuses of human rights have required that abuses be “grave” and “systematic” rather than occasional. The distinction between occasional and systematic abuse is an attempt to identify and respond to the settled “character” of a regime rather than to a particular problem. Of the unjust enemy Kant states: “For they are a threat to their freedom and a challenge to them to unite against such misconduct and to deprive the culprit of the power to act in a similar way again” (Kant, 1972:170).

Conclusions

Short of responding to the violent and/or aggressive dissociated state, the defensive federation remains committed to peace and respect for the freedom and self-determination of its members. Although initially limited to the principle of hospitality such a league may also commit itself to various international rules facilitating intercultural and economic exchanges. In so far as the growing community of interaction can be expected to result in a further development of both national and interstate law, cosmopolitan or world law will be a “necessary supplement” bringing interstate laws into compliance with cosmopolitan right. Global (international) law at this level while voluntarily negotiated will require the development of legal expertise and courts for the exercise of judgments, independent of the states that may be a party to particular disputes, concerning just implementation of its rules. These legal decisions cannot be considered interferences with the sovereignty or freedom of states that are in this manner “associated”. Much of this international political law will shape how states articulate the rights of individuals who enter into these exchanges and thereby influence the formation of domestic law as well.⁹ The pull of cosmopolitan principles will be in the direction of republican freedoms without the requirement that an individual republic take on the task of “exporting” republican values.

Certainly as Kant projected in *Idea For a Universal History* such defensive associations will go through many transformations before all states are able to perfect their internal civil constitutions and commit themselves to the 1st Definitive Article of *Perpetual Peace* but if cosmopolitan right leads the way in the early instantiations of the defensive league it will have laid the groundwork for the stable and universal institution of republicanism and it will be unnecessary for individual republics to make war to save the peace. Thus I conclude that cosmopolitan right implemented by international institutions under conditions of cosmopolitan democratic law can provide a structure of global governance without a global state. Although this paper has been primarily concerned with the juridical structure of a cosmopolitan community lest it appear that I believe that a cosmopolitan community is nothing but a thin legal framework I want to point out that thicker conceptions of cosmopolitanism are possible depending upon the type of multicultural “cultures” that arise within peaceable, open and interactive communities. But those are richly complex issues going far beyond the topic of this paper. A cosmopolitan peace will not be a simple task that can be completed within any finite historical period.

Notes

1. It may be objected that since states may voluntarily terminate their membership in a juridical federation the traditional conception of sovereignty persists, i.e. that states cannot be coerced to submit to any universal principles. Yet, in the context of a juridical federation pledged to no longer pursue the “rights” of states through war, the public repudiation of judgments concerning international justice would constitute the dissenting state as an “unjust enemy”, a term not applicable in the prior state of nature where unregulated sovereignty was the norm. In the *Meta-physical Elements of Justice* (1972:170), Kant maintains that unjust enemies constitute a threat to all other states and that states may rightfully unite to deprive the “offending state” of the power to act in a similar way again.
2. It is arguable that international trade agreements that ignore worker’s rights and the health and environmental impacts of trade are exploitative and constitute unfair relations between individuals and not simply unfair relations between states.
3. Kant’s references to unjust commercial interactions assume that injustice in these interactions has a universal impact—that is, that the community at stake is not limited to the immediate agents. This is because all have this right to interact with all and injustice in international dealings is in effect injustice to everyone.
4. (Anderson-Gold, 2001:ch. 7). Globalization and Development traces the negative impact of the neo-liberal economic policies of the 1980s on the development policies of the IMF and World Bank.
5. Although Kant accepted some degree of economically based political inequality (active v. passive citizen) within even a justly constituted state he maintained that it must be possible to work one’s way out of dependence. Permanent structural economic inequality violates this principle.
6. Culturally based discriminations must also not be allowed a foothold in law since these will tend to become permanent and structural features of association. This means that in multicultural contexts certain limits on majority rule must be recognized that protect minority interests.
7. Some forms of fascist and Nazi ideology portray struggle and war as a permanently desirable condition and jihad or holy war is for some a quasi-permanent condition to be embraced at least until the last infidel has been converted. Although for different reasons, none of these theories accept the basic Kantian principle of universal human rights.
8. (Anderson-Gold, 2001:ch. 4). “Human Rights and the Transformation of Sovereignty.”
9. The experience of the European Union’s Court on Human Rights provides an excellent example of how this can work in practice. Critics are likely to point out that this success has been built upon a common history and shared values. But this simply means that there may have to be multiple jurisdictions for such courts with regional scope mapping onto similarly shared histories and values. A supreme or “world court” is of course a more difficult institutional matter ultimately determining the inside/outside of the federations membership.

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THE STRUCTURE OF PEACE

JOVAN BABIĆ

In *Metaphysics of Morals*, paragraph 44, Kant notes that “before a public law condition is established ... individual human beings, peoples and states can never be secure against the violence from one another, since each has its [?!] own right to do *what seems right and good to it* (aus jedem seinem eigenen Recht, zu tun, *was ihm recht und gut dünkt*) and not to be dependent upon another’s opinion about this.”¹

We should note that here we have an array of “individual human beings”, “peoples”, and “states”. The rest of the paragraph, however, seems to deal with us as individuals, in a direct manner, and only indirectly with the “peoples” and “states”.²

There is a powerful ambivalence here, especially if we compare the very strong wording at the beginning of the paragraph 44: “It is not experience from which we learn the maxim of violence..., it is not some deed (Faktum) that makes coercion through public law necessary....—on the contrary... it lies *a priori* in the rational idea of such a condition (a condition that is not rightful).” The ambivalence is here perhaps not yet visible, except in the shift from a set of three (individuals, peoples, and states), *none of which* can be secure from violence, to a formulation which seems to shrink to individuals who must leave the state of nature and, at all costs, enter a civil condition. This paragraph in *Metaphysics of Morals* is in full accord with the Seventh Thesis from the “Idea for Universal History with a Cosmopolitan Intent”: “...establishing a perfect civil constitution is dependent on foreign relations,” because the state of nature present in existing anarchical international affairs is making security against violence still very far ahead—and there is no “civil condition”, i.e. “rightful condition” in the international arena.³ The concepts of “*a priori*” and “*independence of any factuality*”—very strong concepts, to be sure – appear to have the same validity on all three levels: of individuals, peoples, and states. It seems that abandoning the state of nature at only one level of those three would not suffice for a rightful, lawful condition to be established before the state of nature has been abandoned at all three levels. This means that before the state of nature has been overcome in international affairs, domestic rights in states are doomed to be provisional, tentative and uncer-

tain, which is the opposite of what they are supposed to be. Does this mean that at on the international level each may compel the other by force to leave the state of nature by introducing universally obligatory, peremptory, laws?⁴ The “other” here are states with established internal civil conditions and valid and effective laws (Cavallar, 1999:5). Accordingly, peoples and states should also leave the state of nature for peace to be secured. Until then, there will be a right to impel them to it by force. This means, quite in line with the definition of the state of nature, that war is a default state of affairs, whereas peace is only a goal for which to strive. Consequently, a peace that exists within states only, one which is not also a world peace, would be both incomplete and uncertain.

The ambivalence seems to become visible in a tension between this “a priori” approach *and* the logic by which the laws, necessary to leave the state of nature and enter a civil condition, have to be articulated: they have to be articulated in *freedom*, in autonomy of the agents which “enter” the new condition, and this manifests itself through *consent*. We know this fact, but it is still odd: in order to be just, the laws must be endorsed, authorized, *not imposed*, and this regardless of all other characteristics or features they have. Laws relate to our *external* freedom, but external freedom is still freedom: it is part of the totality of freedom, the same one that we brought (actually have to bring) from the state of nature (as the same freedom that we had, or have had, in that state). External freedom is not supposed to be a kind of slavery, or a domain in which freedom has lost its essence of being the capacity to decide, a capacity which is a kind of power. In a civil condition, freedom is limited. It is only part of what it was in the state of nature—but that part is still freedom and the best part of it indeed. In a practical sense, freedom is efficiently, in a practical sense, working in *both parts*, designating the legitimate freedom part (1) and the restricted part (2). In the area of legitimate freedom we can freely set our goals and attempt to realize them—resuming responsibility for the success and failure in their realization.

In the area of freedom that is restricted by laws, freedom is present in the structure of the necessity of consent: without consent the restriction is not *valid*, but at the same time the consent has to be free, not enforced by compulsion or coercion. There is no real necessity in the requirement for the consent to be given, and the act of giving consent is a fact, not a matter of analytical truth! The normative reasoning power driving for the provision of consent contains necessity, but of a normative kind. Moreover, the necessitation we have in the “necessity” contained in duty, as Kant says: “Duty is the necessity of an action from respect for the law”—is not a real necessity but only a normative one [not that something necessarily will be

realized but that it is necessary that it *ought* to be realized, and this independently of the difference “from duty”/“in accordance with duty” distinction] (Kant, 4:400n). But, of course, it did not have to be realized. Thus, the normative necessity to give consent to laws is not a factual necessity but only a *pressure* of reasons directing our decision to a rational conclusion to give consent.

This pressure is not even primarily of a moral kind but rather purely rational, based in autonomy but expressing our (best) heteronomy: rational self-interest. All that pressure, however, is not sufficient to entail a real necessity in the sense that the result, the act of giving consent, could be “derived” from the content of the laws. What laws will be, will depend in a crucial part on what the real interests are. And the real interests depend on *who’s* interests these are, and what *happened* before. Too many uncertainties, and one variable is determining the most basic interests of anyone. Uncertainties refer to the events that “happened before,” and the variable is the identity of the person(s) who is or are the holder(s) of freedom. We may conclude that the “necessity” we deal with here is at most an urgency *to give* consent, without specifying what the content of this consent is. Taking this into account, it is arrogant to presume that everyone’s decision will be the same, that the interests and their hierarchy will be the same in all humans. The pressure to make a civil condition should suffice to facilitate the decision, but which decision it will be in full precision has not yet been determined in this process.

Hence, on one side we have a normative thesis setting up *a priori* principles that say that before we leave the state of nature we do not have full peace (Kant, 6:312), that any legal constitution is better than none at all (Kant, 6:320), that we must leave the state of nature and establish true peace, thereby overcoming war (Kant, 6:344). This is a demand of reason (Kant, 6:312). The realization of this demand takes time, and it can be incomplete or deficient. These problems, i.e. deficiency and incompleteness, are signs of the presence of some remnants of the state of nature. This is most visible in the international arena where we still have a kind of anarchy. The demand of reason is to put an end to such a state of affairs by establishing a truly global juridical condition.

On the other side, we have what Kant calls “truce”, a “mere truce, a suspension of hostilities, not peace” (Kant, 8:343), a state of temporary peace, even if it is a result of a peace treaty with the victory of one and capitulation of the other side (Kant, 8:355). Truce is a solid concept in Kant, much richer in content than our first impression might suggest. It also might be different from the dictionary meaning of the term. It is a concept worth exploring. There are *two* moments I have in mind here.

First, Kant's peace treaty, or peace pact (depending on the translation) as the end of a particular war, may have as a result that "a current war can be brought to an end but not a *condition* of war" (Kant, 8:355, emphasis J.B.). Our normal linguistic intuition is that truce is only a pause in an ongoing war. According to Kant, however, a peace treaty cannot end the condition of war, because "right cannot be decided by war and its favourable outcome, *victory*."⁵ A possibility of future conflicts, namely, always remains an option. Even after the end of war (concluded with a peace treaty) we still have only a "truce," a kind of state of nature, not real peace.⁶ *Second*, states *have already abandoned* the state of nature, and "what holds in accordance with natural right for beings in a lawless condition, [i. e.] 'they ought to leave this condition', *cannot* hold for states in accordance with the right of nations (since, as states, they already have a rightful constitution internally and *hence* have *outgrown* the constraint of others to bring them under a more extended law-governed constitution..." (Kant, 8:355, my emphasis). Thus truce, which characterizes the anarchical international society, is *not* a state of nature! And the ambivalence is fully visible now. Truce of this kind is the true nature of the world: wars are always possible, and peace, which actually is a truce, is a state of affairs in which that possibility has been successfully avoided. War is a latent but real possibility—a very expensive and often also unnecessary, immoral, even absurd possibility, similar to many related ones we all always have within our reach, in the domain of our freedom (but not such to be considered as the objects of prospective decisions). Nearly all of these options, however, can in some extraordinary circumstances become feasible (like, for example, to cry and shout aloud: it would be very improper for me to do that here at my desk, or in the middle of the lecturing, but if I am falling from a cliff it would suddenly become very proper and feasible).

In other words, being in a state of truce is in a way sufficient for us to say that we are not in a pure state of nature. Truce is more than the absence of any constraint. Precisely because of that the right "to impel the other by force to leave the state of nature by introducing obligatory, peremptory, laws," which is a feature of the state of nature, does not seem to be applicable in the state of truce. Truce seems to be more a kind of peace than a segment of a war. Were it not, we would have a right to impel (all?) others to abandon this condition in order to reach true peace. It would have to proceed in two steps: first, individuals would need to relinquish their wild, unrestricted freedom for a limited but guaranteed freedom provided by the laws of the state. Afterwards, the states, which are to be taken as (artificial?) moral persons, would need to move further and finalize the process by entering a lawful state of cosmopolitan peace which would not

be any kind of “truce.” The problem with this is the following: it would be hard to avoid destroying internal law and order in the process of creating a viable global juridical condition. This might be the reason why Kant claims that, in regarding the state of nature, what holds for individuals cannot hold for states: it seems very unlikely, or impossible, not to destroy the structure of order and peace already created by the abandonment of the lawless natural condition in the renewed process on the second level (Maus, 2010, p. 161). Strictly speaking, if this new world order is to be created according to the demand of reason, *all* states and their laws should be reconsidered and revised. Otherwise, the strongest state(s) would impose its (their) laws as the unquestioned authority of what is to be considered as the sole normative standard. In the process all other authorities would have to withdraw or be cleared. Many pitfalls are looming here. For example, no one would know if one is obeying the law, if in what she is doing she is acting in accordance with any domestic law, because it could turn out later that this is different from the newly, *ex post facto*, created global law. The result would be utter uncertainty regarding any transitional period (except perhaps the ones buried in the deeper past). But this is only one example.

The main point is that the internal, domestic laws, by losing their normative authority, would lose their role in facilitating “the abandonment of the state of nature.” It seems that any attempt to realize a world peace would then imply a kind of revolution which necessarily would destroy most of order and peace attained so far. This would be at odds with Kant’s claim that “any legal constitution, even if it is only in small measure lawful, is better than none at all” (Kant, 8:373n). The other, even more far-reaching problem, could be the question whether the goal of a world state is attainable at all. Another issue is: is such a goal worthwhile - a point which finds its explicit corroboration in Kant’s idea of “soulless despotism” of a world empire.⁷ Either way, this is a subject worth of further exploration.

My own thesis is that “peace” is a name for a state of affairs which acquires its meaning only in relation to its opposite, i.e. to the absence of peace. According to Kant, that absence is the state of nature defined as the state of war (Kant, 6:344). What really is “eternal” here are only possibilities, both of peace and war. Peace and war are to be defined in relation to each other.

Peace is, *prima facie*, positive, war negative. But this is only *prima facie*; because peace can be unjust, contain slavery, humiliation, discrimination, inequality, exploitation, disrespect, etc. We may object that all these are features of peace as truce—not of real, true peace, which would be the

total opposite of anything contained in war. But what is contained in war? What is the purpose and meaning of war, the purpose and meaning which may lead to some justification of it? Putting aside notions of the (possible) eschatological purpose of war (according to which war is a necessary and appropriate *means that leads to ultimate peace*),⁸ adequate descriptions of peace and war ought to be connected with a specification of the role laws play in both schemes. More to the point, both war and peace have to be articulated in two ways in the context of time. First, in time as the frame of possibilities at a specific chronological point defined through previous time and thus determining what is possible and feasible at that point (in that context). Second, in time that is generally understood as the basis of *changes and differences*.

Laws are susceptible to all these influences of time. They are the result of previous traditions, which are subject to change. This fact establishes the *content* of what peace is and why it has to be *temporary*. Temporarieness is a very important component of the structure of peace. It brings changes which produce differences. War is a borderline point of some of those changes in its potential to produce some of those differences. From the other side, war can thus also be regarded as a defence of the *status quo*. From the point of established justifications—those justifications that are based in accepted reasons and the justificatory force of those reasons—there is a certain *asymmetry* which gives a principled primacy to the *status quo* in comparison to a change: an existing state of affairs, as *already* established, presumably has some justificatory reasons at its base, and the force of those reasons (the way that reasons function when they direct us to decide and do what we do) has already functioned as a motivational force for this state of affairs to be formed and accepted. The entire process is in a way accomplished in the past and what we have at the present moment thus has its *raison d'être*. Change-in-view, however, is not real, and as a process change at first is only a beginning (or even something that precedes beginning, something only conceived), its reality is in the future and uncertain. The power of some reasons to direct the action to its production is not in the same position as the same power of the justificatory reasons contained in something that already exists, it is necessarily *underprivileged*, and this power has to be proportionately *stronger, strong enough*, to facilitate the change.

Opening a process of change implies opening a conflict with the *status quo*. And it is possible that this conflict *at some point* cannot proceed in a purely rational way and therefore will be unable to avoid violence, or rely only on the rational strength of reasons at some point of time. It is also possible that the conflict is such that it is not easy, or even possible, to end

it and return to the starting point (or rather to the point before the starting point of the conflict). This is why it may be much easier to start an action such as a war than to stop it. In that case we may resort to violence as a path that allows the continuation of the conflict until its resolution. Thus, the defence of the *status quo* is rather obvious: the constitution, the laws, have to be defended. If one is under attack, defence is not just one of many options standing at her disposal, equal to all other options—it is the default action in response. One may give up defence, of course, but not in advance. This means that the *status quo*, which is always a particular peace with a specific structure of power distribution, is the subject of defence by default. This implies, however, that recourse to force is an option at all times; that war, not peace, has a priority here in a sense in which means have a priority over ends. Hence, a part of the definition of peace is that it is a state of affairs in which war has been avoided. “Avoided” does not denote any necessity here: we just have been successful in not allowing war to occur. But we cannot say that war is an “avoided peace”. Peace is the goal, war is not. War is only a means—a means to peace. There is no possibility of success in “avoiding peace,” comparable to that of avoiding war: in a way this dialectical aspect of their relation is their dynamics. But the dynamics is strong: peace presupposes war, as a shield, as a refuge, as a defence.

Unlike war, which is per definition temporary as a state of affairs that should end (the aim of war is to reach its conclusion!) peace has been normatively conceived as a permanent state of affairs. If we associate war with death, as we often do, we may associate peace with *life*. Let us therefore say that peace is the home of life. Obviously we do not think of *absolute peace*, one we have in graveyards, as Kant would say (Kant, 8:343)—we have peace there, even absolute peace, but no life!—but a more dynamic state of affairs, one resembling life as usual. What makes peace so valuable is that it gives what is most important for and in life. For our purposes here and phrased in the shortest way, *peace is giving us control of time*: through peace, we attain predictability. If we define *life as the activity of setting goals and attempting to realize them*, then it is obvious that life is future oriented and dependent on (some) capacity to control our future time. This is what laws give to us. Laws require and are dependent on peace. The main part of the definition of war corroborates this: it is per definition a suspension, a temporary suspension, of some important laws, and for that matter of some important rights and liberties. *There is no controlled future in war*: it is more as if the future during war resides in two periods, divided by a single point. That point is the end of war—the point of victory or defeat, the point of established peace. By giving us

control of (future) time, peace is a central issue of social power, as well as an expression of its articulation and structure.

The entire mechanism functions in the following way: the constitution and the laws in general have to be considered as worth the defence and defensible, and as in fact defended (as if the peace is the result of a successful defence, regardless of the fact that the peace is an outcome of a factual war). The attempt to defend the laws is always a strong motivational underpinning. Laws cannot function if they are proclaimed to be non-enforceable. Moreover, accepting non-defence would destroy all their enforceability. Every state has a legal duty to defend itself. This duty is also a moral duty, as long as the existence of (some, or any) laws has a moral justification. Hence, the interpretation of Kant's text as one implying a right (and duty?) to impel all (other) states to comply to one unique and unified law, to compel recalcitrant states to comply in order to "enter" a global juridical condition analogous to the civil condition, while proclaiming noncompliant states as outlaws (because they have a *different articulation of their peace*) and presuming the very reason that stands behind it—appears very totalitarian! For the freedom contained in laws, peace has to be taken as a "truce"—not as a perfect, final, ideal state of affairs from the end of time! That would destroy the difference between jurisprudence and morality, as well as the difference between legality and morality that is founded in the Categorical Imperative. Such morality states that the perfection of others must not be my concern, meaning that others may have whichever different motives for their actions as long as their actions conform to my external freedom. Consequently, privacy would be destroyed, while our lives would be policed. Furthermore, our entitlement to interfere in the domain of the freedom of others would be our right, even our duty. This logic is quite visible in the contemporary practice of humanitarian military interventions. Such actions strongly resemble police actions where the distribution of power and entitlement is totally asymmetrical: all legitimate power and authority are exclusively on one side.

Peace is a thick web of constraints created through mutual agreements, established expectations, threats of sanctions, laws, etc. All these constraints make many of our less than good ends much harder to realize, but they do not make those ends really impossible to achieve. The power of restricting freedom contained in laws is not perfectly efficient—freedom always will be a reservoir of both of autonomy and violence. That is so because the civil condition is one of a *repressed* state of nature—repressed but not "abolished" and "overcome." Hence, if it is confronted with the abovementioned totalitarian ideal of pure and absolute peace, this re-

pressed state of affairs might *erupt* as either total resignation, apathy (implying a passively approached lack of any possible consent), or as pure violence—being an expression of despair and helplessness, thereby indicating a lack of consent in an even stronger way. This would signal that peace has lost its formative power. It would be a sign that control has become unbearable and akin to slavery. The point of being free is to be what you are, not to be something else, nor to be under the control of something you do not identify with, something that is not you. And to be *ruled* is even more than to be controlled. If you are ruled by others without your (sincere) consent – regardless whether “you” are an “I” or a “we”, an individual human being or a people (and for that matter a state)—you are not free.

The remedy here is simple: *tolerance*. There is no necessity, real or normative, that my constitution must be everyone’s constitution. There is a pluralism of our appetites and desires (to survive, to be safe, to prosper—quite Hobbesian)⁹ and what is necessary is not universal obedience but universal tolerance. *It is the limits of possible identification that make tolerance necessary*: I, as an autonomous individual, can delegate or transfer my freedom through my laws (confirmed through my consent) to my state, and in doing so I identify myself with a “we” for whom these laws are “*our*” laws. Universal identity does not seem to be possible: it would make any difference impossible and, what is more important, it would preclude dissent. *This preclusion of dissent would make any consent redundant and irrelevant*. The difference between my *voluntary* (free) participation in a collective legislative “we” and my *involuntary* participation in it would be on a par, while my contribution in making collective decisions would become completely negligible and also redundant. Thus, the difference between freedom and slavery would be lost—not because it is empirically difficult for humankind to become that legislative “we” that we all identify with, but because of a stronger logical matter: because there is a *need for others* in a process of identity formation (and identity is what a holder of autonomy has).

It is easy to conceive that *humans* on Earth would unite in a possible defence against some danger coming from outer space. But the nature of this unification seems to be rather different depending on the nature of this danger: in case of a natural danger some form of cooperation and joint action would suffice. We should then expect the old system (or at least some state of affairs similar to the old one) to be re-established after the looming danger passes. Only if the danger were an *attack*, meaning an attack carried out by some other rational beings, only then would it make sense to conceive of a unification which would create one nation on Earth,

forcing all of us to unite not only in cooperation but also politically. And it is equally easy to conceive that this union, the result of this unification, would survive if the assaulting party also continues to constitute a threat. But, if we were to succeed in destroying the attackers entirely, it is very questionable whether the memory of what happened would suffice to transform the newly created union into a lasting nation!

We can find a very fine corroboration of this in Kant. In paragraph 61 of his *The Metaphysics of Morals* he says the following: "...if an *international* (emphasis – J.B.) state... extends over too wide an area of land, it will eventually become impossible to govern it and thence to protect each of its members, and *the multitude of corporations this would require* (my emphasis) must again lead to a state of war. It naturally follows that *perpetual peace*, the ultimate end of all international right, is an idea incapable of realization" (Kant, 6:350; Nisbet's translation (Reiss, 1971:§171).

My own stance is that war is a necessary means to defend laws and peace. It is the matter of an articulation of the structure and distribution of social power: what will be the structure and the hierarchy of possibly legitimate ends, what will be the structure of the legitimate distribution of results and achievements, as well as which criteria will be accepted and applied to this. This defines who will rule and how, and what will be prohibited. In the end we can conclude that the structure of peace consists in who and what we are, what the content of our life is: which ends we set and attempt to realize. Those ends have to be rational (based on reasons) to be realizable, even if we were a society of devils (Kant, 8:366). They have to be arranged and ordered in a web of achievements and holdings, and this all is a *specific structure and articulation of power*. But all of this is possible because existence of laws allows predictability. Thus, this structure is in fact our heteronomy—a very important part of us. It also includes a real possibility of war. Peace is what we are, but war is its part. The capacity to choose evil is an inevitable and necessary part of our freedom (Babić, 2004:248). We have good reasons not to fall prey to that part, but it will always be with us—as long as we are free. Therefore, despite peace being a state of affairs that successfully avoids war, its achievement is by definition temporary. It cannot become permanent. Kant seems to say the same, at least in *The Metaphysics of Morals* and *Toward Perpetual Peace*.

Notes

* A version of this paper was read at the Symposium "Law, Democracy, and Kant's Three Dimensions of Right", held at NTNU, Trondheim, Norway, December 12-13, 2008. I wish to thank Audun Oefsti and the audience for all their comments.

1. Kant, (1999:456); Kant, “Metaphysik der Sitten (1797),” hereafter quoted in an abbreviated form according to the pagination in *Kant’s Werke, Akademie Ausgabe*, Bd. VI, S. 312 as: (Kant, 6:312) or for “Grundlegung der Metaphysik der Sitten (1785)” in Bd. IV, S. 400 as (Kant, 4:400).
2. Kant (6:312). Mary Gregor, whose translation has been used regularly throughout this article if not indicated otherwise, obscures this by translating the German “ihm” and “man” by “it”: “Mithin das erste, was ihm zu beschliessen obliegt, wenn er nicht allen Rechtsbegriffen entsagen will, der Grundsatz sei: man muesse aus dem Naturzustande, in welchem jeder seinem eigenen Kopfe folgt, herausgehen...—“So, unless it wants to renounce any concept of right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment...”—cf. two other and different translations, first an older one, afterwards one among the latest: 1) Nisbet (in Reiss, 1971:137) translated this part as follows: “Thus the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to adopt the principle that one must abandon the state in nature in which everyone follows his own desires”; 2) David L. Colclasure’s translation (Kleingeld, 2006:111-112) of the same is: “Hence the first principle that one must decide upon if one is not to renounce all concepts of right is the following: one must emerge from the state of nature in which each follows only his own thoughts...”. It is in order to note that Mary Gregor’s and David Colclasure’s translations are less precise than Nisbet’s. Nisbet distinguishes between the German “ihm” and “man”, rightly translating them with “him” and “one”. Gregor and Colclasure conflate the two German terms, translating them exclusively by “it” and “one” respectively.
3. Kant (8:24). Nisbet’s translation (Reiss, 1971:47); D. L. Colclasure’s translation, (Kleingeld, 2006:11). Cf. also Cavallar (1999:5).
4. This can mean two very different things: 1) “ideal” law—one law, final peace, no war possible (after one successful final war to introduce this universal and ideal law in the whole world), or 2) impelling “others”—i. e. other states—to enforce some viable law, i. e. their own law, and not allow a territory to be without any law; in this second case a lawlessness, or for that matter the incapacity to enforce the law, but not a fact that it is a different law, can be a *casus belli*.
5. Kant (8:355); but see also Nisbet translation: “rights cannot be decided by military victory” (Reiss, 1971:104).
6. Kant (8:348-9): “A State of peace among men living together is not the same as the state of nature, which is rather a state of war.” Nisbet’s translation: Reiss, 1971:98).
7. The translation here is Nisbet’s, which again seems to be more appropriate than Mary Gregor’s. The opposite standpoint would clearly violate the principle of moral equality of all those past, present and future humans with those who live prior to the establishment of the final lawful state of affairs, regarding respecting the decisions contained in their laws, including any feature of obligatoriness implied in those decisions and laws.
8. Kant (8:365, my emphasis): “Even if a people were not forced by internal discord to submit to the constraint of public laws, war would still force them from without to do so...” Cf. Ludwig (2004:74ff).

9. Cf. for instance, Hobbes, 1981: Part I, Chapter VI, § 6.

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APPLICATIONS

THE LEGITIMACY OF GLOBAL GOVERNANCE INSTITUTIONS*

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“Legitimacy” has both a normative and a sociological meaning. To say that an institution is legitimate in the normative sense is to assert that it has *the right to rule*—where ruling includes promulgating rules and attempting to secure compliance with them by attaching costs to non-compliance and/or benefits to compliance. An institution is legitimate in the sociological sense when it is widely *believed* to have the right to rule.¹ When people disagree over whether the WTO is legitimate, their disagreements are typically normative. They are not disagreeing about whether they or others *believe* that this institution *has* the right to rule; they are disagreeing about whether it has the right to rule.² This essay addresses the normative dimension of recent legitimacy discussions.

We articulate a global public standard for the normative legitimacy of global governance institutions. This standard can provide the basis for principled criticism of global governance institutions and guide reform efforts in circumstances in which people disagree deeply about the demands of global justice and the role that global governance institutions should play in meeting them. We stake out a middle ground between an increasingly discredited conception of legitimacy that connotes legitimacy with international legality understood as state consent, on the one hand, and the unrealistic view that legitimacy for these institutions requires the same democratic standards that are now applied to states, on the other.

Our approach to the problem of legitimacy integrates conceptual analysis and moral reasoning with an appreciation of the fact that global governance institutions are novel, still evolving, and characterized by reasonable disagreement about what their proper goals are and what standards of justice they should meet. Because both standards and institutions are subject to change as a result of further reflection and action, we do not claim to *discover* timeless necessary and sufficient conditions for legitimacy. Instead, we offer a principled *proposal* for how the legitimacy of these institutions ought to be assessed—for the time being. Essential to our account is the idea that to be legitimate a global governance institution

must possess certain *epistemic* virtues that facilitate the ongoing critical revision of its goals, through interaction with agents and organizations outside the institution. A principled global public standard of legitimacy can help citizens committed to democratic principles to distinguish legitimate institutions from illegitimate ones and to achieve a reasonable congruence in their legitimacy assessments. Were such a standard widely accepted, it could bolster public support for valuable global governance institutions that either satisfy the standard or at least make credible efforts to do so.

“Global governance institutions” covers a diversity of multilateral entities, including the World Trade Organization (WTO), the International Monetary Fund (IMF), various environmental institutions, such as the climate change regime built around the Kyoto Protocol, judges’ and regulators’ networks, the UN Security Council, and the new International Criminal Court (ICC).³ These institutions are like governments in that they issue rules and publicly attach significant consequences to compliance or failure to comply with them—and claim the authority to do so. Nonetheless, they do not attempt to perform anything approaching a full range of governmental functions. These institutions do not seek, as governments do, to monopolize the legitimate use of violence within a permanently specified territory, and their design and major actions require the consent of states.

Determining whether global governance institutions are legitimate—and whether they are widely perceived to be so—is an urgent matter. Global governance institutions can promote international cooperation and also help to construct regulatory frameworks that limit abuses by nonstate actors (from corporations to narcotraffickers and terrorists) who exploit transnational mobility. At the same time, however, they constrain the choices facing societies, sometimes limit the exercise of sovereignty by democratic states, and impose burdens as well as confer benefits. For example, states must belong to the WTO in order to participate effectively in the world economy, yet WTO membership requires accepting a large number of quite intrusive rules, authoritatively applied by its dispute settlement system. Furthermore, individuals can be adversely affected by global rules—for example, by the blacklists maintained by the Security Council’s Sanctions Committee⁴ or the WTO’s policies on intellectual property in “essential medicines.” If these institutions lack legitimacy, then their claims to authority are unfounded and they are not entitled to our support.

Judgments about institutional legitimacy have distinctive practical implications. Generally speaking, if an institution is legitimate, then this

legitimacy should shape the character of both our responses to the claims it makes on us and the form that our criticisms of it take. We should support or at least refrain from interfering with legitimate institutions. Further, agents of legitimate institutions deserve a kind of impersonal respect, even when we voice serious criticisms of them. Judging an institution to be legitimate, if flawed, focuses critical discourse by signalling that the appropriate objective is to reform it, rather than to reject it outright.

It is important not only that global governance institutions be legitimate, but that they are perceived to be legitimate. The perception of legitimacy matters, because, in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by democratic publics. If one is unclear about the appropriate standards of legitimacy or if unrealistically demanding standards are assumed, then public support for global governance institutions may be undermined and their effectiveness in providing valuable goods may be impaired.

Assessing legitimacy

The Social Function of Legitimacy Assessments

Global governance institutions are valuable because they create norms and information that enable member states and other actors to coordinate their behaviour in mutually beneficial ways.⁵ They can reduce transaction costs, create opportunities for states and other actors to demonstrate credibility, thereby overcoming commitment problems, and provide public goods, including rule-based, peaceful resolutions of conflicts (Keohane, 2005). An institution's ability to perform these valuable functions, however, may depend on whether those to whom it addresses its rules regard them as binding and whether others within the institution's domain of operation support or at least do not interfere with its functioning.

It is not enough that the relevant actors agree that *some* institution is needed; they must agree that *this* institution is worthy of support. So, for institutions to perform their valuable coordinating functions, a higher-order coordination problem must be solved (Fearon, 1998).

Once an institution is in place, ongoing support for it and compliance with its rules are sometimes simply a matter of self-interest from the perspective of states, assuming that the institution actually achieves coordination or other benefits that all or at least the more powerful actors regard as valuable. This is a major theme of Russel (1999). Similarly, once the rule of the road has been established and penalties for violating it are in place, most people will find compliance with it to be rational from a purely self-interested point of view. In the latter case, no question of legitimacy arises,

because the sole function of the institution is coordination and the choice of the particular coordination point raises no issues on which people are likely to disagree. Global governance institutions are not pure coordination devices in the way in which the rule of the road is, however. Even though all may agree that some institution or other is needed in a specific domain (the regulation of global trade, for example), and all may agree that any of several particular institutions is better than the no institutional alternative, different parties, depending upon their differing interests and moral perspectives, will find some feasible institutions more attractive than others. The fact that all acknowledge that it is in their interest to achieve coordinated support for some institution or other may not be sufficient to assure adequate support for any particular institution.

The concept of legitimacy allows various actors to coordinate their support for particular institutions by appealing to their common capacity to be moved by *moral reasons*, as distinct from purely strategic or exclusively self-interested reasons. If legitimacy judgments are to perform this coordinating function, however, actors must not insist that only institutions that are *optimal* from the stand-point of their own moral views are acceptable, since this would preclude coordinated support in the face of diverging normative views. More specifically, actors must not assume that an institution is worthy of support only if it is *fully just*. We thus need a standard of legitimacy that is both accessible from a diversity of moral stand-points and less demanding than a standard of justice. Such a standard must appeal to various actors' capacities to be moved by moral reasons, but without presupposing more moral agreement than exists.

Legitimacy and Self-Interest

It is one thing to say that an institution promotes one's interests and another to say that it is legitimate. As Andrew Hurrell points out, the rule-following that results from a sense of legitimacy is "distinguishable from purely self-interested or instrumental behaviour on the one hand, and from straightforward imposed or coercive rule on the other" (Hurrell, 2005). Sometimes self-interest may speak in favour of treating an institution's rules as binding; that is, it can be in one's interest to take the fact that an institution issues a rule as a weighty reason for complying with it, independently of a positive assessment of the content of particular rules. This would be the case if one is likely to do better, from the standpoint of one's own interest, by taking the rules as binding than one would by evaluating each particular rule as to how complying with it would affect one's interests. Yet clearly it makes sense to ask whether an institution that promotes one's interests is legitimate. So legitimacy, understood as the right to rule,

is a moral notion that cannot be reduced to rational self-interest. To say that an institution is legitimate implies that it has the right to rule even if it does not act in accordance with the rational self-interest of everyone who is subject to its rule.

There are advantages in achieving coordinated support for institutions on the basis of moral reasons, rather than exclusively on the basis of purely self-interested ones. First, the appeal to moral reasons is instrumentally valuable in securing the benefits that only institutions can provide because, as a matter of psychological fact, moral reasons matter when we try to determine what practical attitudes should be taken toward particular institutional arrangements. For example, we care not only about whether an environmental regulation regime reduces air pollutants and thereby produces benefits for all, but also whether it fairly distributes the costs of the benefits it provides. Given that there is widespread disagreement as to which institutional arrangement would be optimal, we need to find a shared evaluative perspective that makes it possible for us to achieve the coordinated support required for effective institutions without requiring us to disregard our most basic moral commitments. Second, and perhaps most important, if our support for an institution is based on reasons other than self-interest or the fear of coercion, it may be more stable. What is in our self-interest may change as circumstances change and the threat of coercion may not always be credible, and moral commitments can preserve support for valuable institutions in such circumstances.

For questions of legitimacy to arise there must be considerable moral disagreement about how institutions should be designed. Yet for agreement about legitimacy to be reached, there must be sufficient agreement on the sorts of moral considerations that are relevant for evaluating alternative institutional designs. The practice of making legitimacy judgments is grounded in a complex belief—namely, that while it is true that institutions ought to meet standards more demanding than mere mutual benefit (relative to some relevant non-institutional alternative), they can be worthy of our support even if they do not maximally serve our interests and even if they do not measure up to our highest moral standards.⁶

Legitimacy requires not only that institutional agents are justified in carrying out their roles, but also that those to whom institutional rules are addressed have content-independent reasons to comply with them, and that those within the domain of the institution's operations have content-independent reasons to support the institution or at least to not interfere with its functioning.⁷ One has a content-independent reason to comply with a rule if and only if one has a reason to comply regardless of any positive assessment of the content of that rule. For example, I have a con-

tent-independent reason to comply with the rules of a club to which I belong if I have agreed to follow them and this reason is independent of whether I judge any particular rule to be a good or useful one. If I acknowledge an institution as having authority, I thereby acknowledge that there are content-independent reasons to comply with its rules or at least to not interfere with their operation. Legitimacy disputes concern not merely what institutional agents are morally permitted to do but also whether those to whom the institution addresses its rules should regard it as having authority.

The debate about the legitimacy of global governance institutions engages both the perspective of states and that of individuals. Indeed, as recent mass protests against the WTO suggest, politically mobilized individuals can adversely affect the functioning of global governance institutions, both directly, by disrupting key meetings, and indirectly, by imposing political costs on their governments for their support of institutional policies. Legitimacy in the case of global governance institutions, then, is the right to rule, understood to mean both that institutional agents are morally justified in making rules and attempting to secure compliance with them and that people subject to those rules have moral, content-independent reasons to follow them and/or to not interfere with others' compliance with them.

If it becomes widely believed that an institution does not measure up to standards of legitimacy, then the result may be a lack of coordination, at least until the institution changes to conform to the standards or a new institution that better conforms to them replaces it. Thus, it would be misleading to say simply that the function of legitimacy judgments is to achieve coordinated support for institutions; rather, their function is to make possible coordinated support based on moral reasons, while at the same time supplying a critical but realistic minimal moral standard by which to determine whether institutions are worthy of support.

Justice and Legitimacy

The foregoing account of the social function of legitimacy assessments helps clarify the relationship between justice and legitimacy. Collapsing legitimacy into justice undermines the valuable social function of legitimacy assessments. There are two reasons not to insist that only just institutions have the right to rule. First, there is sufficient disagreement on what justice requires that such a standard for legitimacy would thwart the eminently reasonable goal of securing coordinated support for valuable institutions on the basis of moral reasons. Second, even if we all agreed on what justice requires, withholding support from institutions because they

fail to meet the demands of justice would be self-defeating from the standpoint of justice itself, because progress toward justice requires effective institutions. To mistake legitimacy for justice is to make the best the enemy of the good.

Competing standards of legitimacy

Having explicated our *conception* of legitimacy, we now explore standards of legitimacy: the conditions an institution must satisfy in order to have the right to rule. In this section we articulate three candidates for the appropriate standard of legitimacy—state consent, consent by democratic states, and global democracy—and argue that each is inadequate.

State Consent

The first view is relatively simple. Global governance institutions are legitimate if (and only if) they are created through state consent. In this conception, legitimacy is simply a matter of legality. Legally constituted institutions, created by states according to the recognized procedures of public international law and consistent with it, are ipso facto legitimate or at the very least enjoy a strong presumption of legitimacy.⁸ Call this the International Legal Pedigree View (the Pedigree View, for short). A more sophisticated version of the Pedigree View would require the periodic reaffirmation of state consent, on the grounds that states have a legitimate interest in determining whether these institutions are performing as they are supposed to.⁹

The Pedigree View fails because it is hard to see how state consent could render global governance institutions legitimate, given that many states are non-democratic and systematically violate the human rights of their citizens and are for that reason themselves illegitimate. State consent in these cases cannot transfer legitimacy for the simple reason that there is no legitimacy to transfer. To assert that state consent, regardless of the character of the state, is sufficient for the legitimacy of global governance institutions is to regress to a conception of international order that fails to impose even the most minimal normative requirements on states. Indeed, once we abandon that deeply defective conception of international order, it is hard to see why state consent is even a *necessary* condition for legitimacy.

It might be argued, however, that even though the consent of illegitimate states cannot itself make global governance institutions legitimate, there is an important instrumental justification for treating state consent as a necessary condition for their legitimacy: doing so provides a check on

the tendency of stronger states to exploit weak ones. In other words, persisting in the fiction that all states—irrespective of whether they respect the basic rights of their own citizens—are moral agents worthy of respect serves an important value. This conception of the state, however, is not a fiction that those who take human rights seriously can consistently accept.

The proponent of state consent might reply as follows: “My proposal is not that we should return to the pernicious fiction of the Morality of States. Instead, it is that we should agree, for good cosmopolitan reasons, to regard a global governance institution as legitimate only if it enjoys the consent of all states.” Withholding legitimacy from global governance institutions, no matter how valuable they are, simply because not all states consent to them, however, would purport to protect weaker states at the expense of giving a legitimacy veto to tyrannies. The price is too high. Weak states are in a numerical majority in multilateral institutions. Generally speaking, they are less threatened by the dominance of powerful states within the institutions than they are by the actions of such powerful states acting outside of institutional constraints.

The Consent of Democratic States

The idea that state consent confers legitimacy is much more plausible when restricted to democratic states. On reflection, however, the mere fact of state consent, even when the state in question is democratic and satisfies whatever other conditions are appropriate for state legitimacy, is not sufficient for the legitimacy of global governance institutions.

From the standpoint of a particular weak democratic state, participation in global governance institutions such as the WTO is hardly voluntary, since the state would suffer serious costs by not participating. Yet “substantial” voluntariness is generally thought to be a necessary condition for consent to play a legitimating role.¹⁰ Of course, there may be reasonable disagreements over what counts as substantial voluntariness, but the vulnerability of individual weak states is serious enough to undercut the view that the consent of democratic states is by itself sufficient for legitimacy.

There is another reason why the consent of democratic states is not sufficient for the legitimacy of global governance institutions: the problem of reconciling democratic values with unavoidable “bureaucratic discretion” that plagues democratic theory at the domestic level looms even larger in the global case. The problem is that for a modern state to function, much of what state agents do will not be subject to democratic decisions, and saying that the public has consented in some highly general way to whatever it is that state agents do is clearly inadequate. The difficulty is not in identifying chains of delegation stretching from the individual citizen to

state agents, but rather that at some point the impact of the popular will on how political power is used becomes so attenuated as to be merely nominal. Given how problematic democratic authorization is in the modern state and given that global governance institutions require lengthening the chain of delegation, democratic state consent is not sufficient for legitimacy.

Still, the consent of democratic states may appear to be necessary, if not sufficient, for the legitimacy of global governance institutions. Indeed, it seems obvious that for such an institution to attempt to impose its rules on democratic states without their consent would violate the right of self-determination of the people of those states. Matters are not so simple, however. A democratic people's right of self-determination is not absolute. If the majority persecutes a minority, the fact that it does so through democratic processes does not render the state in question immune to sanctions or even to intervention. One might accommodate this fact by stipulating that a necessary condition for the legitimacy of global governance institutions is that they enjoy the consent of states that are democratic and that do a credible job of respecting the rights of all their citizens.

This does not mean that *all* such states must consent. A few such states may wilfully seek to isolate themselves from global governance (Switzerland only joined the UN in 2002). Furthermore, democratic states may engage in wars that are unnecessary and unjust, and resist pressures from international institutions to desist. It would hardly delegitimize a global governance institution established to constrain unjust warfare that it was opposed by a democratic state that was waging an unjust war. A more reasonable position would be that there is a *strong presumption* that global governance institutions are illegitimate unless they enjoy the ongoing consent of democratic states. Let us say, then, that ongoing consent by rights-respecting democratic states constitutes *the democratic channel* of accountability.¹¹

However valuable the democratic channel of accountability is, it is not sufficient. First, as already noted, the problem of bureaucratic discretion that attenuates the power of majoritarian processes at the domestic level seems even more serious in the case of global bureaucracies. Second, not all the people who are affected by global governance institutions are citizens of democratic states, so even if the ongoing consent of democratic states fosters accountability, it may not foster accountability to *them*. If—as is the case at present—democratic states tend to be richer and hence more powerful than nondemocratic ones, then the requirement of ongoing consent by democratic states may actually foster a type of accountability that is detrimental to the interests of the world's worst-off people. From

the standpoint of any broadly cosmopolitan moral theory, this is a deep flaw of domestic democracies as ordinarily conceived: government is supposed to be responsive to the interests and preferences of the “sovereign people”—*the people whose government it is*—not all people or even all people whose legitimate interests will be seriously affected by the government’s actions (Buchanan, 2003). For these reasons, the consent of democratic states seems insufficient. The idea that the legitimacy of global governance institutions requires democracy on a grander scale may seem plausible.

Global Democracy

Because democracy is now widely thought to be the gold standard for legitimacy in the case of the state, it may seem obvious that global governance institutions are legitimate if and only if they are democratic. And since these institutions increasingly affect the welfare of people everywhere, surely this must mean that they ought to be democratic in the sense of giving everyone an equal say in how they operate. Call this the Global Democracy View.

The most obvious difficulty with this view is that the social and political conditions for democracy are not met at the global level and there is no reason to think that they will be in the foreseeable future. At present there is no global political structure that could provide the basis for democratic control over global governance institutions, even if one assumes that democracy requires little direct participation by individuals. Any attempt to create such a structure in the form of a global democratic federation that relies on existing states as federal units would lack legitimacy, and hence could not confer legitimacy on global governance institutions, because, as has already been noted, many states are themselves undemocratic or lack other qualities necessary for state legitimacy. Furthermore, there is at present no global public—no worldwide political community constituted by a broad consensus recognizing a common domain as the proper subject of global collective decision-making and habitually communicating with one another about public issues. Nor is there consensus on a normative framework within which to deliberate together about a global common interest. Indeed, there is not even a global consensus that some form of global government, much less a global democracy, is needed or appropriate. Finally, once it is understood that it is *liberal* democracy, democracy that protects individual and minority rights, that is desirable, the Global Democracy View seems even more unfeasible. Democracy worth aspiring to is more than elections; it includes a complex web of institutions, includ-

ing a free press and media, an active civil society, and institutions to check abuses of power by administrative agencies and elected officials.

Global governance institutions provide benefits that cannot be provided by states and, as we have argued, securing those benefits may depend upon these institutions being regarded as legitimate. The value of global governance institutions, therefore, warrants being more critical about the assumption that they must be democratic *on the domestic* model and more willing to explore an alternative conception of their legitimacy. In the next section we take up this task.

A complex standard of legitimacy

Desiderata for a Standard of Legitimacy

Our discussion of the social function of legitimacy assessments and our critique of the three dominant views on the standard of legitimacy for global governance institutions (state consent, democratic state consent, and global democracy) suggest that a standard of legitimacy for such institutions should have the following characteristics:

1. It must provide a reasonable public basis for coordinated support for the institutions in question, on the basis of moral reasons that are widely accessible in spite of the persistence of significant moral disagreement—in particular, about the requirements of justice.
2. It must not confuse legitimacy with justice but nonetheless must not allow that extremely unjust institutions are legitimate.
3. It must take the ongoing consent of democratic states as a presumptive necessary condition, though not a sufficient condition, for legitimacy.
4. Although the standard should not make authorization by a global democracy a necessary condition of legitimacy, it should nonetheless promote the key values that underlie demands for democracy.
5. It must properly reflect the dynamic character of global governance institutions: the fact that not only the means they employ, but even their goals, may and ought to change over time.
6. It must address the two problems we encountered earlier: the problem of bureaucratic discretion and the tendency of democratic states to disregard the legitimate interests of foreigners.

The standard of legitimacy must therefore incorporate mechanisms for accountability that are both more robust and more inclusive than that provided by the consent of democratic states.

Moral Disagreement and Uncertainty

The first desideratum of a standard of legitimacy is complex and warrants further explication and emphasis. We have noted that a central feature of the circumstances of legitimacy is the persistence of disagreement about, first, what the proper goals of the institution are (given the limitations imposed by state sovereignty properly conceived), second, what global justice requires, and third, what role if any the institution should play in the pursuit of global justice. Moral disagreement is not unique to global governance institutions, but extends also to the appropriate role of the state.

There are two circumstances in the case of global governance institutions, however, that exacerbate the problem of moral disagreement. First, in the case of the state, democratic processes, at least ideally, provide a way of accommodating these disagreements, by providing a public process that assures every citizen that she is being treated as an equal, through the electoral process, while, as we have seen, democracy is unavailable at the global level. Second, although there is a widespread perception, at least among cosmopolitans broadly speaking, that there is serious global injustice and that the effective pursuit of global justice requires a significant role for global institutions, it is not possible at present to provide a principled specification of the division of institutional labour for pursuing global justice. In part the problem is that there is no unified system of global institutions within which a fair and effective allocation of institutional responsibilities for justice can be devised. How responsibilities for justice ought to be allocated among global institutions and between states and global institutions depends chiefly on the answers to two questions: What are the proper responsibilities of states in the pursuit of global justice, taking into account the proper scope of state sovereignty (because this will determine how extensive the role of global institutions should be), and what are the capabilities of various global institutions for contributing to the pursuit of global justice? But neither of these questions can be answered satisfactorily at present, in part because global governance institutions are so new and in part because people have only recently begun to think seriously about achieving justice on a global scale. So the difficulty is not just that there is considerable moral disagreement about the proper goals of global governance institutions and about the role these institutions should play in the pursuit of global justice; there is also moral *uncer-*

tainty.¹² A plausible standard of legitimacy for global governance institutions must somehow accommodate *the facts of moral disagreement and uncertainty*.

Three Substantive Criteria

We begin with a set of institutional attributes that have considerable intuitive appeal: minimal moral acceptability, comparative benefit, and institutional integrity.

Minimal Moral Acceptability. Global governance institutions, like institutions generally, must not persist in committing serious injustices. If they do so, they are not entitled to our support. On our view, the primary instance of a serious injustice is the violation of human rights. We also believe that the most plausible conception of human rights is what might be called the basic human interest conception. This conception, which we can only sketch in broad outlines here, builds on Joseph Raz's insight that rights generally are normative relations (in particular, duties and entitlements), which, if realized, provide important protections for interests, see Joseph Raz (1986: n 17). On this view, to justify the claim that R is a right, one must identify an interest, support the claim that the interest is of sufficient moral importance to ground duties, explain why the duties are owed to the right holders, and make the case that if the normative relations in question are satisfied, significant protection for the interest will be achieved. Certain rights are properly called human rights because the duties they entail provide especially important protections for basic human interests, given the standard threats to those interests in our world.

What the standard threats are can change over time. For example, when human societies create legal systems and police and courts to enforce laws, they also create new opportunities for damaging basic human interests. For this reason, the content of particular human rights, and even which rights are included among the human rights, may also change, even though the basic interests that ground them do not. For example, all human beings, regardless of where or when they exist, have a basic interest in physical security, but in a society with a legal system backed by the coercive power of the state, adequate protection of this interest requires rights of due process and equal protection under the law.

There is disagreement among basic interest theorists of human rights as to exactly what the list of human rights includes and how the content of particular rights is to be filled out. There is agreement, however, that the list includes the rights to physical security, to liberty (understood as at least encompassing freedom from slavery, servitude, and forced occupa-

tions), and the right to subsistence. Assuming that this is so, we can at least say this much: global governance institutions (like institutions generally) are legitimate only if they do not persist in violations of the least controversial human rights. This is a rather minimal moral requirement for legitimacy. Yet in view of the normative disagreement and uncertainty that characterize our attitudes toward these institutions, it might be hard at present to justify a more extensive set of rights that all such institutions are bound to respect. It would certainly be desirable to develop a more meaningful consensus on stronger human rights standards. What this suggests is that we should require global governance institutions to respect minimal human rights, but also expect them to meet higher standards as we gain greater clarity about the scope of human rights.

For many global governance institutions, it is proper to expect that they should *respect* human rights, but not that they should play a major role in *promoting* human rights. Nonetheless, a theory of legitimacy cannot ignore the fact that in some cases the dispute over whether a global governance institution is legitimate is in large part a disagreement over whether it is worthy of support if it does not actively promote human rights. A proposal for a standard of legitimacy for global governance institutions must take into account the fact that some of these institutions play a more direct and substantial role in securing human rights than others.

When we see the injustices of our world and appreciate that ameliorating them requires institutional actions, we are quick to attribute obligations to institutions and then criticize them for failing to fulfil those obligations. It is one thing to say that it would be a good thing if a particular global governance institution took on certain functions that would promote human rights, however, and quite another to say that it has a duty to do so *and* that this duty is of such importance that failure to discharge it makes the institution illegitimate. There are two mistakes to be avoided here. The first is “duty dumping,” that is, arbitrarily assuming that some particular institution has a duty simply because it has the resources to fulfil it and no other actor is doing so (Buchanan and DeCamp, 2006). Duty dumping not only makes unsupported attributions of institutional responsibility; it also distracts attention from the difficult task of determining what a fair distribution of the burdens—among individuals and institutions—for protecting the human rights in question would be. The second error derives from the first: if one uncritically assumes that the institution has a duty to provide X and also assumes that X is a central matter of justice (as is the case with human rights), then one may conclude that the institution’s failure to provide X is such a serious injustice as to rob the institution of legitimacy. But the fact that an institution could provide X and the fact that X is a

human right does not imply that in refraining from providing X the institution commits a serious injustice. That conclusion would only follow if it were established that the institution has a duty of justice to provide X. Merely pointing out that the institution could provide X—or even showing that it is the only existing institution that can do so—is not sufficient to show that it has a duty of justice or any duty at all to provide X.

We seem to be in a quandary. Contemporary institutions have to operate in an environment of moral disagreement and uncertainty, which limits the demands we can reasonably place on them to respect or protect particular human rights. Furthermore, to be sufficiently general, an account of legitimacy must avoid moral requirements that only apply to some global governance institutions. These considerations suggest the appropriateness of something like the minimal moral acceptability requirement, understood as refraining from violations of the least controversial human rights. On the other hand, the standard of legitimacy should somehow reflect the fact that part of what is at issue in disputes over the legitimacy of some of these institutions is whether they should satisfy more robust demands of justice. In other words, the standard should acknowledge the fact that where the issue of legitimacy is most urgent, there is likely to be deep moral disagreement and uncertainty.

In our view, the way out of this impasse is to build the conditions needed for principled, informed deliberation about moral issues *into the standard of legitimacy itself*. The standard of legitimacy should require minimal moral acceptability, but should also accommodate and even encourage the possibility of developing more determinate and demanding requirements of justice for at least some of these institutions, as a principled basis for an institutional division of labour regarding justice emerges.

Comparative Benefit. This second substantive condition for legitimacy is relatively straightforward. The justification for having global governance institutions is primarily if not exclusively instrumental. The basic reason for states or other addressees of institutional rules to take them as binding and for individuals generally to support or at least to not interfere with the operation of these institutions is that they provide benefits that cannot otherwise be obtained. If an institution cannot effectively perform the functions invoked to justify its existence, then this insufficiency undermines its claim to the right to rule.

“Benefit” here is comparative. The legitimacy of an institution is called into question if there is an institutional alternative, providing significantly greater benefits, that is feasible, accessible without excessive transition costs, and meets the minimal moral acceptability criterion. The most difficult issues, as discussed below, concern trade-offs between comparative

benefit and our other criteria. Legitimacy is not to be confused with *optimal* efficacy and efficiency. The other values that we discuss are also important in their own right; and in any case, institutional stability is a virtue. Nevertheless, if an institution steadfastly remains instrumentally suboptimal when it could take steps to become significantly more efficient or effective, this could impugn its legitimacy in an indirect way: it would indicate that those in charge of the institution were either grossly incompetent or not seriously committed to providing the benefits that were invoked to justify the creation of the institution in the first place. For instance, as of the beginning of 2006 the United Nations faced the issue of reconstituting a Human Rights Commission that had been discredited by the membership of states that notoriously abuse human rights, with Libya serving as chair in 2003.¹³

Institutional Integrity. If an institution exhibits a pattern of egregious disparity between its actual performance, on the one hand, and its self-proclaimed procedures or major goals, on the other, its legitimacy is seriously called into question.

The United Nations Oil-for-Food scandal is a case in point. The Oil-for-Food Program was devised to enable Iraqi oil to be sold, under strict controls, to pay for food imports under the UN-mandated sanctions of the 1990s. The purpose was both to prevent malnutrition in Iraq and to counter Iraqi propaganda holding the United Nations responsible for the deaths of hundreds of thousands of Iraqi children, without relieving the pressure on Saddam Hussein's regime to get rid of its supposed weapons of mass destruction. Yet it led to a great deal of corruption. Oil-for-Food became a huge program, permitting the government of Iraq to sell \$64.2 billion of oil to 248 companies, and enabling 3,614 companies to sell \$34.5 billion of humanitarian goods to Iraq. Yet more than half of the companies involved paid illegal surcharges or kickbacks to Saddam and his cronies, resulting in large profits for corporations and pecuniary benefits for some program administrators, including at least one high-level UN official.¹⁴ The most damning charge is that neither the Security Council oversight bodies nor the Office of the Secretary-General followed the UN's prescribed procedures for accountability. At least when viewed in the light of the historical record of other, perhaps less egregious failures of accountability in the use of resources on the part of the UN, these findings have raised questions about the legitimacy of the Security Council and the secretariat.

It also appears that an institution should be presumed to be illegitimate if its practices or procedures predictably undermine the pursuit of the very

goals in terms of which it justifies its existence. Thus, for example, if the fundamental character of the Security Council's decision-making process renders that institution incapable of successfully pursuing what it now acknowledges as one of its chief goals—stopping large-scale violations of basic human rights—this impugns its legitimacy. To take another example, Randall Stone has shown that the IMF during the 1990s inconsistently applied its own standards with respect to its lending, systematically relaxing enforcement on countries that had rich and powerful patrons (Stone, 2004:577–591; see also Stone, 2002). Similarly, if the WTO claims to provide the benefits of trade liberalization to *all* of its members, but consistently develops policies that exclude its weaker members from the benefits of liberalization, this undermines its claim to legitimacy. If an institution fails to satisfy the integrity criterion, we have reason to believe that key institutional agents are either untrustworthy or grossly incompetent, that the institution lacks correctives for these deficiencies, and that the institution is therefore unlikely to be effective in providing the goods that would give it a claim to our support.

Integrity and comparative benefit are related but distinct. If there are major discrepancies between an institution's behaviour and its prescribed procedures and professed goals, then we can have little confidence that it will succeed in delivering the benefits it is supposed to provide. Integrity, however, is a more forward-looking, dynamic virtue than comparative benefit, which measures benefit solely in terms of the current situation. If an institution satisfies the criterion of integrity, there is reason to be confident that institutional actors will not only deliver the benefits that are now taken to constitute the proper goals of institutional activity, but also that they will be able to maintain the institution's effectiveness if its goals change.

Epistemic Aspects of Legitimacy

Minimal moral acceptability, comparative benefit, and institutional integrity are plausible presumptive substantive requirements for the legitimacy of global governance institutions. It would be excessive to claim that they are necessary conditions simpliciter, because there might be extraordinary circumstances in which an institution would fail to satisfy one or two of them, yet still reasonably be regarded as legitimate. This might be the case if there were no feasible and accessible alternative institutional arrangement, if the non-institutional alternative were sufficiently grim, and if there was reason to believe that the institution had the resources and the political will to correct the deficiency. How much we expect of an institution should depend, *inter alia*, upon how valuable the benefits it provides

are and whether there are acceptable, feasible alternatives to it. For example, we might be warranted in regarding an institution as legitimate even though it lacked integrity, if it were nonetheless providing important protections for basic human rights and the alternatives to relying on it were even less acceptable. In contrast, the fact that an institution is effective in incrementally liberalizing trade would not be sufficient to rebut the presumption that it is illegitimate because it abuses human rights.¹⁵

Our three substantive conditions are best thought of as what Rawls calls “counting principles”: the more of them an institution satisfies, and the higher the degree to which it satisfies them, the stronger its claim to legitimacy (Rawls, 1971).

There are two limitations on the applicability of these three criteria, however. The first is *the problem of factual knowledge*: being able to make reasonable judgments about whether an institution satisfies any of the three substantive conditions requires considerable information about the workings of the institution and their effects in a number of domains, as well as about the likely effects of feasible alternatives. Some institutions may not only fail to supply the needed information, however; they may, whether deliberately or otherwise, make such information either impossible for outsiders to obtain or make obtaining it prohibitively costly. Even if the institution does not try to limit access to the relevant information, it may not be accessible, in suitably integrated, understandable form.

The second difficulty with taking the three substantive conditions as jointly sufficient for legitimacy is the problem of moral disagreement and uncertainty noted earlier. Even if there is sufficient agreement on what counts as the violation of basic human rights, there are ongoing disputes about whether some global governance institutions should meet higher moral standards. As emphasized above, there is not only disagreement but also uncertainty as to the role that some of these institutions should play in the pursuit of global justice, chiefly because we do not have a coherent idea of what the institutional division of labour for achieving global justice would look like.

Furthermore, merely requiring that global governance institutions not violate basic human rights is unresponsive to the familiar complaint that rich countries unfairly dominate them, and that even if they provide benefits to all, the richer members receive unjustifiably greater benefits. Although all parties may agree that fairness matters, however, there are likely to be disagreements about what fairness would consist of, disputes about whether fairness would suffice or whether equality is required, and about how equality is to be understood and even over what is to be made equal (welfare, opportunities, resources, and so on). So, quite apart from

the issue of what positive role, if any, these institutions should play in the pursuit of global justice, there is disagreement about what standards of fairness they should meet internally. There is also likely to be disagreement about how unfair an institution must be to lack legitimacy. A proposal for a public global standard of legitimacy must not gloss over these disagreements.

In the following sections we argue that the proper response to both the problem of factual knowledge and the problem of moral disagreement and uncertainty is to focus on what might be called the *epistemic-deliberative* quality of the institution, the extent to which the institution provides reliable information needed for grappling with normative disagreement and uncertainty concerning its proper functions. To lay the groundwork for that argument we begin by considering two items that are often assumed to be obvious requirements for the legitimacy of global governance institutions: accountability and transparency.

Accountability. Critics of global governance institutions often complain that they lack accountability. To understand the strengths and limitations of accountability as a gauge of legitimacy, we start with a skeletal but serviceable analysis of accountability. Accountability includes three elements: first, standards that those who are held accountable are expected to meet; second, information available to accountability holders, who can then apply the standards in question to the performance of those who are held to account; and third, the ability of these accountability holders to impose sanctions—to attach costs to the failure to meet the standards. The need for information about whether the institution is meeting the standards accountability holders apply means that a degree of transparency regarding the institution's operations is essential to any form of accountability.

It is misleading to say that global governance institutions are illegitimate because they lack accountability and to suggest that the key to making them legitimate is to make them accountable. Most global governance institutions, including those whose legitimacy is most strenuously denied, include mechanisms for accountability (Grant, R. W. and Keohane, R. O. 2005:29–44; see also Keohane R. O. and Nye J. S. in Kahler, M. and Lake, D. A. eds., 2003:386–411). The problem is that existing patterns of accountability are morally inadequate. For example, the World Bank has traditionally exhibited a high degree of accountability, but it has been accountability to the biggest donor countries, and the Bank therefore has to act in conformity with their interests, at least insofar as they agree. This kind of accountability does not ensure meaningful participation by those affected by rules or due consideration of their legitimate interests (for a

discussion see Woods, 2003: 69–80). A high degree of accountability in this case may serve to perpetuate the defects of the institution.

So accountability per se is not sufficient; it must be the right sort of accountability. At the very least, this means that there must be effective provisions in the structure of the institution to hold institutional agents accountable for acting in ways that ensure satisfaction of the minimal moral acceptability and comparative benefit conditions. But accountability understood in this narrow way is not sufficiently *dynamic* to serve as an assurance of the legitimacy of global governance institutions, given that in some cases there is serious disagreement about what the goals of the institution should be and, more specifically, about what role if any the institution should play in the pursuit of global justice. The point is that what the *terms of accountability* ought to be—what standards of accountability ought to be employed, who the accountability holders should be, and whose interests the accountability holders should represent—cannot be definitively ascertained without knowing what role, if any, the institution should play in the pursuit of global justice.

Therefore, what might be called narrow accountability—accountability without provision for contestation of the terms of accountability—is insufficient for legitimacy, given the facts of moral disagreement and uncertainty. Because what constitutes appropriate accountability is itself subject to reasonable dispute, the legitimacy of global governance institutions depends in part upon whether they operate in such a way as to facilitate principled, factually informed deliberation about the terms of accountability. There must be provisions for revising existing standards of accountability and current conceptions of who the proper accountability holders are and whose interests they should represent.

Transparency. Achieving transparency is often touted as the proper response to worries about the legitimacy of global governance institutions (Florini, 2003). But transparency by itself is inadequate. First, if transparency means merely the *availability* of accurate information about how the institution works, it is insufficient even for narrow accountability—that is, for ensuring that the institution is accurately evaluated in accordance with the current terms of accountability. If information about how the institution operates is to serve the end of narrow accountability, it must be (a) accessible at reasonable cost, (b) properly integrated and interpreted, and (c) directed to the accountability holders. Furthermore, (d) the accountability holders must be adequately motivated to use it properly in evaluating the performance of the relevant institutional agents. Second, if, as we have suggested, the capacity for critically revising the terms of accountability is

necessary for legitimacy, information about how the institution works must be available not only to those who are presently designated as accountability holders, but also to those who may contest the terms of accountability.

Broad transparency is needed for critical revisability of the terms of accountability. Both institutional practices and the moral principles that shape the terms of accountability must be revisable in the light of critical reflection and discussion.¹⁶ Under conditions of broad transparency, information produced initially to enable institutionally designated accountability holders to assess officials' performance may be appropriated by agents *external* to the institution, such as non-governmental organizations (NGOs) and other actors in transnational civil society, and used to support more fundamental criticisms, not only of the institution's processes and structures, but even of its most fundamental goals and its role in the pursuit of global justice.

One especially important dimension of broad transparency is *responsibility for public justification*.¹⁷ Institutional actors must offer public justifications of at least the more controversial and consequential institutional policies and must facilitate timely critical responses to them. Potential critics must be in a position to determine whether the public justifications are cogent, whether they are consistent with the current terms of accountability, and whether, if taken seriously, these justifications call for revision of the current terms of responsibility. To help ensure this dimension of broad transparency, it may be worthwhile to draw on, while adapting, the notice and comment procedures of administrative law at the domestic level. See Stewart, R. B. (2003:437–60); Kingsbury, Kirsch, and Stewart (2005). See also Esty (2005); Wickham (2000:617–46); Salzman (2000:769–848); OECD (2004).

Earlier we noted that although comparative benefit, minimal moral acceptability, and integrity are reasonable presumptive necessary conditions for legitimacy, it may be difficult for those outside the institution to determine whether these conditions are satisfied. We suggest that broad transparency can serve as a proxy for satisfaction of the minimal moral acceptability, comparative benefit, and integrity criteria. For example, it may be easier for outsiders to discover that an institution is not responding to demands for information relevant to determining whether it is violating its own prescribed procedures, than to determine whether in fact it is violating them. Similarly, it may be very difficult to determine whether an institution is comparatively effective in solving certain global problems, but much easier to tell whether it generates—or systematically restricts access to—the information outsiders would need to evaluate its effective-

ness. If an institution persistently fails to cooperate in making available to outsiders the information that would be needed to determine whether the three presumptive necessary conditions are satisfied, that by itself creates a presumption that it is illegitimate.

Legitimate global governance institutions should possess three epistemic virtues. First, because their chief function is to achieve coordination, they must generate and properly direct reliable information about coordination points; otherwise they will not satisfy the condition of comparative benefit. Second, because accountability is required to determine whether they are in fact performing their current coordinating functions efficiently and effectively requires narrow transparency, they must at least be transparent in the narrow sense. They must also have effective provisions for integrating and interpreting the information current accountability holders need and for directing it to them. Third, and most demanding, they must have the capacity for *revising the terms of accountability*, and this requires broad transparency: institutions must facilitate positive information externalities to permit inclusive, informed contestation of their current terms of accountability. There must be provision for ongoing deliberation about what global justice requires and how the institution in question fits into a division of institutional responsibilities for achieving it.

Overcoming Informational Asymmetries

A fundamental problem of institutional accountability is that insiders generally have better information about the institution than outsiders. Outsiders can determine whether institutions enjoy the consent of states, and whether states are democratic; but it may be very difficult for them to reach well-informed conclusions about the minimal moral acceptability, comparative benefit, and integrity conditions. Our emphasis on epistemic institutional virtues is well suited to illuminate these problems of asymmetrical information.

First, if institutional agents persist in failing to provide public justifications for their policies and withhold other information critical to the evaluation of institutional performance, we have good reason to believe the institution is not satisfying the substantive criteria for legitimacy.¹⁸ Second, there may be an asymmetry of knowledge in the other direction as well, and this can have beneficial consequences for institutional accountability. Consider issue areas such as human rights and the environment, which are richly populated with independent NGOs that seek to monitor and criticize national governments and global governance institutions and to suggest policy alternatives. Suppose that in these domains there is a division of labour among external epistemic actors. Some individuals and

groups seek information about certain types of issues, while others focus on other aspects, each drawing on distinct but in some cases overlapping groups of experts. Still others specialize in integrating and interpreting information gathered by other external epistemic actors.

The fact that the information held by external epistemic actors is dispersed will make it difficult for institutional agents to know what is known about their behaviour or to predict when potentially damaging information may be integrated and interpreted in ways that make it politically potent. The institutional agents' awareness of this asymmetry will provide incentives for avoiding behaviour for which they may be criticized. A condition of *productive uncertainty* will exist: although institutional agents will know that external epistemic actors do not possess the full range of knowledge that they do, they will know that there are many individuals and organizations gathering information about the institution. Further, they will know that some of the information that external epistemic actors have access to can serve as a reliable proxy for information they cannot access. Finally, they will also know that potentially damaging information that is currently harmless because it is dispersed among many external epistemic agents may at any time be integrated and interpreted in such a way as to make it politically effective, but they will not be able to predict when this will occur. Under these conditions, institutional agents will have significant incentives to refrain from behaviour that will attract damning criticism, despite the fundamental asymmetry of knowledge between insiders and outsiders.

This is not to say that the effects of transparency will always be benign. Indeed, under some circumstances transparency can have malign effects. As David Stasavage points out, "open-door bargaining... encourages representatives to posture by adopting overly aggressive bargaining positions that increase the risks of breakdown in negotiations" (Stasavage, 2004:667–704).

When issues combine highly charged symbolic elements with the need for incentives, conflicts between transparency and efficiency may be severe. Our claim is not that outcomes are necessarily better the more transparent institutions are. Rather, it is that the dispersal of information among a plurality of external epistemic actors provides some counterbalance to informational asymmetries favouring insiders. There should be a very strong but rebuttable presumption of transparency, because the ills of too much transparency can be corrected by deeper, more sophisticated public discussion, whereas there can be no democratic response to secret action by bureaucracies not accountable to the public.

Furthermore, if national legislatures are to retain their relevance—if what we have called the democratic accountability channel is to be effective—they must be able to review the policies of global governance institutions.¹⁹ For legislatures to have information essential to performing these functions, they need a flow of information from transnational civil society. Monitoring is best done pluralistically by transnational civil society, whereas the sanctions aspects of accountability are more effectively carried out by legislatures. With respect both to the monitoring and sanctioning functions, broad transparency is conducive to the principled revisability of institutions and to their improvement through increasingly inclusive criticism and more deeply probing discussion over time.

Institutional agents generally have incentives to prevent outsiders from getting information that may eventually be interpreted and integrated in damaging ways and to deprive outsiders of information that can serve as a reliable proxy to assess institutional legitimacy. The very reasons that make the epistemic virtues valuable from the standpoint of assessing institutional legitimacy may therefore tempt institutional agents to ensure that their institutions do not exemplify these virtues. But institutional agents are also aware that it is important for their institutions to be widely regarded as legitimate. Outsiders deprived of access to information are likely to react as does the prospective buyer of a used car who is prevented from taking it to an independent mechanic. They will discount the claims of the insiders and may conclude that the institution is illegitimate. So if there is a broad consensus among outsiders that institutions are not legitimate unless they exemplify the epistemic virtues, institutional agents will have a weighty reason to ensure that their institutions do so.

Contestation and Revisability: Links to External Actors and Institutions

We have argued that the legitimacy of global governance institutions depends upon whether there is ongoing, informed, principled contestation of their goals and terms of accountability. This process of contestation and revision depends upon activities of actors outside the institution. It is not enough for the institutions to make information available. Other agents, whose interests and commitments do not coincide too closely with those of the institution, must provide a check on the reliability of the information, integrate it, and make it available in understandable, usable form, to all who have a legitimate interest in the operations of the institution. Such activities can produce positive feedback, in which appeal to standards of legitimacy by the external epistemic actors not only increases compliance with existing standards but also leads to improvements in the quality of these standards themselves. For these reasons, in the absence of global

democracy, and given the limitations of the democratic channel described earlier, legitimacy depends crucially upon not only the epistemic virtues of the institution itself but also on the activities of *external epistemic actors*. Effective linkage between the institution and external epistemic actors constitutes what might be called the *transnational civil society channel of accountability*.

The needed external epistemic actors, if they are effective, will themselves be institutionally organized.²⁰ Institutional legitimacy, then, is not simply a function of the institution's characteristics; it also depends upon the broader institutional environment in which the particular institution exists. To borrow a biological metaphor, ours is an ecological conception of legitimacy.

All three elements of our complex standard of legitimacy are now in place. First, global governance institutions should enjoy the ongoing consent of democratic states. That is, the democratic accountability channel must function reasonably well. Second, these institutions should satisfy the substantive criteria of minimal moral acceptability, comparative benefit, and institutional integrity. Third, they should possess the epistemic virtues needed to make credible judgments about whether the three substantive criteria are satisfied and to achieve the ongoing contestation and critical revision of their goals, their terms of accountability, and ultimately their role in a division of labour for the pursuit of global justice, through their interaction with effective external epistemic agents.

The Complex Standard frames the legitimacy of global governance institutions as both dynamic and relational. Its emphasis on the conditions for ongoing contestation and critical revision of the most basic features of the institutions captures the exceptional moral disagreement and uncertainty that characterize the circumstances of legitimacy for this type of institution. While acknowledging the facts of moral disagreement and uncertainty, the Complex Standard includes provisions for developing more robust moral requirements for institutions over time. The Complex Standard also makes it clear that whether the institution is legitimate does not depend solely upon its own characteristics, but also upon the epistemic-deliberative relationships between the institution and epistemic actors outside it.

A Place for Democratic Values in the Absence of Global Democracy

Earlier we argued that it is a mistake to hold global governance institutions to the standard of democratic legitimacy that is now widely applied to states. We now want to suggest that when the Complex Standard of legitimacy we propose is satisfied, important democratic values will be

served. For purposes of the present discussion we will assume, rather than argue, that among the most important democratic values are the following: first, equal regard for the fundamental interests of all persons; second, decision-making about the public order through principled, collective deliberation; and third, mutual respect for persons as beings who are guided by reasons.

If the Complex Standard of legitimacy we propose is satisfied, all three of these values will be served. To the extent that connections between the institutions and external epistemic actors provide access to information that is not restricted to certain groups but available globally, it becomes harder for institutions to continue to exclude consideration of the interests of certain groups, and we move closer toward the ideal of equal regard for the fundamental interests of all. Furthermore, by making information available globally, networks of external epistemic actors are in effect addressing all people as individuals for whom moral reasons, not just the threat of coercion, determine whether they regard an institution's rules as authoritative. Finally, if the Complex Standard of legitimacy is satisfied, every feature of the institution becomes a potential object of principled, informed, collective deliberation, and eligibility for participation in deliberation will not be restricted by institutional interests.²¹

Consistency with Democratic Sovereignty

One source of doubts about the legitimacy of global governance institutions is the worry that they are incompatible with democratic sovereignty. Our analysis shows why and how global governance *should* constrain democratic sovereignty. The standard of legitimacy we propose is designed *inter alia* to help global governance institutions correct for the tendency of democratic governments to disregard the interests and preferences of those outside their own publics. It does this chiefly in two ways. First, the emphasis on the role of external institutional epistemic actors in achieving broad accountability helps to ensure more inclusive representation of interests and preferences over time. Second, the requirement of minimal moral acceptability, understood as non-violation of basic human rights, provides an important protection for the most vulnerable: if this condition is met, democratic publics cannot ignore the most serious "negative externalities" of their policy choices. Global governance institutions that satisfy our standard of legitimacy should not be viewed as undermining democratic sovereignty, but rather as enabling democracies to function justly.

A legitimate global order will include human rights institutions that promote the conditions for the proper functioning of democracy (the right

to basic education, the right to freedom of expression and association, and so on) in countries that are democratizing and help sustain these conditions in countries that already have democratic institutions. Critics of global governance institutions that claim they are illegitimate because they constrain democratic sovereignty either beg the question by assuming that the “will of the people” should not be constrained so as to take into account the interests of those outside their polity or they underestimate the extent to which democracy depends upon global governance institutions.

Having articulated the Complex Standard, and indicated how it reflects several key democratic values, we can now show, briefly, how it satisfies the desiderata for a standard of legitimacy we set out earlier.

1. The Complex Standard provides a reasonable basis for coordinated support of institutions that meet the standard, support based on moral reasons that are widely accessible in the circumstances under which legitimacy is an issue. To serve the social function of legitimacy assessments, the Complex Standard only requires a consensus on the importance of not violating the most widely recognized human rights, broad agreement that comparative benefit and integrity are also presumptive necessary conditions of legitimacy, and a commitment to inclusive, informed deliberation directed toward resolving or at least reducing the moral disagreement and uncertainty that characterize our practical attitudes toward these institutions. In other words, the Complex Standard steers a middle course between requiring more moral agreement than is available in the circumstances of legitimacy and abandoning the attempt to construct a more robust, shared moral perspective from which to evaluate global governance institutions. In particular, the Complex Standard acknowledges that the role that these institutions ought to play in a more just world order is both deeply contested and probably not knowable at present.

2. In requiring only minimal moral acceptability at present, the Complex Standard acknowledges that legitimacy does not require justice, but at the same time affirms the intuition that extreme injustice, understood as violation of the most widely recognized human rights, robs an institution of legitimacy.

3. The Complex Standard takes the ongoing consent of democratic states to be a presumptive necessity, though not a sufficient condition for legitimacy.

4. The Complex Standard rejects the assumption that global governance institutions cannot be legitimate unless there is global democracy, but at the same time promotes some of the key democratic values, including informed, public deliberation conducted on the assumption that every individual has standing to participate and the requirement that key institutional policies must be publicly justified.

5. The Complex Standard reflects a proper appreciation of the dynamic, experimental character of global governance institutions and of the

fact that not only the means they employ but even the goals they pursue may and probably should change over time.

6. The Complex Standard's requirement of a functioning transnational civil society channel of accountability—an array of overlapping networks of external epistemic actors—helps to compensate for the limitations of accountability through democratic state consent.

The central argument of this essay can now be summarized. The Complex Standard provides a reasonable basis for agreement in legitimacy assessments of global governance institutions. When the comparative benefit condition is satisfied, the institution provides goods that are not readily obtainable without it. These goods, however, can be reliably provided only if coordination is achieved, and achieving coordination without excessive costs requires that the relevant agents regard the institution's rules as presumptively binding—that is, that they take the fact that the rule is issued by the institution as a content-independent reason for compliance. The instrumental value of institutions that satisfy the comparative benefit condition also gives individuals generally a content-independent reason not to interfere with the functioning of the institutions. Satisfaction of the minimal moral acceptability condition rules out the more serious moral objections that might otherwise undercut the instrumental reasons for supporting the institution. Satisfaction of the other conditions of the Complex Standard, taken together, provides moral reasons to support or at least not interfere with the institution. Among the most important of these reasons is that the institution has epistemic virtues that facilitate the development of more demanding standards and the progressive improvement of the institution itself. Thus, when a global governance institution meets the demands of the Complex Standard, there is justification for saying that it has the right to rule, not merely that it is beneficial.

Conclusion

In this essay we have offered a *proposal* for a public standard of legitimacy for global governance institutions. These institutions supply important benefits that neither states nor traditional treaty-based relationships among states can provide, but they are quite new, often fragile, and still evolving. Politically mobilized challenges to the legitimacy of these institutions jeopardize the support they need to function effectively, in spite of the fact that these challenges are typically unprincipled and possibly grounded in unrealistic demands that confuse justice with legitimacy. A principled global public standard of legitimacy could facilitate more responsible criticism while at the same time providing guidance for im-

provement, through a process of institutionalized, collective learning, both about what it is reasonable to expect from global governance institutions and about how to achieve it. Our hope is that the proposal offered in this paper serves these purposes.

Notes

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1. A thorough review of the sociological literature on organizational legitimacy can be found in Suchman (1995:571–610).

2. For an excellent discussion of the inadequacy of existing standards of legitimacy for global governance institutions, see Bodansky (1999:596–624). For an impressive earlier book on the subject, see Franck (1990). Franck’s account focuses on the legitimacy of rules more than institutions and in our judgment does not distinguish clearly enough between the normative and sociological senses of legitimacy.

3. A large and growing literature exists on global governance. See, for example, Prakash and Hart (1999); Nye and Donahue (2000); Held and McGrew (2002).

4. Erika de Wet, “The Security Council as Legislator/Executive in Its Fight against Terrorism and against Proliferation of Weapons of Mass Destruction: The Question of Legitimacy” (presentation at the conference “Legitimacy and International Law,” Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, June 14, 2006).

5. The emphasis here on the coordinating function should not be misunderstood: global governance institutions do not merely coordinate state actions in order to satisfy pre-existing state preferences. As our analysis will make clear, they can also help shape state preferences and lead to the development of new norms and institutional goals.

6. Legitimacy can also be seen as providing a “focal point” that helps strategic actors select one equilibrium solution among others. For the classic discussion of focal points, see Schelling (1960:ch. 3). For a critique of theories of cooperation on the basis of focal point theory, and an application to the European Union, see Geoffrey Garrett and Barry Weingast “Ideas, Interests, and Institutions: Construct-

ing the European Community's Internal Market," in Goldstein and Keohane, eds. (1993:178–85).

7. Most contemporary analytic philosophical literature on legitimacy tends to focus exclusively on the legitimacy of the state and typically assumes a very strong understanding of legitimacy. In particular, it is assumed that legitimacy entails (1) a content-independent moral obligation to comply with all institutional rules (not just content-independent moral reasons to comply and/or a content-independent moral obligation to not interfere with others' compliance), (2) being justified in using coercion to secure compliance with rules, and (3) being justified in using coercion to exclude other actors from operating in the institution's domain. See, for example, Wellman and Simmons (2005). It is far from obvious, however, that this very strong conception is even the only conception of legitimacy appropriate for the state, given what is sometimes referred to as the "unbundling" of sovereignty into various types of decentralized states and the existence of the European Union. Be that as it may, this state-centred conception is too strong for global governance institutions, which generally do not wield coercive power or claim such strong authority. For a more detailed development of this point, see Allen Buchanan, "The Legitimacy of International Law," in Besson and Tasioulas (2010).

8. This view was forcefully expressed by Professor Yoram Dinstein of Tel Aviv University, in comments on a draft of this essay.

9. For a more detailed discussion, see Buchanan (2003) especially chapter 5.

10. For a perceptive discussion of how consent to new international trade rules in the Uruguay Round (1986–94) was merely nominal, since the alternatives for poor countries were so unattractive, see Steinberg (2002:339–74).

11. How the requirement of ongoing consent should be operationalized is a complex question we need not try to answer here; one possibility would be that the treaties creating the institution would have to be periodically reaffirmed.

12. For a valuable discussion that employs a different conception of normative uncertainty, see Monica Hlavac, "A Developmental Approach to the Legitimacy of Global Governance Institutions" (unpublished paper).

13. In March 2005, Secretary-General Kofi Annan called for the replacement of the Commission on Human Rights (fifty-three members elected from slates put forward by regional groups) with a smaller Human Rights Council elected by a two-thirds vote of members of the General Assembly (see his report "In Larger Freedom," A/59/2005, § 183).

14. For the report of the Independent Inquiry Committee into the United Nations Oil-for-Food Program (the Volcker Committee), dated October 27, 2005, see www.iic-offp.org/story27oct05.htm.

15. We are indebted to Andrew Hurrell for this example.

16. For a discussion of the role of critical revisability in practical reasoning, with parallels to theoretical reasoning, see Buchanan (1975:395–408).

17. For an illuminating account of the legitimacy of health care institutions that emphasizes responsibility for justifications, see Daniels and Sabin (1997:303–50).

18. The analogy in the economics of information is to the market for used cars. A potential buyer of a used car would be justified in inferring poor quality if the

seller were unwilling to let him have the car thoroughly examined by a competent mechanic. See Akerlof (1970:488–500).

19. On the role of legislatures with respect to the legitimacy of an international legal order, see Wolfrum, R. “Legitimacy in International Law: Some Introductory Considerations” (paper prepared for the conference “Legitimacy in International Law” at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, June 13–14, 2006).

20. We use the term “external epistemic actor” here broadly, to include individuals and groups outside the institution in question who gain knowledge about the institution, interpret and integrate such knowledge, and exchange it with others, in ways that are intended to influence institutional behaviour, whether directly or indirectly (through the mediation of the activities of other individuals and groups).

21. On our view, the legitimacy of global governance institutions, at present at least, does not require participation in the critical evaluation of institutional goals and policies by all who are affected by them; but if the standard of legitimacy we recommend were accepted, opportunities for participation would expand.

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THE INTERNATIONAL LAW OF PIRACY

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“Piracy” is frequently referred to as the quintessential example of “international criminal law.” But, despite the rhetoric, examples of any legal results flowing from that characterization are very rare. The First American statute relating to “piracy” was passed in 1790 and immediately ran into difficulties. It provides, in its section 12, for example, for designating as “pirates” those giving assistance to “pirates.” Among the first defendants were two pilots (surnamed Howard and Beebee) in Delaware who had guided a suspicious vessel to anchorage (in 1818 the case is in 3 [Bushrod] Washington 340). The two defendants were acquitted by a jury. The second statute, which survives today (18 U.S. Code §1651), was passed in 1819 (3 Stat. [1850 ed.] 510) and continued in 1820 (3 Stat. [1850 ed.] 600). It tries to avoid the problems of the 1790 statute by making criminal at United States law “piracy as defined by the law of nations.” Since, as noted below, there is no clear definition of piracy under the presumed “law of nations,” this amounts to delegating to judges the capacity to define a “crime” after it is committed. But “common law crimes,” while theoretically possible, have not been considered a proper basis for criminal prosecution in the United States since 1816 (*U.S. v. Coolidge*, 14 U.S. [1 Wheaton] 415 [1816]). It is an interesting sidelight on this discussion that the American jurist most insistent on maintaining the validity of the statute of 1819 was Joseph Story (see *U.S. v. Smith*, 18 U.S. [5 Wheaton] 20 [1820]), who dissented from *U.S. v. Coolidge* in 1816. Above the current (1936) codification of the law of 1820, the following note appears: “In light of far reaching developments in the field of international law and foreign relations, the law of piracy is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion...” There has been no known criminal conviction under the 1820 statute for over a century, although it has been discussed in several cases.

Although “common law crimes” survive theoretically in the United Kingdom, “piracy” was defined there by statute in 1700. 11 & 12 William III c. 7 (1700). But the British definition seems to have had “pirates” sub-

ject to British courts in mind rather than a generality. Indeed, article VIII of the Statute expressly refers to “Pirates” as those who are “natural-born Subjects, or Denizens of this Kingdom” committing “any Act of Hostility, against others his Majesty’s Subjects... under Colour of any Commission from any foreign Prince or State.” There are repeated references to the reach of the Parliament of England, presumably a reference to jurisdiction to prescribe.

Attempts at codification have been made internationally. The League of Nations attempted one in 1926. This purported codification was severely criticized and eventually dropped as not “of sufficient real interest in the present state of the world to justify its inclusion in the programme of the (proposed) conference” and the Assembly of the League requested the Council to arrange for the codification conference without including “piracy” in its proposed agenda.

The Harvard Research was the result. A Committee was set up by the Harvard Research program to consider the international law of “piracy” independently of the efforts of the League and its Reporter (M. Matsuda). The Harvard Research reporter was Professor Joseph W. Bingham of Stanford University.¹

The result of this effort was a full draft Convention of 19 articles, the last one, obviously relevant to “piracy” and *de lege ferenda*, being a commitment to the peaceful settlement of disputes arising out of the interpretation or application of the Convention and referring to arbitration by a panel set up in 1907 or adjudication by the Permanent Court of International Justice set up in 1920.

The Harvard Researchers recognized immediately that the public international law relating to “piracy,” if any such existed, had to be analyzed separately from municipal law: “[P]iracy under the law of nations [by which the authors clearly meant public international law, although the coincidence of the two is subject to challenge, but this is not the place to analyze the matter further] and piracy under municipal law are entirely different subject matters and... there is no necessary coincidence of fact-categories covered by the terms in any two systems of law” (“Harvard Research,” 1932:749; the Researchers recognized this split at “Harvard Research,” 1932:752;754). The Harvard Researchers adopted the view that “pirates are not criminals by the laws of nations, since there is no international agency to capture them and no international tribunal to punish them and no provision in the laws of many states for punishing foreigners whose piratical offense was committed outside the state’s ordinary jurisdiction...” (“Harvard Research,” 1932:756).

The Harvard Researchers adopted this view not only for purposes of discussion, but as the jurisprudential basis for their draft Convention: "The theory of this draft convention, then, is that piracy is not a crime by the law of nations. It is the basis of an extraordinary jurisdiction in every state to seize and to prosecute and punish persons, and to seize and dispose of property, for factual offenses which are committed outside the territorial and other ordinary jurisdiction of the prosecuting state and which do not involve attacks on its peculiar interests" ("Harvard Research," 1932:760).

As to the key jurisdictional point, the Harvard Researchers do not seem to have undertaken the research proper to their product. Instead, resting on argumentative secondary sources, much of it by scholars who do not seem to have done much primary research either, the Harvard Researchers said: "Indeed it is difficult to find cases of exercises of jurisdiction over piracy which would not be supported on one or more of the ordinary grounds. They are very rare" ("Harvard Research," 1932:761). Recourse is then had to writers who support "universal jurisdiction" not on the basis of state practice, real incidents, diplomatic correspondence and municipal court cases referring to what was asserted to be international law by a municipal judge, but on the basis only of the writers' conceptions of the structure of the international legal order and filtered interpretations of state practice asserted to exist but difficult to demonstrate in particulars. Thus "naturalist" scholars, such as Judge Joseph Story, are quoted extensively, but their conclusions and jurisprudential viewpoint are not adopted.

Instead, the most influential single publicist whose views are cited at length and for many points of approach is a German "positivist," Paul Stiel (see Stiel, 1905). Stiel regarded the jurisprudential split between "naturalists" and "positivists" as a split between Anglo-American jurists, whom he regarded as "naturalists" despite the cases and the writings of John Marshall, Richard Henry Dana and others, and the "Kontinentalen" as positivists despite the writings of Grotius, Pufendorf and others. From this point of view, and without much detailed analysis, Stiel concluded that a definition is possible: "Piracy is a non-political professional course of forcible robbery against nearly all countries undertaken at sea." From this he isolated the elements of the legal concept, including location (high seas, the word "high" seems to have been inserted by him here), physical means (force), intention (to take property), and whom (anybody, disregarding his own modifying word, "nearly"), purpose (private enrichment), etc. Since this framework excludes private erring or the regular course of raiding attributed (falsely) by many European publicists to the Barbary States before 1830 and to others, and yet such activities had been routinely been called "piracy" by many European scholars and some European (and

American) courts, Stiel had some difficulty. He resolved this not by reconsidering his definition or breaking the concept into parts but simply by asserting the old state-authorized "piracy" to be obsolete, even though there seemed to him to be some similarities between the acts for which a "piracy" conviction was obtained by English officials in Singapore in 1858 and the Roman practice against Illyrian raiders. His analysis is not deep and his assertion about the Malayan case of 1858 is unattributed and not evidenced in any other known source; his citation to Roman practice is not to any original source, but to the great nineteenth century German historian of Rome, Theodore Mommsen. This leads Stiel into further difficulties when he finally corns to consider the doctrinal aspect of Sir Stephen Lushington's opinion in *The Serhassan* (Pirates) case, and those difficulties are avoided rather than solved by relegating the discussion to the section on political ends, denying that the legal concept of "piracy" applies to political actors but finding some states to be capable of being classified "piratical" because they lack political goals for their takings. It is not at all clear that the desire of *The Serhassan* communities to be free of British visits and other influences, which prompted the attack on British warships that led to the punitive raid held by Lushington to entitle the victors to the bounty paid under British statutory authority to those who engage "pirates," was non-political, and Stiel does not explain why he classifies it as such.

Similarly, the British position in the Huascar correspondence with Peru is not analyzed. In that correspondence between the British and Peru, the British suggestion that unrecognized "rebels" can be properly considered "pirates" as a matter of international law is dismissed by Peru and British non-governmental experts (see Rubin, 1998:291-304; the primary sources are all cited there) as questionable because as long as the rebels' victims are only government vessels of their own, state nobody would consider them "pirates," and an *ad hoc* denomination as "pirates" solely because of the nationality of the victim vessel seems more than any criminal law conception should bear.

Now, none of this analysis of Stiel diminishes the utility of Stiel's proposal *de lege ferenda* for the law of "piracy" as it might have been acceptable to states in the early years of the 20th century, and the use of Stiel's suggestions regardless of the doubtful soundness of the historical and legal evidence on which they rest is justified for that purpose. Indeed, there is much in Stiel's work that could as well have been based on a more thorough analysis, and, regardless of soundness, seems consistent with the conclusions possible to reach from cases and jurisprudential discussions. In taking the general orientation proposed by Stiel as the basis for their

own draft, the Harvard Researchers thus did not necessarily diminish the value of their proposal as an exercise *de lege ferenda*.

In their use of earlier scholarship in general, however, the Harvard Researchers themselves seemed somewhat confused. Long quotations from Stiel are preceded or followed with what appear to be supporting quotations from a variety of sources addressing different problems from different jurisprudential perspectives and at different times. Article 3, the definition of “piracy” for purposes of, the draft Convention, quotes at some length from what seem to be 54 different sources in addition to Stiel, mostly European publicists of the 19th century, who were supposed to support in one way or another various parts of the proposed definition. There is no apparent attempt to evaluate those writings by jurisprudential view or any other clue as to their relative persuasiveness; there is no chronological consistency or indication that perhaps the rules found persuasive in Italy or other states deriving their experience from Roman or Mediterranean interactions were rejected by world-stage actors, like England in the 17th century and later, because of possible differences in the political structure of the overall society whose trade was to be protected from interference, or the self-image of the state accepting or denying the role of world policeman against “piracy.” Thus, the Harvard draft must be evaluated on its own merits as a legislative proposal, and cannot be supported as a reflection of a scholarly analysis of precedent and theory. Indeed, the Researchers themselves seem to throw up their hands in dismay with regard to the definition of “piracy”:

An investigation finds that instead of a single relatively simple problem, there are a series of difficult problems which have occasioned a great diversity of professional opinion. In studying the content of the [definition] article, it is useful to bear in mind the chaos of expert opinion as to what the law of nations [*sic*] includes, or should include, in piracy. There is, no authoritative definition. Of the many definitions which have been proposed, most are inaccurate, both as to what they literally include and as to what they omit. Some are impromptu, rough descriptions of a typical piracy (“Harvard Research” 1932:769).

In these circumstances, the legal analysis implicit in the Harvard draft is of minimal interest.

As an exercise in proposing a legal formulation taking due account of the confusions of the period regarding “piracy” and the persistence of the concept as a factor in justifying some legal results, the Harvard draft has had a major impact on the development of legal thought. For present pur-

poses only the definitional article and the articles dealing with jurisdiction seem important. They say:

Article 3: Piracy is any of the following acts, committed in a place not within the territorial jurisdiction of any state:

1. Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without a bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character.

2. Any act of voluntary participation in the operation of a ship with knowledge of facts which make it a pirate ship.

3. An act of instigation or of intentional facilitation of an act described in paragraph 1 or paragraph 2 of this article.

Article 4:

1. A ship is a pirate ship when it is devoted by the persons in dominant control to the purpose of committing an act described in the first sentence of paragraph 1 of Article 3, or to the purpose of committing any similar act within the territory of a state by descent from the high sea, provided in either case that the purposes of the persons in dominant control are not definitely limited to committing such acts against ships or territory subject to the jurisdiction of the state to which the ship belongs...

Article 6: In a place not within the territorial jurisdiction of another state, a state may seize a pirate ship or a ship taken by piracy and possessed by pirates, and things or persons on board.

Article 7:

1. In a place within the territorial jurisdiction of another state, a state may not pursue or seize a pirate ship or a ship taken by piracy and possessed by pirates; except that if pursuit of such a ship is commenced by a state within its own territorial jurisdiction or in a place not within the territorial jurisdiction: of any state, the pursuit may be continued into or over the territorial sea of another state and seizure be made there, unless prohibited by the other state...

Article 9: If a seizure because of piracy is made by a state in violation of the jurisdiction of another state, the state making the seizure shall, upon the demand of the other state, surrender or release the ship, things and persons seized, and shall make appropriate reparation...

Article 13:

1. A state, in accordance with its law, may dispose of ships and other property seized because of piracy.
2. The law of the state must conform to the following principles:
 - (b) Claimants of any interest in the property are entitled to a reasonable opportunity to prove their claims...

Article 14:

1. A state which has lawful custody of a person suspected of piracy may prosecute and punish that person.
2. Subject to the provisions of this convention, the law of the state which exercises such jurisdiction defines the crime, governs the procedure and prescribes the penalty...
3. A state may intercede diplomatically to assure [fair and humane treatment] to one of its nationals, who is accused in another state.

Weaknesses in the draft are immediately apparent. As to the substance of the offense, why are “rape,” “wound,” “enslave,” and “imprison” there? There seem to be no cases supporting any such inclusions however horrible those acts may be. Participation in the slave trade had been expressly ruled out of European (including British) definitions when the trade was a serious matter in international commerce (see *The Le Louis* [1817] 2 Dods. 210: “No lawyer, I presume, could be found hardy enough to maintain that an indictment for piracy could be supported by the mere evidence of trading in slaves. Be the malignity of the practice what it may...” *Cf.* *The Antelope*, 23 U.S. [10 Wheaton] 66 [1825]). And if “rape,” “wound” and “imprison” should be included merely because they are serious and violent offenses, why not “torture” or even generally “assault”?

Why is there a distinction drawn between acts “committed in a place not within the territorial jurisdiction of any state” for the purpose of defining the offense, and an act otherwise within the definition (indeed, more broadly stated in Article 4 also to include “any similar act”) “within the territory of a state by descent from the high sea” for the purpose of defining a “pirate ship”? The definition of what is “piracy” in article 3 includes an implied definition of who is a “pirate” (whoever commits an act of defined “piracy” as well as any of the fringe connections specified in paragraphs 2 and 3 of that article). Article 4 defines a “pirate ship” more broadly. It would seem that there could conceivably be a “pirate ship” with no “pirates” on board and that had never been involved in the commission of an act of “piracy” if all its assaults were raids ashore. Presumably to make sense of this, it was to establish a category for ships not wholly lacking nationality from which an act of “piracy” within the definition of article 3 could be committed. But why, if the attacking vessel had national

character, should the law of “piracy” come into play at all? At least, it is not clear why a ship which had been involved in shore raids should be considered a base of piratical acts when it acted at sea, and the identical vessel that had not previously committed shore raids would not be considered a base for “piratical” acts on the high sea unless it had first lost its national character. And if any vessel had first lost its national character, it would seem to be within the definition of a base of “piratical” acts at sea whether or not it had first been involved in shore raids. Article 4 seems senseless.

As to jurisdiction, clearly territorial jurisdiction is dominant and pursuit into the territorial waters of any state can be forbidden under article 7. The language shifts the burden to the territorial sovereign to prohibit the chase, rather than limiting the authority of the policing state to pursuit of a “pirate,” but that seems to be as far as the Harvard Researchers were willing to go to meet the British position in principle (it might be pointed out that in the *Third United Nations Law of the Sea Conference* the British argued for a definition regarding jurisdiction over “piracy” that Peru argued against (see Rubin, 1998:391). Article 9 seems to take even that concession back by providing not only for a turning over to the territorial sovereign of the persons and property seized, but even the paying of reparations.

Finally, as to “universal” jurisdiction, article 13 refers back to the lawfulness of the seizure to determine if the seizing state can apply its own law to property seized. If the seizure was “lawful,” then the seizing state can apply its own law, apparently even if there is no identifiable national interest in the incident beyond the fact of the seizure by its officials. Article 6 appears to make lawful (although the word is not used) the seizure of “a pirate ship” or a ship “taken and possessed by pirates,” and the property connected with it; but the same seizure of the same ship and property would appear to be unlawful if the ship had been used for depredations only “against ships or territory subject to the jurisdiction of the state to which the ship belongs” (article 4). In that latter case, the ship would not be classifiable as a “pirate ship” and whether the ship's company were “pirates” could not be determined until after the seizure; the seizure itself could not be regarded as “lawful” when done. And if the ship had not in the first instance been “taken by piracy,” but had been lawfully acquired, or even taken by robbery under the law of some territorial state while not on the high sea and not by descent from the high sea, then it is not clear that any taking by a second country's officials would be “lawful” in the sense of article 6. And if article 6 not did make the seizure “lawful,” then article 13 would apparently not apply. This construction opens up compli-

cations of a magnitude that cannot repay further analysis in this place since the Convention has never been adopted. But it is clear that the provisions as drafted do not represent a simple assertion of universal jurisdiction over ships and property involved in "piracy," or of universal jurisdiction with a simple exception. This gingerly handling of ships and property involved in alleged "piracy" is particularly interesting as showing a complete denial of the concepts of a universal international law (or law of nations) despite the use of the phrase "law of nations" by Blackstone and the framers of the American Constitution; concepts which included all maritime law with the "law of nations" and denied the legal significance of the place or sovereign authority of the tribunal erected to apply that supposedly universal law. The implication is not only that there is a cloud on the notion of universal jurisdiction over the goods involved in suspected "piracy" cases but that the same rules of "standing" applied to determine which sovereigns' courts should even hear the case; that standing *ratione materiae* and standing *ratione personae* must both be present in any "piracy" adjudication.

Article 14 seems to attempt to change that situation with regard to criminal trials, but again the universality of the jurisdiction is made to rest on the "lawfulness" (without defining what "law" applies) of the "custody"; and that lawfulness seems to depend on the interpretation of article 6. In the Researchers' commentary to article 6 no clue is given as to the complications involved; the Researchers seem to have thought that article 6 merely codified an ancient "right of any state to capture on the high sea a foreign ship which has committed piracy or is the booty of pirates" ("Harvard Research" 1932:832). But there is no citation to any case or writer to support this grand assertion, and it seems wrong both historically and legally to the degree that it ignores the general international law of "standing." It seems to reflect the misconceptions of the time growing out of British assertions of a world-wide policing jurisdiction taken as a matter of policy and applies to foreign military vessels of non-European subordination in the absence of *animus furandi*, and not applied by any state to "pirates" in the context of the Harvard Research, i.e., persons acting *animus furandi* within article 3 as "criminals" under the laws of all states.

There are many other peculiarities and questions raised by the Harvard Research draft Convention on Piracy, but since it was presented *de lege ferenda* and was not in fact adopted as such, it seems unnecessary to analyze it further in this place.

In 1931, while the Harvard Research was still underway, there was an incident in the Far East that resulted in jurisdiction being exercised over accused "pirates" in the absence of a link to some traditional basis for jurisdiction to prescribe. The incident occurred between Chinese vessels

on the high seas and the capture of the accused “pirates” was effected by a British naval vessel, *H.M.S. Somme*, apparently (the report is not entirely clear) also on the high sea (as defined by the British). The accused were taken in to the British tribunal in Hong Kong and there convicted of “piracy” by a British criminal court. The question was referred all the way to the highest British tribunal with jurisdiction over colonial courts, the Judicial Committee of the Privy Council. The opinion there was unanimous among the five British judges, and delivered by Viscount Sankey, the Lord Chancellor. It does not mention any jurisdictional doubts (see *In re Piracy jure gentium* [1934] A.C. 586; *British International Law Cases*, 1964:§836). As to the point of substance, the opinion seems to treat British precedents and writings, as if evidentiary of the evolving public international law regarding “piracy” and not merely evidence of an evolving British municipal law. The *Huascar* correspondence is referred to with a single sentence reciting the facts, followed by another single sentence saying merely: “The British Admiral justly considered that *Huascar* was a pirate and attacked her” (the sole citation to the case is to Parliamentary Paper, Peru No. 1 1877, presumably Parliamentary Papers 1877 LXXXVIII 613 [Peru No. 1]). Dr. Lushington’s opinion in both the *Serhassan* (Pirates) and the *Magellan Pirates* cases, and the American case, the *Ambrose Light* are cited for the proposition that an actual robbery is not required for the crime of “piracy” to be completed. There is no notice of the fact that in all three cases there was no *animus furandi* at all, and that this lack might indicate that something other than the English crime of “piracy” might have been involved; the assumption is unstated that the legal word “piracy” covers both the acts descended from the English notion of robbery within the jurisdiction to prescribe, enforce and adjudicate of English Admiralty tribunals and acts of interference with ocean shipping whatever the motive, and some assumption of British legal rights to police the seas. The confusion of concepts seems to have been complete.

It is noteworthy that the case is a British case, and adopts the British view of natural law and British jurisdiction as an incident of an assumed universal jurisdiction. Although both the Harvard Research draft Convention and the League of Nations draft are cited with approval, there is no analysis of either except on the most superficial level. Other European publicists are cited; it appears that all the citations to sources other than the usual English sources were taken from the Harvard Research, at least all those cited seem on cursory inspection to appear also in the Harvard Research and the comprehensiveness of the Harvard Research is praised by Viscount Sankey.

The Privy Council’s conclusion was:

A careful examination of the subject shows a gradual widening of the earlier definition of piracy to bring it from time to time in consonance with situations either not thought of or not in existence when the older juriconsults were expressing their opinions... [Their Lordships] having examined all the previous cases, all the various statutes and all the opinions of the various juriconsults cited to them, they have come to the conclusion that the better view and the proper answer to give to the question addressed to them is... that actual robbery is not an essential element in the crime of piracy *jure gentium* (*In re Piracy jure gentium* 600, 3 *British International Law Cases*, 1964:§843).

One other case was rescued from oblivion in 1932 and should be mentioned as evidentiary of the tendency of Anglo-Americans at the time to assert universal jurisdiction even where unnecessary to support the particular adjudication, and to cover all “piracy” cases with verbiage of a generality unnecessary and inappropriate by current standards to criminal proceedings. In 1922 an American court in the Philippines affirmed a conviction for “piracy” against “certain Moros from the Philippines” who boarded a Dutch boat in the territorial waters of an island in the Dutch East Indies, raped the women and sank the boat with the men on board (who escaped to shore). An appeal on the basis of lack of jurisdiction was disallowed and the prison term was changed to a death penalty for the one of the two defendants (Lol-Lo) who had committed the rape (*People v. Lol-Lo and Saraw*, 43 *Philippine Islands* 19 as reported in *1 Annual Digest of Public International Law Cases*, Case No. 112 [Williams and Lauterpacht, 1932:164-165]). As reported, the decision says: “Nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state,” because “The jurisdiction of piracy, unlike all other crimes has no territorial limits.” Since the actual conviction of Lol-Lo was for rape, and it was for the rape, not for “piracy,” that he was sentenced to death, this is very difficult to understand. Why was a rape within the territorial jurisdiction of the Dutch authorities within the jurisdiction of the American authorities also? It is especially difficult to understand when the definition given by the tribunal of the “crime of piracy” was: “Piracy is robbery or forcible depredation on the high seas, without lawful authority and done *animo furandi*, and in the spirit of universal hostility.” Even if “rape” fits the definition of “forcible depredation” (which seems doubtful not only as a matter of definition, but because the sentence for “piracy” was life imprisonment and the sentence for rape was death; it is hard to see a crime with a greater penalty as a lesser included offense of a crime with a lighter penalty), it is incomprehensible that “on the high seas” means also “within the territorial waters of a foreign state.”

In fact, if the Spanish-rooted law of the Philippines, which is reported to have been the law applied, could have been construed to apply to Philippine defendants acting abroad, and jurisdiction could have been based on the personal power of a sovereign to prescribe rules binding on his subjects wherever they are, the jurisdiction was easily supportable on the basis of the nationality of the actor(s), not universality. As reported, no mention is made of the established Constitutional limits to American prescriptive jurisdiction as pronounced by the United States Supreme Court in 1820 (*U.S. v. Wiltberger*, 18 U.S. [(5 Wheaton) 76; for a fuller background of the case, see Rubin, 1998:153-154) or the long course of American practice that by 1922 for a hundred years had followed that result despite the constant reiteration of the theoretical possibility of universal jurisdiction which was never asserted to lie within the territorial jurisdiction of a foreign sovereign, but only on the high sea. It must be concluded that the case is a unique, or nearly unique, example of a colonial court, this time an American one, making up a convenient law for itself regardless of precedent, logic or the political need to accommodate to the legal powers of neighbouring sovereigns. It is probably not accidental that the incident occurred and was decided on the far fringes of two empires where the legal and political problems would not likely be significant.

Nonetheless, it is odd and significant for the trend of thinking in the United States that the “piracy” section in the major compilation and American (and some foreign) legally significant practice published in 1941 (Hackworth, 1941:681-695) section 203, normally a source of balanced reportage and minimal comment (for example, a statement that *U.S. v. Smith* is the leading American case supporting the notion that there is such a thing as an international law of “piracy” and that it is properly incorporated into American law by mere reference in the Act of 1819 is immediately followed by a long excerpt from Lenoir, *Piracy Cases in the Supreme Court*, 25 J. Crim. L. and Criminology 532 (1934-1935), including the passage: “It is doubtful whether the Court would hold this view today, nor is it considered a correct statement of the present international law on piracy,” reasoning that Justice Livingston’s dissent was more persuasive than the majority opinion and that in near universal practice “piracy” was not only punished, but, for sound jurisprudential reasons, defined only by Municipal Law. *Id.* 552-553), quotes the passages set out above from both *In re Piracy jure gentium* and *People v. Lo1-Lo and Saraw* without any counterbalancing comment (Hackworth: 1941:686;687). Universal jurisdiction seems to have been adopted as the official American position by 1941, and the contrary cases and logic forgotten. There is some

evidence that this position maintains its influence among American officials.²

As part of a more or less complete review of the law of the sea, with an eye to eventual codification, the United Nations General Assembly asked the International Law Commission to prepare a text that could form the basis for international agreement on the law of the sea (see Briggs, 1965:298-301). The text, originally prepared by J.P.A. Francois, the Commission's Special Reporter, titled *Regime of the High Seas*, was published on 1 March 1952, *2 Year Book of the International Law Commission* [hereinafter *YBILC*]. The Report is denominated Doc. A/CN.4/79 in the United Nations archives and contains six articles dealing directly with "piracy." Article 23 is the definition. It is Francois's French translation of article 3 of the Harvard Research draft Convention (*YBILC*: 1954:15). The French text is not directly identified as a mere translation in the Report, but in the discussion at the International Law Commission's 290th meeting on 12 May 1955, the English text is set out, *1 YBILC*, 7th Session (1955:39n3). It is verbatim the text of the Harvard article quoted above except for changing the word "a" to "the" in the phrase "for private ends with a [the] bona fide purpose of asserting a claim of right." Oddly, in the un-annotated text of the Harvard Research draft Convention, reproduced above, the text of article 3 differs from the annotated text set out here with a third variation on that sentence; the un-annotated text has neither "a" nor "the" but says merely "private ends without bona fide purpose." (The confusion seems inconsequential). The other five articles are French translations of articles 4(1), 5, 6, 10 and 12 of the "Harvard Research" draft (the English version of M. Francois' draft, identical to the corresponding articles of the "Harvard Research" draft except for stylistic changes, is set out in *1 YBILC*, 7th Session, 1955:31-51n1).

Thus the current language of the "piracy" provisions of the 1958 Geneva Convention on the High Seas and the 1982 Montego Bay Convention on the Law of the Sea are identical in substance, and neither can be said to make sense (see Rubin, 1976:70)

What seems to be involved in this confusion is not any issue of substance. It seems widely agreed that the taking of property without the blessing of a legal order creates legal consequences in the international legal order, perhaps a claim for damages. The issue is in the designation of an appropriate legal order to determine the legal results of the taking. Ail municipal legal orders authorize some takings, perhaps as "eminent domain," "reception," "confiscation" or some other category established by the legal order to cover action by the state or even self-help by aggrieved individuals in some circumstances. The problem with "piracy" seems to be

the imposition on foreign “takers” of notions of a municipal legal order that the foreigners deny has purview over the property in question. Calling the taking a violation of “the law of nations” or of “international law” assumes the universality of rules relating to “takings” that is not evident in either the cases or diplomatic correspondence. And yet, all agree that “pirates” go too far.

Another complication is the frequent use of the word “pirates” to describe a particular regime’s political enemies in order to deny them authority to establish a legal order, to legislate and enforce their (the “rebels”) rules. Thus, “rebels” like the American John Paul Jones, have been labelled “pirates” by the authorities seeking to withhold from them the authority they seek despite their having commissions from what ultimately became the government of a “state” in the international legal order (see Rubin, 1998:172n140).

In sum, the legal conception of “piracy” has been so seriously abused over the centuries that it is doubtful that the word retains any useful content in law, whatever its value in morality or politics. None of which is to support takings of property without the backing of a legal order responsible for abuses of discretion by its subjects.

To resolve these issues, it can be suggested that the word “piracy” should be abandoned in law; that the notion of “piracy” or other property takings be considered *per se* a violation of international law should also be abandoned. Instead, effort should be put to pressuring states and belligerents and others purporting to operate under a legal order, to provide rules for the preservation of “property rights” and “human rights” within that order (including a right to personal safety; to be free of murder, rape, assault), and to respond to complaints that persons subject to that legal order have violated its rules.

Notes

1. See “Harvard Research” (1932:5;738), hereinafter cited as “Harvard Research”, giving the background of the Harvard Research effort and listing those concerned with the “Piracy” Report. With no disrespect intended toward the Californians, who included many scholars, of the 15 named advisers only three were resident outside of California, and they included one from the West Coast, one from Idaho, and Professor Harold Sprout of Princeton.
2. See the review of Rubin (1998) by CDR Bowman (1990) even that CDR Bowman overlooks a great deal both in that book and outside it.

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“PIRATES” AND THE WORLD AS A *CLOSED COMMERCIAL STATE*

PETAR BOJANIĆ

Before I explain this complicated title, especially the quotation marks around the word “Pirates,” and before I reveal my intention and attempt to provisionally justify it (in the title I discretely introduce and transform Fichte’s *Closed Commercial State* into a great world state or empire, always open and borderless; I assume that a world as such cannot be closed), I will first cite a part of the 54th paragraph from Kant’s 1797 work *The Metaphysics of Morals*. My intention is not to simply evoke Carl Schmitt’s critique of Kant’s ideas concerning preemptive war and the unjust enemy—as we all know, these ideas were not Kant’s nor is their critique original (Schmitt, 2006:168-171) after all, both Kant and Schmitt are simply brilliant compilers in international law—rather, I want to preliminarily demonstrate that every project concerning the constitution of an empire, league of nations or world government (or world governance) implies a paradoxical existence of an ambiguous “exterior” (“outside,” “without”). It seems that the existence (or nonexistence) of something “outside” of the world or “outside” of borderless sovereignty, is a precondition for any theory of world governance.

In the chapter which deals with public right (the Right of Nations), Kant presents four basic elements of natural rights. We are interested in the third element:

A league of nations in accordance with the idea of an original social contract is necessary, not in order to meddle in one another’s internal dissensions but to protect against attacks from without (Kant, 1996:482-483).

Two editors of Kant’s works believed that Kant did not provide an object to which this sentence is referring. Vorländer believed that “enemies” (outside enemies) [*gegen Angriffe der äußeren Feinde zu schützen*] should be added, while Natorp thought that “nations,” were in question, meaning that attacks come from other nations/people. I find the existence of any “outside”/“without”, any sort of space for an enemy or nation (for a terror-

ist, pirate or alien) problematic because a union of nations, as well as an empire, surely assumes that all nations are already inside and together. Why does a project concerning the union of all nations presume the existence of another space? How is it possible that something else exists, another entity or figure, that does not take part in finalizing this new community and new unity? Does every fusion and union presuppose omission and exclusion?

When one constructs the difficulty with Kant’s sentence, found in § 54, in such a way, it becomes quite trivial and uninteresting to conclude that Kant’s “league of nations” or his “perpetual peace” projects refer to only a few of the most important (at the time) European states (the rest of the world is completely excluded). Within Kant’s lectures from *Anthropology*, which have only recently been published, we find that Poland is his “unjust enemy” (his Iraq or Iran) (should be preemptively attacked and its territory divided, as the Polish do not have a middle class and are incapable of writing a constitution) and that this “league of nations,” nor does it have room for the barbarous Turkey. I think that what is perhaps most important and what we should insist upon, from Kant until today or from Rome to NATO,¹ is that the understanding and paradox of this outside/without (*äußeren* or “*äußeren*”) is the first mark of the imperial. It is possible to add, to Kant’s doubts and asymmetric strategies—for everyone to unite against the “outside”/“without”; that danger and attack come from outside/without; that the union of states or world government defends itself or rather brings safety to everyone; that to advance and attack is to defend from future attack—many more constructions of imperial space and imperial danger. All these forms could have relatively similar characteristics. For an intention and/or an act to be imperial—I begin with the simple fact that these acts produce a subject (emperor), who is essentially a warrior who won a battle (who is stronger than others in one instance and in one space)—it is necessary that they imply superiority and expansionism. The confusion between hegemony and empire (Münkler, 2005:35-79) could perhaps be overcome by insisting that the imperial is in fact a constant action or process (Heidegger, 1992:40-41).² An empire is a fight for an empire. For example, if we were to define global war or imperial wars as eternal and as wars that produce no order (*nomos*), then it necessarily follows that the “imperial” already contains: (a) the production or emission of asymmetry (asymmetric powers, forces, conflicts) (Münkler, 2004:649-660; Münkler, 2006:151-168); (b) constant exposure of borders and danger in time and space (the outside/without is anywhere; “outside” is not on the margins of (the empire’s) power but inside and in different places); (c) the use of military or police actions and expeditions;

and (d) the constant changing of laws and norms (the emperor continually creates new norms; this is precisely how he differs from the legislator).

I would like to transform these four elements, which in my opinion could explain the expression “Imperial Wars” (or “Imperial Acts”, “Imperial Intentions”), into one imaginary encounter and examination between the “emperor” (or “sovereign”) and the “pirate.” The fact that this is possible—St. Augustine, while describing the Emperor Alexander’s conversation with a bandit, reveals the similarities of these two figures (both pillage and work primarily for themselves)—shows us that this register could perhaps be the fifth element of the imperial “gesture” or “principle” (Johns, 2009:11). For now, I will set aside the quotation marks around the word “emperor” or “sovereign”—I insist that the “imperialization” or constant imperial action fatally weakens and deteriorates the attribute “sovereign” and sovereignty—and direct my attention towards the romantic figure of the “pirate” (*die Figur des Piraten*, is Schmitt’s syntagm) (Schmitt, 1994:241).

There are four propositions I can suggest concerning the “pirate:”

First: here I attempt to follow Gilbert Gidel’s 1932 differentiation between two sorts of piracy: “*piraterie proprement dite ou piraterie du droit de gens*” and “*piraterie par analogie*.” (Gidel, 1981:301-348). When I use the word “pirate” with quotation marks, it is my intention, among others, to find a true gesture (not a figure) that appears to resist the empire. If an act resists the empire in a completely asymmetric way, then it can be called and treated as being piratical. This is in reality a legal fiction, just as the famous definition of pirates (a definition which is not a definition) is in reality “Rhetorical Invective” (Tindall, 1694:25-26) or “*eine Floskel*” (Stiel, 1905:42): *Pirata est hostis humani generis*.³

Second: “pirate,” as a complicated and confusing name for a space “outside/without” and forever devoid of empire, can be a synonym for quite a large group of differing regulations and figures that an empire constantly distributes. Again, I use the word “pirate,” because the “pirate” (or “*criminel cosmopolit*,” (Gidel, 1981:332), universal enemy, “*Welt Feind*,” “*solidarische Feind*”)⁴ is the unconditional condition for the existence of international law and a union of all States (anyone can punish and destroy him because he is the enemy of the world order). All of these figures, coming from completely different times, are asymmetric in relation to the empire (it is as if asymmetry creates superfluous space) and all of them constitute the empire in a future time. I will list them in no particular order: dissidents, bandits, refugees, *sans papiers* (or hackers) are imperial figures *par excellence*; differing groups which do not recognize the Roman Empire during its rule and unsuccessfully attempt to constitute communi-

ties, Coke and Blackstone name them “confederates” (Rubin, 2006:359),⁵ today we would call these undefined entities “failed states” or perhaps states which are dominated by corruption; then we have terrorists (we should not forget that towards the end of the 19th century (1892), terrorist or anarchist acts on the seas, as some called them, were grouped with pirate acts; international law termed these acts as non-political, despite these acts not having the characteristics of acts which have as their goals self interest) (Gidel, 1981:326); Barbarian states (*Republiques Barbaresques; Raubstaaten*) (Stiel, 1905:83) or the Barbary powers (Algeria, Tunisia, Libya, Morocco), who Vattel terms the “common enemy of the human race” and calls for, just as Kant did, the unification of Christian states to repress such nations, also appear much later (Cf. Mössner, 1972:201-202; Rubin, 2006:277).⁶ Discussions concerning whether the soldiers of these barbarian states are pirates, how to treat them, are today replaced with unending discussion concerning just and unjust warriors. Christian Wolff, similarly to Locke and Vattel, writes about soldiers who do not wage war but rather destroy the security of all nations:

Therefore, the right to punish them belongs to all nations, and by this right they can remove from their midst those wild monsters of the human species [*ista fera humani monstra*] (Wolff, 1934:319; Cf. Heller-Roazen, 2009:117, 218).

The final figure which is quite judiciously distributed by the empire is certainly that of the left, nervous, hysterical critic of the empire.

I think that it would be quite appropriate to construct the third and fourth proposition of piracy as well. I will proceed by using Carl Schmitt’s published texts and several dossiers that concern pirates that I consulted and found in his Düsseldorf’s Archives. Both the third and fourth (and perhaps fifth) points which Schmitt pays close attention to can be found in the statements published a year ago, of a certain Asad “Booyah” Abdulahi, who has captured ships in the Gulf of Aden and the Indian Ocean:

When the money is delivered to our ship we count the dollars and let the hostages go. If we get \$1.8m, we would send \$380.000 to the investment man who gives us cash to fund the missions, and then divide the rest between us. Our community thinks we are pirates getting illegal money. But we consider ourselves heroes running away from poverty. We don’t see the hijacking as a criminal act but as a road tax because we have no central government to control our sea. With foreign warships now on patrol we have difficulties. But we are getting new boats and weapons. We will not stop until we have a central government that can control our sea.⁸

Quite easily, perhaps too easily, Abdulahi utters the sentence that represents the core of piracy: “Our community thinks we are pirates getting illegal money.” The institution *animus furandi* (Rubin, 2006:82;116)⁹ (*l’esprit du lucre*; acting for private motives), used by Gilbert Gidel (1981:317) in his book, will help Schmitt draw a clear distinction, in his 1963 book about partisans, between partisans and pirates. The pirate steals, works for himself, has no “institutional potential” and is non-political. This final characteristic is precisely—to paraphrase Schmitt—what keeps the figure of the pirate still theoretically interesting [*noch ein theoretisch ganz interessantes*] (Schmitt, 1994:241), and nothing more; every other aspect is all too insufficient. This is why quotation marks are necessary when one speaks of piracy and pirates!

Before I end by demonstrating that all our doubts concerning world governance and imperial wars (prosecutions) today have come from Schmitt’s short 1937 text “Der Begriff der Piraterie”—the reason for the quotation marks in the title of my text are found only in the Italian translation of this text¹⁰—it is important to address the confusion regarding the “pirate” Abdulahi (“Our community thinks we are pirates getting illegal money”) on three points: theft, the political (meaning Abdulahi as a self-proclaimed taxman of a nonexistent state, a revolutionary, *nouveau riche*, proletarian, partisan, hero) and the non-political. These three terms repeatedly appear in 20th century books and manuals concerning pirates. At the beginning of the text “Der Begriff der Piraterie” Schmitt copies a key feature from his favourite Paul Stiel book, 1904’s *Der Tatbestand der Piraterie*: “An undertaking that pursues political aims is not piracy” [*Ein Unternehmen, das politische Zwecke verfolgt, ist nicht Piraterie*] (Schmitt, 1994:240). To speak of pirates implies exclusively *animus furandi*. Only the actions of revolutionary parties, only rebellions which have a clear political goal and follow the laws of war—continue Stiel and Schmitt—should not be considered piracy.

Why is it necessary to follow all the intricacies and corrections in Schmitt’s understanding of “world governance” (pirates, sea, earth, *nomos*) from the 1937 text to the 1963 book on partisans? The complexity and urgency of this task is emphasized by the fact that during the existence of the Reich the great majority of Schmitt’s lectures concerned the sea.¹¹ Schmitt’s resistance to the pirate is, in fact, resistance to the empire (to Britain, rather Britain and America). I would leave aside what is most important: first, England, as well as other states had completely rid itself of pirates by the 18th century, and that since then the states themselves have become the bearers of war; up until then, at a time in which the aforementioned barbarian states existed, there was nothing strange about

differing groups carrying on private wars and actions without any sort of authorization (or “self-authorization” as done by our hero Asad “Booyah” Abdulahi); second, England is again clouding international law by reintroducing the problem of piracy (several international conferences concerning piracy are the reason for Schmitt’s 1937 text) and that for several months Germany’s complaint has gone unanswered (it is unknown if Schmitt participated in the formulation of this document); and third, there is no space for the figure “pirate” in the Mediterranean or anywhere else, as there are no high sea and “non-political spaces” left, because states have completely occupied the European space.¹² In response to an imperial act by Britain (and not only Britain; this is a concept which Schmitt has continuously resisted since the end of World War I) that a submarine attack on commercial vessels should be treated as an act of piracy—which assumes that everyone will unite and join the fight against the “pirate”—Schmitt convincingly demonstrates that such new measures in international law create a new order among European states and leads to the possibility of joint expeditions for retribution and lynching in the name of humanity.

Should the English conception of submarine piracy be established as a general concept of the law of nations [*Völkerrechtsbegriff*], the concept of piracy will have changed its place in the system of international law [*Völkerrechts*]. It will have been displaced from the empty space of non-political action into the space of intermediary concepts between war and peace, which is typical of the after-war period (Schmitt, 1994:243; the translation of D. Heller-Roazen (2009:145).

Schmitt’s defence of symmetry and the right to war—which he adds to his argumentation in the second step—while being quite well known, was never truly taken into consideration when the limits of imperial wars or imperial expeditions were being discovered. Schmitt says that with such changes to international law, true total wars are avoided between total states, open war and true peace. Conversely, Schmitt’s “imperial acts” and asymmetric strategies, even after 1937, can easily be integrated into one great imaginary history of the imperial. Here I do not simply mean the clear indications and comparisons of the Jew as a citizen of the world [*Jude als Weltbürger*] with the figure of the pirate, who does not have the protection of any state and who is not authorized by any state, from the lecture “Volkgruppen—nicht Minderheitenrecht”, held in Flensburg in 28 April 1938.¹³ Rather I am referring to Schmitt’s great campaign, which begins with a lecture on “Völkerrechtliche Grossraumprinzipien”, in Kiel on 3 April 1939. Basing his statement on a speech by the Führer from 1938, Schmitt here, for the first time, formulates his idea that states are not

the true bearers and creators [*Träger und Gestalter*] of international law, but rather that the *Reich* is (in the plural, *Reiche*). The English daily *The Times*, on 5 April 1939, transmits Schmitt's words:

Only nations with the mental and moral qualifications, as expressed in their discipline and organization, to hold firmly in their hands the complicated apparatus of a modern community are entitled to form a State which will be a first-rank subject of international law. The states formed by other nations can only be objects of international law.¹⁴

Notes

1. In the text "In the course of its 60 years, NATO has united the West, secured Europe, and ended the Cold War" (*Foreign Affairs*, September/October 2009), Zbigniew Brzezinski writes: "To remain historically relevant, NATO cannot—as some have urged—simply expand itself into a global alliance or transform itself into a global alliance of democracies. German Chancellor Angela Merkel expressed the right sentiment when she noted in March 2009, "I don't see a global NATO... It can provide security outside its area, but that doesn't mean members across the globe are possible" (Brzezinski, 2009: 20).

2. Heidegger, in his seminar on Parmenides (1942-43) while trying to compare the Greek *pseudos* and the Latin *falsum*, searches for the original meaning of the word *imperium*. Beginning with the word command, *Befehl* (he recommends that this word be written *Befelh*), Heidegger moves on to the word to cover [*bergen*] or to "commit" (command), to send [*befehlen*] the dead to the earth or into the fire (to send something in such a way as to have it covered by something else). "*Imparare* (*im-parare*) is to arrange [*einrichten*], take necessary measures [*die Vorkehrung treffen*], to occupy in advance, and so to take possession of the occupied territory and to rule it. „*Imperium* is the territory [*Gebiet*] founded on commandments [*Gebot*], in which the others are obedient [*botmässig*]“. Heidegger continues: "Command, as the essential ground of domination, includes being-superior, which is only possible as the constant surmounting of others, who are thereby the inferiors. [...] The essence of the *imperium* resides in the *actus* of constant "action" [*im actus der ständigen 'Aktion'*]."

3. There are a few recent papers about this "definition" already used by Cicero, Sir Edward Coke and William Blackstone, which origin is uncertain. Two books systematically treat this issue: Alfred P. Rubin, *The Law of Piracy* (Rubin, 2006:55) and Daniel Heller-Roazen, *The Enemy of Law. Piracy and the Law of Nations* (2009:16-17 *et passim*).

4. "Der solidarische Feind müsse den solidarischen Widerstand erzeugen." (See Binding, 1885:379).

5. Confederate(s) is a member of gang or a combination of persons to do an unlawful act or to do a lawful act by unlawful means. Hugo Grotius analyzes, in detail, the institution of "declaration of war" in the book *The Rights of War and Peace* (Book 3, § 3, 1-2), as well as a community or group within whose backgrounds are

evil and crimes: “Neither does a State immediately cease to be a State, tho’ it commits some Acts of Injustice, even by public Deliberation; nor is a Company of Pirates and Robbers to be reputed a State [*coetus piratarum aut latronum civitas est*], tho’ perhaps they may observe some kind of Equity among themselves, without which no Body can long subsist.” (Grotius, 2005:1247); Cf. Rubin, 2006:26-27; 58-59).

6. In the text “Deutschland und der Weltkrieg” (29.08.1914) Friedrich Meinecke says that Austria and Germany were provoked into war because the country and people of Serbia were unable to lead an honorable and loyal war [*loyale Krieg*], rather they instigated fanatical, barbarian and criminal politics. Meinecke insists that he understands completely the Serbian wish to establish a nation state, but contends that for a people to be able to do so successfully they must prove that they are a cultured people [*Kulturvolk*] (Meinecke, 1958:96-97).

7. The three files are marked RW 265. 19904, 19905, 19906. *Carl Schmitt-Archiv. Landesarchiv NRW, Abteilung Rheinland*. The files contain Schmitt’s detailed notes used in the writing of his texts “Der Begriff der Piraterie” (autumn 1937), texts concerning the sea and the state in a time of war, books on *Nomos* and books on the partisans. Schmitt analyzes, in detail, the expression “*hostis generis humani*”, Cicero’s fragments and Robespierre’s speeches. He systematically reads Paul Stiel’s books, texts concerning piracy from the *American Journal of International Law* from 1932 and 1935, and Philip Gosse’s book *The History of Piracy* from 1932. In 1943 Schmitt works in the Berlin library. Found in file RW 265. 19906 is a photocopy of a chapter on piracy from Gilbert Gidel’s book, *Le droit international public de la Mer*. It is interesting that in a lecture titled “Land und Meer. Ist Seeherrschaft in der bisherigen Form noch möglich?,” held in Hamburg on January 12, 1945, one of many lectures concerning the sea he holds during the war in different cities across Europe, Schmitt speaks about “an end to the oceanic space and a new space in the air [*Luftraum*]. This is the end of English power. In the space of the English island a great quasi island of North America appears (the United States and Canada). North America creates *ein Luftimperium* over the world.” (Tommissen, 1996:85).

8. *The Guardian*, Saturday 22.11.08, p. 1.

9. The Latin word *furandi* is translated as stealing, an *animo* means “with intent.”

10. In the original there are no quotes around *der Piraterie*. In the Italian translation, published in February 1939 in the journal *La vita italiana* (Anno XXVI, p. 189-193), quotation marks appear around the word *piratería* [II concetto di “pirateria”] yet they should not be present according to Italian orthography. At the end of Schmitt’s text, a work that was quite freely translated, the translator is not named. The author of these “reverse” quotations could be Julius Evola who appears at the end of Schmitt’s text (p. 193-194), writing in the name of the editors about the debate which Schmitt’s text *su la Guerra totale* caused upon its publication in December 1938.

11. *Carl Schmitt-Archiv. Landesarchiv NRW, Abteilung Rheinland RW 265*. 20105, 20067.

12. “Whoever calls to mind the specific state and political condition of the contemporary Mediterranean must immediately confront the question of where, then,

the non-political sea-thieves [*unpolitische Seeräuber*] could find an empty space of complete statelessness [*Nichtstaatlichkeit*] in which to run their business.”(Schmitt, 1996:241). The translation is taken from a book by D. Heller-Roazen (2009:143).
 13. *Flensburger Nachrichten*, 29.04.1938. *Carl Schmitt-Archiv. Landesarchiv NRW, Abteilung Rheinland RW 265*. 20105.
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THE RIGHT TO BE SUBJECT TO INTERNATIONAL LAW

LARRY MAY

A major problem that non-citizens continue to face is arbitrary detention. Although arbitrary detention is prohibited under the International Covenant on Civil and Political Rights, non-citizens—especially asylum seekers, undocumented immigrants, and victims of trafficking—continue to be placed in detention for indefinite periods.
—Weissbrodt, 2008:3-4

In this paper I look for guidance from *Magna Carta* for disputes in contemporary international law.¹ *Magna Carta* was slightly amended in 1225 to include, after “desseised,” the words “of any free tenement or of his liberties or free customs.” When added to the idea of outlawry already in the original version of *Magna Carta*, this was understood to mean also the right not to be deprived of citizenship rights (see Thompson, 1948:68). As we move slowly toward an international legal order, one of the key rights will be something like the right to be a subject of international law, and the right not to be forced to lose the protection of one’s rights as a “citizen of the world.” Related to these rights is the idea, also from *Magna Carta*, that something like trial by jury of one’s peers is crucial for the protection of all of one’s other rights. I am not proposing that the category of “world citizen” is yet established in practice today, but only that as we move slowly toward such a global order there are various procedural rights that will need to be secured to guarantee to all persons the equal protection of international law. The positive right to be subject to international law, or the negative right not to be excluded from the protection of international law, is of the highest priority for the progressive development of something like global citizenship rights that correspond to human rights.

The idea explored in this paper, is for international courts or other institutions to step in and offer relief when detainees have been allowed to slip between the cracks of extant legal systems or rights-enforcement regimes. In addition, I would also argue that something like trial by jury in criminal matters should be an acknowledged international right, which can

be overridden only in rare cases. And this is probably the most controversial of the various proposals to adopt *Magna Carta's* procedural rights. For there have not yet been major international instruments that have recognized trial by jury as a requirement of criminal proceedings. This was one of the lynchpins of the evolving *Magna Carta* doctrine. The right to a jury by one's peers is crucial for justice, or so it was thought over time as procedural justice developed in England in the centuries after *Magna Carta*. Yet today there are no international jury trials, so this right is a long way from being recognized and enforced, although the recently decided United States Supreme Court decision in *Boumediene* seems to be on the road to recognizing this right.²

In this paper, I will first examine the idea of being an outlaw or a Stateless person as someone who is effectively rightless. Second, I will explain what it means to be rendered an outlaw in international law. I will argue that each human person has a right not to be outlawed in this way. Third, I will connect the right not be outlawed to something like the right to trial by a jury of one's peers. I will acknowledge that in some cases it is very difficult to allow for such a right in international law, but nonetheless argue that the cases where the right to jury is denied should be few. Fourth, I will argue that once these rights are recognized, we will have progressed quite far toward a full version of the international rule of law. Finally, I will address an objection to my proposal for seeing the world peopled by global citizens. In addressing this objection, I outline my general normative view which falls somewhere between a state-centric and an individual-centric position about global justice.

I. The Concepts of Outlawry and Statelessness

The term outlaw literally refers to the status of being outside the law. At the time of *Magna Carta*, a person could escape from the sanctions of the State by leaving its jurisdiction, which meant going to the parts of England where the King's armies did not reach. But there is a more interesting way to become an outlaw, namely by being made into an outlaw by the King's act of stripping a person of his or her effective citizenship rights and forcing him or her out of the protective jurisdiction of the King's law. And among the things that this meant was that a person was no longer able to petition to have a jury of one's peers determine if he or she had been properly deprived of rights or wronged in other ways. Outlaws could be killed without risk of State sanction, but nonetheless became folk heroes in England and many other societies emerging out of feudalism (see Hobbsbawn, 1972).

The somewhat mythical “Robin Hood” story illustrates both senses of being an outlaw. He is said to have escaped the King’s sanctions, perhaps at the time of *Magna Carta* itself in the early thirteenth century, by retreating into Sherwood Forest where the King’s men could not easily get to him. But it is also alleged, on his behalf, that the King, perhaps either Edward or John, improperly issued sanctions against Robin Hood and thereby forced him into outlaw status (see Dobson and Taylor, 1977). What I am interested in is the latter type of case although I recognize that sometimes it is difficult to sort out the causes of a person’s becoming an outlaw. In this sense, there is a close parallel between Robin Hood and the detainees at Guantanamo who were forced out of the protection of all legal systems, and became effectively rightless.

The term outlaw today is more commonly used to refer to those who spurn the legal requirements of civilized societies, by voluntarily choosing not to conform to legal standards. Robin Hood may have been a case in point, although as I said it is not clear. In any event, historically, pirates are those who have often been declared to be outlaws, in the sense of having placed themselves outside of the obligations of the law. In this sense, it is also true that the “outlaw” status is often claimed to trigger a kind of reaction, both domestically and internationally, not to respect the rights of these people who are outside the law. I have previously argued that this is a grave mistake (see May, 2007: ch. 14; May, 2008, ch. 15).

I would like to revive the older idea of an outlaw as someone who has been forced outside of the protection of the law, and to reserve the term bandit for those, like pirates, who have voluntarily chosen to be outside of the protection and obligation of the law. *Magna Carta* was an agreement or charter between King John and the feudal barons. Chapter 39 (normally referred to as Chapter 29, in the 1225 revised version of King Henry III) says:

No freeman shall be taken or imprisoned or desseised or exiled or outlawed or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

One of the least commented on parts of *Magna Carta* was the right not to be made an outlaw as one of the rights that was to be protected by the King. This right was clearly related to the right not to be exiled. Indeed, both of these ideas, exile and outlawry, are attempts by the leaders of the State to remove a citizen or subject from the protection of the laws into a realm, whether it be outside the territorial borders of the State or outside the domestic reach of the State. It might be thought that today, becoming an outlaw is not much of a problem because there are no longer places

within States that are not subject to the legal protection of the State. Yet, Guantanamo Bay and Bagram Air Base are examples today, as are the detention centres for those who are unsuccessful asylum seekers, as well as refugee camps.

In the remainder of this section I will briefly explore the reasons for thinking that there is a right not to be arbitrarily made into an outlaw. The most important point here is that when one is placed outside of the protection of the State one has effectively lost one's rights as a member of that State, whether subject, citizen, or resident. To render someone an outlaw is most significantly to render ineffective this person's civil rights. There is a sense in which a person never really loses rights merely when they are not protected. But rights have little meaning except as hortatory unless there is a political body that recognizes that it must respond when claims are made on the basis of one's rights.

In the case of human rights, it is even clearer that one cannot literally lose one's rights, since they are premised on being a member of the human community. But as in the case of civil rights, if no State or other institution protects these rights then it is as if one has indeed lost these rights. Being made an outlaw is then equivalent to being deprived of the right to be subject to a legal regime where one's other rights are protected or at least given uptake, or recognized, by some institution in the claims one makes. And this is simply one of the very worst things that can happen to a person, nearly equivalent to ceasing to be a person altogether.

Conceptually, it is not necessary that a person be a citizen of a particular State in order to be effectively a rights-bearer. This is especially true if we are talking of legal rights rather than moral rights. But even in the case of legal rights, a person who is Stateless could still be a rights-bearer if there is some political entity other than a State of which the person is a citizen. If there were to be a world government that had the ability to grant world citizenship status to those who are not formally citizens of any national State, then people could be effectively rights-bearers even though not citizens of any national State.

In my view, rights-bearers must have some political institution to which they can appeal if their rights are not respected or their rights-claims are not heard. James Hathaway has summarized the issue in respect to refugees: "Refugee status is a categorical designation that reflects a unique ethical and consequential legal entitlement to make claim on the international community."³ To have international rights, such as the right to be protected as a refugee, means being able to make claims against the international community, since refugees are seeking national citizenship status but currently lack it.

For purposes of analytic clarity, we can distinguish between *de jure* and *de facto* statelessness. People who are *de jure* stateless literally have no official citizenship in any national State, having either lost their official citizenship status or never having been granted such status. People who are *de facto* stateless may be people who have left their country of habitual residence in order to seek asylum, or who have lost their citizenship papers, or who are attempting to return to their country of habitual residence but are blocked from doing so. Such people are *de facto* stateless since it may be true that they formally are citizens of a State, but that they cannot exercise their rights as citizens for various reasons (perhaps because they are detained in another State) and are thereby effectively rendered stateless.

Being a person, a moral subject, is to occupy the status of having both rights and duties—indeed, there is a sense that the rights and duties correlate with each other, so that if one has obligations without also having rights one has ceased to be a full moral subject. This is similar to how those who are languishing in prison had no hope of getting out. In such cases, the jailer has no accountability for the treatment of the prisoner, who has “disappeared” as a person, and may as well be dead. Of course, these people have the benefit of not having actually died, but as far as their rights go, it is very much like they have indeed died. The disappeared are just one of many contemporary cases of being made an outlaw. And as we will explore in the next section, such cases are a major affront to the idea of human rights and to international, as well as to domestic, protections of the rule of law.

Outlawry is not often discussed anymore, but I believe that a return to this idea can help illuminate what is especially problematic about States that hold detainees for indefinite duration, effectively depriving them of rights of subjects or citizens. Such actions are very much like exiling or deporting someone, but doing so in such a way that the detainee remains within the territory of the State. This is precisely what it meant in late Medieval England to force a person to be an outlaw. I will draw on the insights about this idea from English history to discuss the idea’s modern day equivalent in international law.

II. Outlawry and Statelessness in International Law

The term outlaw does not have a technical definition in international law. Perhaps the closest idea is that of being an outlaw or rogue State, namely a State that does not subscribe to the main provisions of international law. There are two other popular meanings of individuals who are

outlaws that are also not technical usages in international law. First, a person could be an outlaw in the sense that he or she is stateless. As a stateless individual, and hence without the protection of the laws of any State, the person is both outside the laws of States and also to a certain extent outside international law, insofar as international law is formed by the agreements of States. Second, a person could be an outlaw in the sense of being expelled from a State and not allowed to enter any other State, perhaps destined to remain in the high seas, and hence not in the territory of any State. In this latter sense, a person can be an outlaw in international law in the same way that Robin Hood was an outlaw in Sherwood Forest in the 13th Century.

Currently, there are many people who are stateless and in that sense they are the modern equivalent of outlaws. Some of these people are in refugee camps, having been expelled from their home country but now not recognized as members of the State in which they reside. Some of the people are in detention centres in countries like the United States and Australia, having arrived on the soil of these countries but then having been denied asylum. With no State willing to accept them, they are placed into detention centres (often some of the most gruesome prisons) to wait for some State to accept them, or their asylum decisions to be overturned on appeal.

In the current regime of international law, one is not necessarily unprotected if one is stateless, but it certainly is harder for one's rights to be protected without some sort of membership or citizenship status in an existing State. Various treaties have attempted to protect those who are Stateless including many who would otherwise be outlaws. The Geneva Conventions tried to protect all those who suffered from the ravages of war, including those who had become displaced during war from their original States. *The Refugee Convention* and *the Convention on the Elimination of all Forms of Racial Discrimination* singled out displaced persons for special protection. And *the Convention Relating to the Status of Stateless Persons*, which was modelled on *the Refugee Convention*, is quite explicit in setting out a regime to protect the rights of stateless persons. But as I will argue later, these various regimes suffer from the fact that there is no effective international institution to which people can appeal when they are deprived of what the regimes are supposed to secure.

There is one class of outlaws that has remained virtually unprotected, namely those who have been expelled from the protection of law because of their alleged illegal activities or the danger they pose to the State in question. Indeed, *the Stateless Persons Convention* explicitly rules out the application of the treaty to those who "have committed a serious non-

political crime outside the country of their residence prior to their admission to that country” (Article 1.2 [iii] b). This is a major gap in the protection of human rights, and especially of procedural rights.

Those who are not citizens of a given State and have been detained within that State, and whose detention is for an indefinite period of time, are some of the clearest cases of individuals who fall through the cracks of the system of protection afforded by States. These people may not be strictly “stateless” in a *de jure* sense. Yet since there has been no determination that their asylum status may not be revived or that there might not be a State that can be found to accept them, they may be *de facto* stateless. If a State offers security reasons for not granting asylum or for not transporting the person to another State, the person in question is in a kind of limbo, and the major international instruments on statelessness do not seem able to grant to these people the protection they need.

Another category of people who do have recognized protection, although not enough, are those refugees who have been forced to flee their home States and who have not been accepted as subjects or citizens of the State in which they find themselves. The refugee camps of the world are largely centres of “detention” if that term is used a bit more broadly than normal, where the inhabitants are also effectively rightless in that no State is willing to protect them from the most severe of human rights threats, including the threat of death, rape, and other serious harm. While these people are recognized as stateless, and there are international treaties that afford them rights protection, there are so many gaps here that being in a refugee camp most closely resembles being in a Hobbesian state of nature rather than in a state of civil society.

One of the reasons for the problem of rights enforcement in refugee camps is that some of the people in these camps may indeed be people who have a criminal past, even as the overwhelming majority of these people are innocent men, women, and children. But the fact that there are some miscreants in these camps has given the host State the ability to mount a claim that it does not have to protect these folks since they pose a threat to the safety or security of that State. Worse yet, it has sometimes given the host State what it believes is its right to attack the people in the refugee camps.

There is a specific provision of the Refugee treaty that should govern some of these matters, but also seemingly has a gap. The problem relates to the interplay of rights protection and security issues. As Matthew Gibney puts it, there is a clash of perspectives here that is hard to reconcile.

In the first, the view of the person forced from his country, to be a refugee is to be “lost.” The refugee is forced to eke out an existence in a

place where the social and political markers that enable orientation in the world are alien and difficult to decode. In the second, the perspective of the receiving country, the refugee is an interloper, someone from whom any request is “impertinent,” or ... “shameless.” He is a person who, betrayed by his own state, is forced to rely on the sufferance of others.⁴

From this clash of perspectives it is hard to see how to proceed without some kind of adjudicatory board that could decide whether the rights of the refugee or the interests of the State should prevail. Suffice it here to say that if to be a refugee one must cross into a given State, then it is in the interest of some if not many States to keep potential refugees from ever getting that foothold on their claimed rights.

In the discussion of the application of the *Geneva Conventions*, *The ICRC Commentary* authors state that the clear intention of the *Geneva Convention* drafters was that the *Geneva Conventions* would not have gaps such that some people would not be protected in the aftermath of war (Pictet, 1958:51). I will here make a similar argument for the gapless reach of international law. It should not matter whether one is in a refugee camp in an adjacent State or on the soil of a given State in terms of whether refugee status can be claimed, assuming that the basis of the claim is a good one. And in general, there should not be some people whose States protect their rights but where other people are effectively rendered rightsless because no State will protect them.

My main point is that if human rights have meaning it is that people have significant rights, and should also have protections, merely by being members of the human or world community. When a person is deprived of human rights protection by falling through the cracks of the regime of international rights protection that person is effectively rendered not fully human. I will expand on this idea later in this paper and I will also later address the fourth and most controversial of the *Magna Carta* legacy rights, trial by a jury of one’s peers, and connect this right to the right not to be outlawed. Before addressing that topic let me briefly discuss what is meant by my claim that individuals should be subject to international law.

III. Being a Subject of International Law

There are of course two meanings of the term “subject” in the expression “subject to international law.” People are subject to a legal regime when they have obligations to obey the legal rules of that regime. And people also are subject to a legal regime when they have legal rights that are enforced in that regime. In the *Stateless Persons Convention*, the obligations are listed first, before the lengthy discussion of rights. I believe

that this is no accident, since like all multilateral treaties, the drafters wanted to make it as appealing to States as they could. As in matters of corporate governance generally, those in control of corporate power have looked for a linking of rights with responsibilities. And the international domain is no exception here, with global leaders as well as national leaders all looking for a way to bind people to arrangements that increase security as well as rights globally.

As international law becomes less infirm and more like domestic legal systems, procedures are needed guaranteeing that individuals are subject to international law in both senses of the term "subject." There are currently significant impediments to recognizing that all persons are subject to international law in both of these ways. Not the least of these impediments is that international law relies heavily on States to enforce the provisions of international law. States are sometimes quite reluctant to enforce international law when it conflicts with domestic law or where its enforcement is against one of its own nationals, especially high ranking political and military leaders who are its nationals. And because of this reluctance, especially when the State in question also does not feel bound to protect the rights of the individual in question as a matter of domestic law, the individual ends up being effectively rightless.

Think again of people who are truly stateless in that they have been forced out of their home State and have not been accepted as subjects or citizens of another State, perhaps now eking out a bare existence in a refugee camp on the border of their previous home State. David Miller has argued that no one has a right to become a member of a particular State (Miller, 2007:ch. 8). But what if one is now denied membership in any State? One could agree with Miller that no State has an obligation to accept this person and still feel that the person has the right to be subject to some legal order. So if no State will grant the person citizenship, then at very least the person needs to have minimal citizenship rights protection extended in some sense by the international community.

Miller argues that States have the right to decide who can become its subjects or citizens. And that this is important both for national identity and for meeting national responsibilities. In this work I will not take a stand on whether Miller is correct about this or not, although I would disagree with him about a number of aspects of his position and its supporting arguments. But even Miller would have to admit that in some cases the State's complicity in the statelessness of a person could affect whether that State has obligations to the stateless person. But the very difficult case is when no State thinks it has special obligations to a given stateless person, and yet when the rights of the person call for some kind of protection. My

view is that if international protection of human rights was not so infirm, it might make sense in the way that Miller suggests that no State has an obligation to protect this person's rights, but that the person is not effectively rightless since the international community does have such an obligation.

For international law to recognize that all humans are subjects of international law, in terms of looking to international law for protection of their rights, the most obvious thing to do, and what I have proposed throughout this work, is for there to be a special international court or other institution that looks to the protection of procedural rights that would indeed guarantee that all people are subjects before the law and have access to the equal protection of the international law. Indeed, the somewhat expanded notion of the rights of detainees that I defended above called for there to be minimal due process in the sense that everyone was recognized as equal before the law. The idea is that everyone should be seen as equal before international law as well, as in a sense citizens or subjects of the world. But as we will see, some have challenged this idea, arguing that it is utopian to talk of there being a category of citizenship of the world. I address this concern in the final section of this paper. But first I discuss a very controversial, although quite important, right.

IV. Trial by Jury

The most controversial of all of the rights I have discussed in this book is the right to trial by jury of one's peers. At the moment such a right is not recognized in international law and is generally not offered in international tribunals. Instead, even trial courts at the international level are staffed by panels of judges. And in addition, trial by jury is the least like a procedural right of all of the *Magna Carta* legacy rights as well. Yet, as I will argue in this section, trial by jury is intimately related to the more widely recognized procedural rights, like *habeas corpus* and non-refoulement that derive from *Magna Carta*. Indeed, *Magna Carta* contained at least a rudimentary idea of trial by jury as one of the four rights enshrined in the famous Chapter 29. And in my view there was good reason to have trial by jury linked to the other rights, especially the right to be subject to law.

One might think of *Magna Carta*'s reference to trial by a jury of one's peers as equivalent to what that idea means today. But this is a mistake—rather it is the way that this right developed especially in the 17th century that is like the right today. At the time of *Magna Carta*, trial by jury in its modern sense was not what was at stake. What the barons sought to secure was the practice “known as *recognitio* or *inquisitio*, which was introduced

into England by the Normans and was simply the practice of obtaining information on local affairs from the sworn testimony of local men.” It is true that very soon thereafter the information was then institutionalized as the basis of the initial indictment, and that another group of men was then asked to render a verdict in place of trial by ordeal. But according to many historians, what the barons called for at *Magna Carta* is not the same institution as what we now call trial by jury (McKechnie, 1914:134-138). The idea, though, of having a group of men decide the legitimacy of the indictment and also the verdict is clearly related to the *inquisitio* that was indeed one of the main rights of *Magna Carta*. And it is still historically uncontested that such a right had influence on the emerging right of trial by jury that has come down to us today.

In an excellent study of trial by jury, Michael Hill and David Winkler describe a long-term project on juries that sought input from scholars across the globe. Here is one of their conclusions:

History apart, there appear to be two principle justifications for having juries:

They are independent decision-makers.

They respect society in the disposition of criminal cases and, as such, they satisfy one (at least) of the socio-political imperatives ... [that] government is “by the people” (Hill and Winkler, 2000:397-443;411).

Hill and Winkler argue that jury trials can be defended in terms of fair trials although they acknowledge that there may be other ways to achieve fair trials, and that various societies in the past seemed to achieve fair trials without the institution of the jury trial as we understand it today in western societies.

There are serious costs in a jury system—and “Practitioners working in an existing jury trial system ignore the cost argument at their (and the system’s) peril” (Hill and Winkler, 2000:412). As the Dutch have seen, in some cases efficiency can be maintained and cost can better be contained when professional judges make decisions rather than lay juries (Hill and Winkler, 2000:413-414). And professional judges are much less likely to disregard the law and engage in “nullification” than are lay juries. In addition, in societies without a history of trial by jury, legitimacy of verdicts is far more likely to be recognized by the public if juries are not employed. And there has never been a system that relied exclusively on juries in any event, giving rise to the idea that at very least juries are not in and of themselves stable enough to sustain fair trials.

In my view, despite its potential pitfalls, trial by jury is worth defending at the international level. In the long history of Anglo-American juris-

prudence from *Magna Carta* until today, the right to trial by jury has been seen as highly significant in the general protection of the law that should be afforded to all persons who fall under the law's jurisdiction. At least in part, this is because trial by jury of one's peers is likely to be less subject to political manipulation and abuse than trial by a "jury" of social and political elite judges. Underlying this position is the idea that there is more of a commonality of interest between a person and his peer group than between elites and persons standing in the dock.

Commonality of interest between those who risk conviction and those who do the convicting is important in trials so that those risking conviction have the sense that the proceedings have been fair ones. Of course, those who share commonalities of interest can be unfair to one another. But the kind of unfairness that comes from people having unreasonable expectations or not knowing the normal expectations of people in a particular society can be blunted by making sure that people from the same society as the accused are in the group that decides on conviction. Even judges that come from the same region as the accused do not necessarily have commonality of interest since such commonalities are a function of socio-economic status as well as region.

Trial by jury of one's peers also gives expression to the idea that those who are accused and those who accuse are part of the same community. This is important because it means that the duties that a person is accused of having violated are specifically correlated with rights to a fair process in determining whether those duties were in fact violated. Such correlations can be maintained by those who are not one's peers. But the thought is that peers will respect such rights because they can better identify with what it is like to have these rights not respected. The idea that one has peers, and that they are the ones who have convicted the accused, is important for establishing the respect for the accused as a rights-holder.

There is though a very important practical problem—namely that in international criminal law, a true jury of one's peers would have to be drawn from the community the complaining party comes from, and that may well be half a world away from where the trial is to take place. And these jury members would have to be transported to The Hague, for instance, and housed for potentially several years. In addition, many parts of the world do not have a tradition of trial by jury, and if the complaining party comes from that part of the world, then there is a serious problem about how to get the members of his society to the point where they understand what it means to sit as a jury of his peers. And finally, there is the problem that issues in international law tend to be rather more complex than domestic

issues and so there is reason to think that a jury of one's peers will find it difficult even to understand the issue to be decided upon.

One way to respond to some of these objections is to restrict the scope of such trials, or perhaps initially to make them more like administrative hearings rather than full-blown trials. Hearings sometimes have small juries, and this would make things easier given the above difficulties. In addition, those hearings could be held initially in situ, as a fact-finding matter, and then the determination of applicable international law could be determined back in the place where the international tribunal or administrative panel regularly meets.

What is more important is that the spirit of trial by jury prevails rather than the letter. So, in this context what is crucial is that there are some people who are deciding major issues of the trial, especially factual matters, who are not merely drawn from the elite of the society and thus may not have much sympathy for a marginalized member of that society who appears before them. Indeed, the role of juries is to decide factual issues rather than issues of law in any event, so the complexity of the law is not necessarily an impediment to having trials with juries instead of merely trials with banks of jurists drawn from regions of the world that are quite different from the region where the defendant resides.

The issue of whether to have trial by juries is primarily one of affording to the individual defendant some kind of guarantee that his or her interests will not be significantly discredited because the people judging do not share those interests or even understand them. And there are various ways to help here, perhaps if we construct a progressive list of things that would lead to robust jury trials but would also include less robust institutional checks. On this list would be:

- 1) multiple-judge panels that have some jurists from the defendant's region;
- 2) multiple-judge panels that have some jurists from the defendant's State;
- 3) preliminary hearing panels that contain defendant's peers;
- 4) juries that contain some of defendant's peers;
- 5) juries that contain mainly defendant's peers.

In each of these alternatives, we move progressively closer to true trial by jury in international trials.

If we think even more creatively, we can imagine other types of hearings, especially administrative hearings, which can partially serve the spirit of the principle of trial by jury of one's peers.⁵ In domestic contexts it is common to have these proceedings conducted by members of the professional class. But this need not be the case, as is sometimes true in small claims courts in the United States or in alternative dispute resolution

proceedings. In such proceedings, it is possible to give the defendant a veto power over the mediator, or even to give the defendant a more direct say in who would be the mediator, chosen from a list of approved mediators. The principle undergirding trial by jury can be seen here in these various alternatives to proper trials as well. It is commonly objected that international law cannot accommodate the procedure of trial by jury of one's peers. But as I have argued this is too simplistic a response. In spirit, if not in letter, this procedure can be accommodated to various degrees in international law today. And in doing so, it will be possible to embrace the principles that undergird trial by jury of one's peers.

It is also the case that the spirit of trial by jury of one's peers is related to the idea that no one should be deprived of being subject of international law. The very idea of a person being judged by those who are his or her co-nationals, or fellow members of a smaller group such as state membership in a federal system of states, is an idea that implicates the right to be a subject of the law. For without being a subject of a legal regime, there really aren't peers that one has that could constitute a jury of one's peers. This does not rule out, as I argue at the end of this paper, that one can be subject to more than one legal regime. What has motivated my study is the idea that some people have been denied the protection of legal subject status. And part of what this means is that such other rights as the right to trial by jury is also called into question when a person is deprived of being a legal subject. On the other hand, having the right to be judged by a jury of one's peers makes it harder for a person to be systematically deprived of legal status.

V. Citizens of What?

The objection I wish to take up at the end of this paper has to do with the idea of world citizenship with which I began. For there to be citizens of the world there must be a world community that would in some sense correspond to a nation-state, or else there would not be any entity or "State" for the people to be citizens of. Indeed, there seems to be something of a category mistake to say that there are citizens and yet for it to be unclear what political community these citizens are connected to. I shall address this objection by suggesting that there is enough of a world community for the idea of world citizens to begin to make sense, but that this does not commit me to full-scale cosmopolitanism.

Cosmopolitanism is the thesis that international morality only or primarily concerns individuals. According to this view, the rights of individuals in the world, human rights, are not to be subjugated to the interests

or rights of States. The State has no, or very little, moral standing and indeed should not count in moral deliberations. Most cosmopolitans then make the leap to politics and argue that the individual is also the main unit of global politics, with the State greatly reduced in importance. And cosmopolitans are highly critical of attempts to talk of even a society of States. Yet, their perspective, much more so than mine, falls prey to the charge that it is simply utopian to think that there is anything like a global community that would be morally or politically prior to communities in States.

I subscribe to the view that is often called “the society of States” perspective (see Caney, 2005:10-13). The international community is a community composed primarily of States and only secondarily of individuals. Nonetheless, there are human rights that are the rights of people qua human, not merely civil rights that are rights of State citizenship. The question is what to make of claims about world citizenship. My view is that such claims are partly metaphor and partly reality, but that it is indeed utopian to talk of full-scale world citizenship. People have citizenship rights that relate to the States they are members of. But people also have subsidiary citizenship rights to the global community that their States are the primary members of. Human rights are normally mediated through States, although there are important exceptions when it comes to those who are stateless or whose rights are not being protected by their States. In my view, there is enough of a global community to speak non-metaphorically of global citizenship insofar as we focus on the community or society of States.

People are “citizens of the world” in two senses of that term. First, most people are citizens of some State that is part of a society of States. Second, for those who are not citizens of States or for whom States do not protect their rights, these people have a non-mediated right of citizenship in the world community. This latter category of citizenship is of a limited sort. The rights in question are rights to basic human rights and basic procedural rights, including the *Magna Carta* legacy rights I have been discussing. And when these rights are abridged, either States should redress their infringement, or failing that, these people still can pursue their rights directly in the international arena. The international “community” is then a stand-in for the society of States plus the protection mechanisms set up to deal with gaps that exist when people are stateless or when States have clearly demonstrated that they will not protect the human rights of their citizens.

People are citizens of the world metaphorically in that they have human rights that their States should protect creating a situation in which it is

as if there were true citizenship rights of the world. And in those cases of statelessness or failure of a State to protect the human rights of its citizens, there is a non-metaphorical sense in which people are global citizens insofar as they can press their human rights claims for direct redress by various international institutions. In this way it is possible to answer the question of what people are citizens of when it said that they are citizens of the world.

It could still be objected that there is not enough of a world community for there to be anything other than the metaphorical sense of being a global citizen. In the remainder of this section I will attempt to respond to this variation of the objection I discussed above. There is a rudimentary international community in the sense that there are interlocking institutions that facilitate trade and health information and aid around the world. And such a community is as much as we need in order for there to be sufficient community of interest around the globe. In fact, the emerging consensus about the most important substantive rights in international law, gives one hope that a similar consensus could emerge about procedural rights in international law as well. Such a consensus would provide fuel to the idea that there is generally an emerging idea of global citizenship.

A related objection is that in thinking about the problems of this book in global terms I have neglected the fact that many global problems result from what States have done and it is States that can and should be the ones to remedy those problems. This is the position that David Miller defends in his book, *National Responsibility and Global Justice* (Miller, 2007). Miller argues that we must treat individuals as agents and not merely as patients in terms of global problems having to do with those who are poor or refugees. The poor or those who are refugees are inhabitants of States, and often those States have contributed to their problems. Such considerations are not irrelevant. Indeed, it may mean that refugees do not have an absolute right to leave their home States and become members of another State.

My response to this objection is to point out that pursuing global solutions does not rule out also considering State-based solutions. Indeed, since I am not a cosmopolitan I do not have to worry about attacks like those of Miller as much as cosmopolitans do. My model remains that of the *International Criminal Court*, with its principle of complementarity. In many ways, this international court is really only a back-up and deterrent device to prod States to redress substantive rights violations. The various models concerning how to redress procedural rights violations are also meant to be back-up alternatives to what States can often do best if properly motivated. There is, of course, the special case of people who have no

State to appeal to, where international courts or other institutions will be the primary forum for their complaints. But these cases will be exceptional.

My view is that there is nothing wrong with the idea that most people are citizens or subjects of multiple legal realms. The two most important memberships are State and global. Being a citizen of the United States and also a citizen of the world is not significantly different from being a citizen of Missouri and a citizen of the United States, or perhaps the better analogy is to those people who hold dual citizenships. In any event, as I have indicated, being a citizen of the world in the sense that one has significant rights by virtue of being human does not necessarily indicate where those human rights are best protected, and certainly does not mean that one can press such rights claims only, either internationally or nationally.

David Weissbrodt has stated: "The architecture of human rights law is built on the premise that all persons, by virtue of their essential humanity, should enjoy all human rights" (Weissbrodt, 2008:45). This right to equality before the law has been promulgated by various international bodies including the United Nation's Human Rights Committee. But in the case of non-citizens, whether "migrants, refugees, stateless persons, and others, they share common experiences of discrimination and abuse" (Weissbrodt, 2008:241). Few deny that human rights protections should be extended to all; what is at issue is how this should be implemented, and especially to what extent a State's security interests can trump the protection of the right to equal protection of international law to all.

In this paper, I have discussed the right not to be outlawed or removed outside the protection of law, the rights of those who are stateless, procedural rights against discrimination and abuse of non-citizens of various kinds, and the related right to have a trial by jury of one's peers. And I have ended by addressing the vexing question of what entity or "State" individuals are primarily subjects of when questions of international law are in play. Throughout, I have argued that one of the most important rights is the right to be a legal subject, and that one of the most important international rights that one has is the right to be subject to international law. The right to be subject to international law is a procedural right that has its roots in certain aspects of *Magna Carta* and also is a linchpin in the international rule of law.

Notes

1. This paper is cut from Chapter 10 of my book-manuscript, *Global Justice and Due Process*.
2. *Boumediene v. Bush*, 128 S. Ct. 2229, 2256 (2008). Kennedy cites Harlan's concurring opinion in *Reid* as criticizing *Ross* in wondering "whether jury trial should be deemed a necessary condition of the exercise of Congress' power to provide for the trial of Americans overseas."
3. Hathaway (2007:352). Also see the discussion of this issue in Keebone (2009:304-308).
4. Gibney (2006:139). Also see, Lane in Gibney (2006:171-172).
5. For a discussion of related issues about who is the subject of the administrative regulatory action see Kingsbury, Krisch and Stewart (2005:24).

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WORLD GOVERNMENT AND THE INTERNATIONAL CRIMINAL COURT*

ANTHONY ELLIS

There is at present no such thing as a world government. But what, for a long time, was considered to be its antithesis, namely strong national sovereignty, has been considerably eroded. That erosion has taken many forms, but what has been one of the most interesting has been the establishing of an International Criminal Court. The ICC of course cannot work without a substantial degree of compliance on the part of largely autonomous nations. But domestic courts too cannot work without a substantial degree of compliance on the part of those over whom they claim jurisdiction. In the case of most domestic legal systems there is such compliance—secured, no doubt, by various means. Whether there is such compliance in the case of the ICC is, at best, unclear, and the ICC, along with other erosions of national sovereignty, should perhaps be considered an experiment whose outcome is not yet known. My purpose in this paper is to suggest that, whatever may be true about the practicalities, we should in principle welcome at least this particular erosion of national sovereignty.

1

The ICC deals with “the most serious crimes of concern to the international community as a whole.”¹ It is, however, “complementary to national criminal jurisdiction” (RSICC, Article 1). and most of those who have been punished for the crimes over which it has jurisdiction have been prosecuted by their own courts, or courts set up by an occupying authority after a war.² Despite the largely woeful record of local courts in prosecuting their own war criminals,³ that war crimes trials should be carried out in this way is no doubt, at present, the default presumption.⁴ But we need to be clear about what generates this presumption, and what follows from it.

It has two possible sources. One is based upon local contingencies, considerations of what is possible, or even convenient, legally, politically, financially, and so on at a particular time and place; such considerations

alone could not provide a *principled* reason against international courts. The other source is based upon theoretical concerns about the rights of jurisdiction and the sovereignty of states, and is supposed to deliver a principled reason against international criminal jurisdiction.⁵

The force of the latter concern is indicated by the fact that it is shared even by many who do not oppose international criminal courts, perhaps most notably by Larry May. It will be useful to examine May's work; I think we shall find that the concern is misplaced and anyway cannot be allayed by the sort of argument with which we are familiar. Here is May contrasting international courts with humanitarian intervention:

When the security of a person has been jeopardized by that person's own state, then it is permissible for sovereignty to be abridged so as to render the individual secure. But when we ask about international tribunals that hold some individuals criminally liable for the violations of the security of other persons, more needs to be shown than just that a person's security has been breached. There must be some compelling reason why the international community is warranted in prosecuting individuals as opposed to states.⁶

May thinks that the "compelling reason" must be found in a concern specific to "the international community," a concern that gives the international community a legitimate interest in prosecution. But why should we demand such a compelling reason?

One argument is supposed to work by analogy with domestic law: the *domestic* community may legitimately punish offenders only if it has a legitimate interest in doing so, and it has such an interest only if an offense harms the community. By analogy, the international community is held to have a legitimate interest in punishing only those who cause harm to the international community.⁷

But this argument seems wrong from the start. If we took seriously, and substantively, the claim about domestic criminal law, then domestic criminal law would have little work to do. Most offenses do not, in any real way, harm the community; they harm only the direct victims and some of those who are close to them in various ways. May says: "Often what is meant [by harming the community] is that [the community's] residents are made less secure by the crime" (May, 2005:82), "just as when a woman is raped merely because she is a woman there is a sense in which all women are put in jeopardy and harmed."⁸ Given that rape, *so described*, is necessarily a recidivist crime, there is indeed a sense in which the fact that a woman has been raped "merely because she is a woman" raises the probability that other women will be raped too. But of course a

woman is not usually raped “merely because she is a woman”; there are usually other factors in play too. These factors will normally be universal properties and so the risk to the class of women possessing *these* properties will, everything else equal, necessarily be raised. But this class will rarely include the whole community. The community certainly has a legitimate interest in preventing this risk; but that is not because the risk affects the whole community. What the community has a legitimate interest in preventing is the harm done to particular people if they are raped. We prohibit rape, and punish it, in order to protect individual people from the harm that actually being raped would do *to them*. And if an action could be guaranteed to have no harmful effects on anyone other than its direct victim, the interest of the domestic community would remain largely intact.

May further holds that that in domestic law it is a necessary condition of an offense being a public matter that it target the individual on the basis of group-membership: “criminal prosecutions should only go forward when group-based individual harm is alleged.” (May, 2005:82). We could make this trivially true: almost all offenses are committed against someone because of their possession of some universal property or other, and so because of their membership in a “group.” But if we don’t make this trivializing move, then it is surely false: a murder victim doesn’t have to belong to any specially significant group—a race, or gender, say—before his murderer should be prosecuted. Indeed, if it is possible to target someone as a victim under a description that involves no universal properties at all—if my aim is simply, as Kripke might have put it, to kill *Nixon*—then he doesn’t have to belong even to a trivial group.

It is important here not to be misled by a theoretical fiction. It is often said that what distinguishes public from private law is that in the latter it is harm to the community that is of concern, not harm to the individual victim. But, in the sense in which this is true, the word “harm” carries a purely formal, theoretical meaning, bearing no more content than is required by the phenomenon it is intended to describe: the state lays down certain prohibitions and the harm to the community just *is* the violation of a prohibition. In this purely theoretical sense of “harm” it is a tautology that the state may punish only behaviour that harms the community, and that tautology can do none of the explanatory work that May requires.⁹

If the first part of the argument is wrong then the argument by analogy fails. But imagine that the first part of the argument were correct. We should still need to be shown how international crimes affect the international community and thus provide it with the “compelling reason” that

May requires. That is what he tries to show: international crimes must harm “the world community, or humanity”.¹⁰

According to May, “harm to humanity” can arise in either of two ways: first when someone is wronged because he is a member of a group, and second when someone is wronged by the state. In the “ideal case,” there will be both (May, 2005:89). But since May’s emphasis on the second is largely the result of the fact that, according to him, it usually involves the first, I shall concentrate on the first.¹¹

May suggests that “the most promising” way to explain how group-based offenses “harm humanity” is through the idea that “some significant characteristic of humanity is harmed, perhaps by harming it within each member of humanity” (May, 2005:85). That in turn is explained like this: group-based offenses show a “callous disregard for the individuality of the individual”, the “unique features of the individual” (May, 2005:85). The rough idea is that if you harm someone merely because they are a member of a group which they have not chosen to join then you are not harming them because of something unique to them. That is trivially true.¹² But it clearly does not follow, and nor is it true, that you are harming them on the basis of something common to all humans. And still less does it follow that you have harmed something common to all humans.

A different argument suggests that “all humans in all political communities” have a “shared interest” in peace and the protection of basic human rights (May, 2006:375). Each thus shares the interest of everyone else in peace and the protection of basic human rights and so when, say, someone’s basic human rights are violated, everyone’s interests are harmed.

In fact, there may be communities, and people, who thrive on warfare. But let that pass. A different problem is that the notion of a shared interest is unclear here.

Here is one reading: A group of people might have a shared interest in X in the sense that *each* has an interest in getting X. But of course it does not follow from this that each has an interest in any of the others getting X. So from the fact that each of a group of people has an interest in being at peace it does not follow that each has an interest in any of the others being at peace. This is surely what we often see in international affairs: it can be in the interest of one country to foment war between other countries. If it cannot, that is certainly neither a priori nor obvious.

Perhaps May has in mind a stronger reading: each member of a group may have an interest in all members of the group getting X. In a two-person case, this would presumably give us the result that May requires, at least as far as peace, or lack of conflict, is concerned. (It would not, however, apply to the protection of human rights.) But the two-person case is

obviously irrelevant to the question at issue, where we have many communities and even more people; and the argument does not work except in the two-person case. As I said, it is neither a priori nor obvious that a community cannot have an interest in other communities being at war amongst themselves.

May also has a different argument:

Group-based harms are likely to be either more widespread, in the sense of not being restricted to isolated victims, or more systematic, in that they display more than just motivations of hatred or cruelty, than harms that are individually based. Group-based harms are of interest to the international community because they are more likely to... risk crossing borders and damaging the broader international community.¹³

I shall make two comments on this.

First, even when they affect a large proportion of a population, group-based offenses—*merely as such*—have no more significant tendency to spread across borders than any other large scale persecution (random kidnapping of people as slaves, for instance, or just widespread oppression). And indeed the vast majority of group-based persecutions have not spread across international borders in any significant way (racial discrimination in the US for example). It is really only a problem in special cases—when, for instance, the group itself is spread across borders, or when the group has significant support in other countries, or when it is sufficiently large and well-organized to create a destabilizing civil war, or large refugee problem. Most socially significant groups do not satisfy any condition of this sort.

Secondly, the mere fact that group-based persecution spills across a border could not explain why the *international* community should have an interest *that it did not already have*. Take, for example, Idi Amin's persecution of his East Asian population. Many of them had British passports that were thought to give them a right to enter the UK, and many wished to do so. So the persecution did, in one sense, cross borders, since it faced the British government with a relatively small influx of refugees of Asian origin. But if the persecution was not already of concern to the international community, then the mere fact that Britain would have to cope with this influx of Asian citizens could not make it so. It is true that this was a relatively small problem and was unlikely to lead to significant global instability. But it illustrates a larger point: group-based persecution hardly ever affects *the international community* rather than simply some proper subset of it. The wars in the Balkans in the 1990s, for instance, did not significantly affect, say, India or Brazil or a multitude of other member

states of the UN.¹⁴ I do not mean to imply that such countries had no significant interest in those events. But their interest did not stem from the fact that borders were crossed.

So far, May's argument has been that the international community has a legitimate interest in war crimes because they cause "harm to humanity." In *War Crimes and Just War*, the argument shifts: "humanity" now becomes "humaneness": "War crimes are crimes against *humaneness*... [and they] affect an interest of the international community to minimize suffering by preventing inhumane treatment."¹⁵ But now the wheel of humanity is turning idly. The international community certainly has "a legitimate interest" (suitably defined) in preventing suffering; that is just to say that it has a moral right to prevent suffering, and that is true simply because everybody has that right. But it doesn't have a special right to prevent suffering *caused by inhumane treatment*. It has, for instance, exactly the same right to prevent suffering caused by injustice (again, suitably defined).

May starts this wheel spinning because he holds that soldiers may, as a matter merely of justice, do "nearly" anything in self-defence against an unjust aggressor: "when one side fights without just cause, the other side owes them nothing."¹⁶ On that view, one will need to explain why there are moral restrictions on what soldiers may do to each other. May's answer is that those restrictions arise from "the duty of humanity," i.e. the duty to act with mercy and compassion. But if this is not merely a terminological stipulation about the scope of words such as "humaneness" and "justice," then it is surely quite implausible. There are limits of *justice* on what one may do to an unjust aggressor in self-defence; if a co-worker tries to steal my ball-point pen and I spray his legs with bullets to prevent this, I shall not simply have failed in the virtue of mercy; I shall have done him a wrong, an injustice, and that reveals itself in the fact that he would have, in morality, and in most legal systems, a right to redress. There seems no reason to think that the situation is different with soldiers. Certainly, the international community has an interest in minimizing the ravages of war. But that has nothing specially to do with humaneness, nor anything special to do with the international community, properly speaking, nor even, really, with war.

2

As is perhaps already clear, I do not think that we need the contortions that May puts us through. The mistake is to assume that the burden of proof lies on those who support the internationalization of criminal law,

rather than those who question it. The correct starting point is to ask: why should the international community *not* have a right to prosecute and punish certain behaviour? *Everyone* has a right, within limits, to prevent people from aggressing against others. That is simply a commonplace extension of the right of self-defence. It is a right the exercise of which we are happy to cede, in part, to our government, and that is, in my view, the normative underpinning of penal institutions. And there is no reason—in *principle*—why we should not cede to our government our right to prevent aggression *wherever* it occurs, and by whom, and upon whom, it is perpetrated; nor is there any reason, *in principle*, to refuse to cede it to any other trustworthy body. So what needs justifying is not the fact that the international community, or the UK government, has a legal right to, say, prosecute Chileans who torture Chileans in their own country; what needs justifying is that, for instance, the government of the UK has *no* legal right to prosecute Chileans who *steal* from Chileans in their own country. Now that *can* be justified—very easily—but the justification is not philosophically deep or very interesting; it has to do merely with practicalities, legal, political, financial and bureaucratic, for instance (and, no doubt, traditional habits of thought).

It will seem otherwise, I think, only if one attributes more depth to the notion of the sovereignty of states than that notion actually merits, and thus thinks that international jurisdiction needs a special sort of justification, or just an especially strong one, as does May. There are two ways in which one might attribute more depth to the notion of state sovereignty than it merits.

First, one might attribute to the state a sort of intrinsic value, i.e. a value that does not depend upon causal consequences. The most natural way to do this is to link the value of states to the value of individual, autonomous agency. And the value of individual, autonomous agency involves at least the capacity for freely and rationally determining the means to one's ends. What the connection is between freedom and rationality, and whether autonomy requires rationally determining one's ends, are matters that can be put aside for now. Individual, autonomous action, so understood may be thought to have intrinsic value.

Now, to make plausible the idea that the state might have intrinsic value, we need to distinguish two sorts of intrinsic value: basic, and derived. Few will nowadays attribute to the state a *basic* intrinsic value. But intrinsic value need not be basic; it may derive from a more basic value and yet still be intrinsic. In the present case, the most plausible candidate for basic value would be, I take it, individual autonomy. So, one might think that such autonomy has a basic, intrinsic value, and that the activities

of a group may derive intrinsic value from this. A group activity may, for instance, express the unanimous will of the members of the group and so will inherit whatever intrinsic value attaches to the autonomy of each member. Or, differently, a group may do something that it is impossible for an individual to do alone (participate in cooperation, for instance); in such a case, one might think that the activity has value as enhancing the possibilities of individual autonomy. In cases like these, we may say that the value of group autonomy is, though derived, nonetheless intrinsic.

I have spoken so far of the intrinsic value of a *group*, but one may think, more specifically, that this value can transmit to the *state* too. The thought is that individual autonomy has an intrinsic value that transmits to self-governing groups, and that this value transmits in turn to the sovereignty of the state that is an expression of it. Given this thought, one might think that there is a principled, though perhaps rebuttable, objection to international courts, or at least those which claim jurisdiction over citizens who do not recognize them.

But it is surely difficult to see that “group self-governance,” at the level of states anyway, is really of intrinsic value in the way outlined above. If a group “governs itself” through some process that results in un-coerced and unanimous agreements, then it is plausible to think that the value of individual autonomy transmits—trivially—to the autonomy of the group. But that is not what happens in even the most democratic societies. Decisions are virtually never reached by unanimous consent; policies are often adopted that conflict with the convictions of some citizens. The most that could be hoped for would be that the decision-making machinery itself would have unanimous, thoughtful endorsement. But that too cannot be relied upon. Perfectly reasonable people object strongly to, for instance, the “first-past-the post” voting system in the United Kingdom, or the institution of the “Presidential College” in the United States. Many people object even to democratic processes altogether. And many have not deliberated rationally about the nature of the democratic process at all. Many such citizens often participate in political decisions involving these mechanisms. But many objecting citizens refuse to participate, and they have no alternative but to have others make their political decisions for them. Such a system cannot simply *inherit* the intrinsic value of individual autonomy.

But perhaps the argument is supposed to work by analogy: the value of self-governing groups is in some important way *like* the value of autonomous, individual agents. As I mentioned earlier, self-governing groups can make possible rational deliberation, which can seem like the sort of deliberation that autonomous individuals go through. But if this is to work, it

must at least work in the standard case. And the standard case, even in the best democracies, is where rational deliberation does not produce unanimity but only a majority view. But if we think of the group by analogy with the individual, then a group that acts on a mere majority preference is, at most, like an individual with a fractured will rather than an individual guided by reason in the way that is supposed to generate intrinsic value.

But let us, for a moment, assume that group self-government has intrinsic value; it is a further step to assert that the sovereignty of states has intrinsic value; and this for two reasons.

First, the legal doctrine of state sovereignty does represent a certain right of “self-government”; but it has nothing to do with, say, individual Englishmen each organizing their own lives; it represents only the bare right of, say, “the English” to be ruled by “the English.” But that would be achieved by an absolutist monarchy so long as the monarch and his or her subjects were all English. Something like that is pretty much the situation of many members of the United Nations and whatever value this may have it certainly does not have the sort of intrinsic value that derives from the value of individual autonomy outlined above.

Second, one may think, as I do, that no particular value attaches to the notion of group self-government other than political accommodation to historical facts and their residue. But even if one denies that, it is important to note that a group can “govern itself” *in all the ways that it is legitimate to demand* without having state sovereignty. That is to say, no plausible moral right to self-government, if there is one, extends to state sovereignty as that is understood even in recent international law. The Welsh, for instance, could govern themselves in every way that it is legitimate for them to demand without seceding from the United Kingdom. That is because the moral right to self-government does not extend to matters that impinge seriously on one’s neighbours. The moral right of the Welsh to self-government would not entitle them, for example, to go to war in defence of Anglesey, in a way that was disastrous for the English; or so I should think. But in international law, Welsh state-sovereignty would grant just this right so long as the state was acting in self-defence and was not in breach of other provisions of international law.

This brings us to the second of the two ways in which I said that one might attribute more depth to the notion of state sovereignty than it merits. On this way of thinking, the value that state sovereignty has is purely *instrumental*. And it must surely follow from this that the value attaching to international courts is also instrumental, and no *special* reason is required in order to justify them. The question is simply whether the lives of (enough) individuals go (sufficiently) better by recognizing them. And the

argument here surely inherits the results of our earlier arguments. Until we are given reason to think otherwise, we should presume that the threat of prosecution and punishment by suitably established and authoritative international bodies will have some deterrent effect; and until given reason to think that the costs of particular such bodies are unacceptably high, we shall be justified in our adherence to them.

May seems to address this point when he says that the point of states is to secure the protection of individuals and to ensure peace and harmony amongst states; and so long as a state is “conforming to this normative aim” there is a presumption against interference by other states.¹⁷ But as soon as we press “conforming to” this argument collapses under the weight of a dilemma. We may take it to mean “actually and wholly conforming to.” But since not even the most willing state has ever wholly secured the protection of all of its citizens, and could not possibly do so, the presumption would be utterly weak. We might modify the claim, then, and say that a state should be immune from interference as long it achieves this aim as far as it can, say, or to a reasonable degree. But now the claim will seem unmotivated, at least to those whose lives and wellbeing the state is not, as a matter of fact, willing or able to protect: why should one of those unfortunates not seek—and be entitled to get—protection elsewhere? Remember that we are not now talking of one state invading another on behalf of the downtrodden, but of an international legal order which, in some circumstances, might provide them deterrent protection and redress. To suggest that the citizens of a state that is doing only more or less what states ought to do should have no right to such a legal order, or even that there is a presumption in favour of this proposition, would be as if one were to say that, since the primary responsibility for the welfare of children falls upon parents, the children of those parents who care for them only more or less, or who are incompetent to care for them properly, should not normally be entitled to look to the law for protection from the harm that their parents allow to befall them.

May perhaps offers a reply when he says, “Social stability requires exclusive legal control over a population.” But though (some degree of) social stability may be a necessary condition of the protection of individual rights, they are not the same thing. And it is anyway, I think, plainly false that social stability requires exclusive legal control over a population (cf. Luban, 2006:356). The legal doctrine of state sovereignty is, after all, a relatively recent development in world history, and it has hardly ever been the case, and certainly is not now, that a state has “exclusive legal control over a population”. And those who have most vociferously laid

claim to it in the twentieth century have all too often had anything in mind but the protection of individual rights.

Notes

* This article was partly published as Anthony Ellis, 2010, “War Crimes, Punishment and the Burden of Proof,” *Res Publica*, vol. 16:181–196.

1. *Rome Statute of the International Criminal Court* [RSICC], Article 5. It has jurisdiction over genocide, crimes against humanity, war crimes and, some time in the future, international aggression. I shall refer to all of these crimes, somewhat inaccurately, as war crimes.

2. Or local courts largely supported by an occupying power as with the Iraqi High Tribunal, largely overseen by the Regime Crimes Liaison Unit (a US Justice Department agency located in the US Embassy in Iraq).

3. It can be woeful in more than one way. After WWI, German prosecution of war crimes was derisory. In Rwanda, in the aftermath of the genocide, more than 100,000 people have been imprisoned in dire conditions.

4. But in somewhat remote circumstances, the ICC can take jurisdiction of a case from a local court (see the RSICC, Articles 13–19).

5. Actually, virtually no sensible person objects to international criminal jurisdiction as a whole; it’s a very old idea. The objection is really to the International Criminal Court and other UN tribunals.

6. May (2005:81). May is speaking explicitly of international crimes generally, not just war crimes. He is largely followed in this view by Drumbl (2007:6;34;182).

7. May (2005:82): “In domestic settings, criminal prosecutions should only go forward when group-based individual harm is alleged—that is, harm that affects not only the individual victim but also the community... In international criminal law, harms that are prosecuted should similarly affect... the world community, or humanity.”

8. May (2006:374). I suspect that perhaps May means “harmed by being put in jeopardy.” At any rate, for this discussion I shall accept that being put at risk counts as a harm.

9. Husak also holds that the criminal law has a legitimate interest only in behaviour that wrongs “the community itself”. But he glosses that as whether “given wrongs are done not only to individual victims but also to the shared values and interests of communities” (Husak, 2008:136n). It is, surely, barely intelligible to speak of doing a wrong to a value or interest. It is, presumably, simply another way of saying that “the whole community has a stake in reducing violence” (136), and cannot *explain* that claim.

10. I take it that May intends “world community” and “humanity” to be co-referring here.

11. “In this second way that harms are group-based, it is not that the victim is experiencing group-based harm but rather that there is State involvement... in the harmful acts, thereby making these acts systematic rather than random” (May 2005:8).

12. Or false: it is unique to each that *he* has not voluntarily joined the group.
13. May (2006:83). Cf. "...when attacks on individuals are based on group characteristics rather than the individual characteristics of the victims, there is a much greater likelihood that the harms will be spread throughout a population rather than focused exclusively on a particular victim" (86).
14. Of course, the independence of Kosovo in 2008 was greeted with alarm by a number of states—including India—that had no significant interest in the Balkans save for the possible precedent effect of recognizing Kosovo.
15. May (2007:42). May recognizes the shift in his book published in 2008 (p. 4).
16. May (2007:56; see also 57;59). I am not sure what "nearly" is supposed to rule out (or "very little if anything" on p. 59). May here speaks only of self-defence in war; whether he intends it more generally I am not sure. It's also a little unclear to what extent May subscribes to this view himself or is simply attributing it to Grotius, or the C17 thinkers generally. Note also that on p. 57 May says, "On this Grotian account, we *owe* people more than natural justice would dictate" (my emphasis); so we do presumably owe them more than nothing.
17. But the statute of the International Criminal Court allows direct "interference" in only very remote circumstances.

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WORLD GOVERNMENT, INTERNATIONAL LAW AND THE ETHICS OF CARE*

VIRGINIA HELD

The chances of the United States relinquishing its sovereignty to a world government in the foreseeable future seem approximately nil. And the likelihood of there being a world government without the United States, even given the U.S.'s current decline, seems comparably low for the foreseeable future. So I will not even consider the desirability, or not, of a world government that might turn tyrannical, or homogenize all distinctive cultural achievements into marketable products, or multiply corrupt bureaucracies on a global scale. Or keep the peace and save the environment.

I will consider instead a much more feasible substitute, and that is international law. After a grievous hiatus, especially damaging during the administration of George W. Bush, the trend in United States policy may again turn toward greater acceptance of international law. And if so, this will go some distance toward dealing with the violent conflicts that some look to world government to control.

We need to be concerned with the world as it is, here and now, and with how to prevent and alleviate its terrible ills. Futile hopes for an ideal future contribute relatively little. Support for international law, however, is badly needed and may be worth providing. I will argue that for the foreseeable future, violence should be contained through the use of international law. I will pursue the arguments from the perspective of the ethics of care.

The Ethics of Care and Violence

I have come to believe that the ethics of care can provide the basis for a comprehensive moral theory, though many aspects of this new approach in moral theorizing remain to be developed. The ethics of care can provide moral guidance for people in all their connections with others, from their closest connections as members of families and small groups to their most

distant and even global relations as members of states and as fellow human beings. Care is most obviously a familiar practice and primary value in the personal interactions of family and friendship. It can immediately be recognized as essential in its most direct form, since no child can survive without a great deal of care for many years. We all have experience with what we can recognize as the values of care. Care is increasingly recognized as relevant also for political and international interactions and for both the close and the most general ties of civil society.

The ethics of care especially values caring relations between persons, obviously at the personal level within families and among friends, and less obviously at the most general level of relations between all human beings. It understands the value and necessity of caring labour and the values of empathy, sensitivity, trust, and responding to need. It cultivates practices such as the building of trust, and practices of responding to actual needs. It offers critical analyses and evaluations of existing practices, whether practices of care which have traditionally been exploitative or practices lacking care where it ought to be more evident. The conception of persons at the centre of the ethics of care is a view of persons as interrelated, in contrast with the model of the independent, self-sufficient liberal individual. Growing out of feminist appreciations for the enormous amount of overlooked but utterly necessary labour involved in bringing up children and caring for the ill or dependent, the ethics of care articulates especially the values involved and the guidance they provide.

The ethics of care has developed care as a value at least as important as justice. It is based on experience that really is universal, the experience of having been cared for, since no person can exist without having received a great deal of care. It compares favourably in this regard with contractual views only claimed to be universal. It rests not on religious views that are divisive, but on common experience.

Where such other moral theories as Kantian morality and utilitarianism demand impartiality above all, the ethics of care understands the moral import of our ties to our families and groups. It evaluates such ties, differing from virtue ethics in focusing on caring relations rather than on the virtues of individuals. How such more traditionally established values as justice, equality, and individual rights should be meshed with the values of caring relations is being worked out.

The ethics of care can conceptualize that within the more distant and weak relations of care that can be formed, we can develop political and legal ways to interact, and here the more familiar moral theories may be suitable. Traditional and dominant moral theories such as Kantian ethics and utilitarianism, with their deontological and consequentialist ap-

proaches, are still suitable, I think, for many issues within the realm of the legal or political when these are seen as embedded within a wider network of relations between human beings, though they are less satisfactory than usually thought when expanded into comprehensive moral theories. For violence arising within political conflict and being dealt with in political and legal ways, the more familiar approaches often remain appropriate. However, for longer-term evaluations of political institutions and practices, of groups and the violence they often now employ, and of how these domains should be configured within wider societies including potentially a global one, the ethics of care would, I think, be more promising (see especially, Held (2006: ch. 7-10). Considerations of care should always to be taken into account in situating the political and legal in a wider context. Our deepest considerations should be ones that ask what appropriate caring for all human beings requires.

The ethics of care provides a strong basis for valuing nonviolence over force in regional and global conflicts. This concern is relatively missing in the familiar political and moral theories that have been devised for the interactions of citizens of a given state with each other and then expanded to interstate contexts. Questions of which persons or groups are to be included in the contract have never been adequately addressed in the social contract tradition or in the moral theories such as Kantian ethics and utilitarianism that have accompanied its history. Answers to such questions have merely been assumed. In fact, force and violence have played an overwhelming role in establishing the boundaries and memberships of states. Nationalism and imperialism rather than contractual agreements have permeated their development and continue to be dominant in the ways states interact.

The ethics of care insists that we promote our policies and seek change and maintain order as non-violently as possible. It does so in a way that addresses the world as it is, in contrast with ideal theories based on hypothetical contracts between states. When the principles worked out for citizens' relations with each other are universalized as moral theories, or even as theories of international relations, they remain abstract and nearly inapplicable to a world already carved up into thoroughly unequal states. In the world as it is, the powerful often exploit and impose their will on others rather than respect weak states as equals. A moral theory such as the ethics of care is needed to provide that we care enough about our fellow human beings to actually respect their rights and take appropriate account of their interests and especially that we refrain from aggressive violence.

In the international context, as in that of a state, the ethics of care does not recommend that justice be simply replaced by care, either in its institu-

tions or in the ways we theorize about them and about morality. However, it recognizes the gross limitations of law and the superiority of other moral approaches for much of human value. It understands the importance within states of law and its enforcement in protecting persons from violence, and in bringing about implementation of their rights. It can even acknowledge that while legal institutions ought to be more caring, justice, as a value, ought to have priority over care in the limited domain of law, though care may be primary in the comprehensive morality within which law should guide specific interactions. Analogously in the international context, care can recommend respect for international law while contributing to more promising alternatives.

Care and violence are obviously incompatible. Violence destroys what care labouriously creates. Care instructs us to establish the means to curb, contain, prevent, and head off the violence that characteristically leads to more violence. In bringing up children, this requires a long process of nurturing and education: to cultivate nonviolent feelings, self-restraint, appropriate trust, and an understanding of the better alternatives to violent conflict. In interactions with others at some distance, the primary institutions with which to prevent and deal with violence are political and legal, and care can recommend acceptance when appropriate of these institutions along with recognition of their limits and of how alternative ways of interacting can be more satisfactory. These understandings can be matched at the international level, as care recommends respect for international law and recommends also alternative and better ways of fostering interconnection. We should work to build the interactions that are not primarily political and legal—the often non-governmental networks of civil society, with their cultural, economic, educational, environmental, scientific, and social welfare forms of cooperative institution—that will connect us and address our problems. We can gradually extend their reach so that caring can be better expressed (see e.g. Held, 2006: ch. 10; Keane, 2003; Robinson, 1999; Slaughter, 2004).

To avoid paternalistic domination, care needs to be interpreted from the perspective of the recipient as well as of the provider. Based on their experience, recipients can make clear how the care they receive should be respectful and appropriately empowering rather than demeaning and oppressive, within both families and in a global context. Care is sometimes provided in ways that are domineering, insensitive, and ineffective, but this is not good care. The ethics of care provides guidance for meeting the needs of persons, including needs for peace and security from violence, in ways that are effective, sensitive, liberating, and responsible.

Sara Ruddick has explored how, although actual mothers are often violent, an ideal of nonviolence “governs the practice” of maternal care (Ruddick, 2002). She shows how relevant such practices are for those working to promote peace. Mothers, she observes, often “school themselves to renounce violent strategies of control...” A politics of peace should be “resolutely suspicious of violence even in the best of causes.” Peacemakers seldom call for an absolute renunciation of violence but they “fix on inventing myriad forms of cooperation, reconciliation, and nonviolent resistance” (Ruddick, 2002:xviii-xix). Of course the claim is not that one can deal with terrorists or violent states in the same ways that parents try to deal with violent children. The point is rather that the values and practices of care can provide guidance for both.

Guided by the ethics of care we would recognize that violence, or the threat of it, are expectable aspects of human reality and that we can work successfully to contain their presence and decrease the damage they bring about. We would seek to restrain rather than destroy those who become violent, we would work to prevent violence rather than wipe out violent persons, and we would contain violence as non-violently as possible.

In a recent article examining Simone de Beauvoir’s deep ambiguity toward the use of political violence, Kimberly Hutchings reviews various feminist writings on the subject (Hutchings, 2007:111-132). She says of Sara Ruddick’s discussion that it “illustrates the ongoing tension between feminist distrust of political violence and the conviction that in circumstances of oppression, the use of political violence may be a necessary evil” Hutchings, 2007:114). For Beauvoir, she says, “the condition of political action...is...*ambiguity*, and on this basis, she claims that the question of the legitimacy of political violence remains open” Hutchings, 2007:121). Ruling out violence *a priori* is as dangerous as the tyrant’s or revolutionary’s willingness to embrace it. Beauvoir’s argument suggests to Hutchings that, concerning political violence, “there is no stable resolution to the ambiguity in feminist responses...We are left with the responsibility of judgment” Hutchings, 2007:128-129). My discussion of political violence fits easily into this tradition.

Robin May Schott effectively argues against the just war tradition on which a great deal of moral thinking about violence usually rests. She finds that the just war tradition all too easily normalizes war, suggesting that as long as certain limits are observed, war is morally acceptable (Schott, 2008). She uses Kant to argue that war is never morally acceptable, but an ethics of care might even more reliably keep us from forgetting that war is always atrocious, even if sometimes better than its alternatives. Which terms one uses to make the distinction between war being

sometimes necessary or better than its alternatives but never morally acceptable is somewhat arbitrary. The point to remember is that it should always have been prevented, averted, avoided. If it has become better than capitulation against an aggressor or abdication of responsibility in the face of genocide, the situation already represents a massive moral failure.

One could argue that the problems of the just war tradition result more from the misuse of its norms, as by the administration of George W. Bush, rather than of the norms themselves which do require that war be a last resort. But the specific norms have been developed for conflicts between the armed forces of states. It is questionable whether they can be applied to the kinds of violence engaged in, for instance, by nonstate groups trying to achieve liberation from colonial oppression or foreign occupation, or secession from an existing state. The ethics of care can accept various underlying norms of the just war tradition such as the requirement that one's cause be just and that the violence used must be proportional. It is better able to keep in mind the overriding context of caring relations between human beings that are so obviously shattered by war.

The Case for International Law

There are good reasons to be sceptical of the soundness of international law as guidance for arriving at moral evaluations in international affairs. By and large, international law has been devised to serve the interests of existing states no matter how dubious their claims to legitimacy or how questionable their objectives. International law is biased in favour of existing states and against groups seeking independence for their members, or fundamental changes opposed by such states even when such changes would be moral improvements. And the enforcement of international law has been inadequate.

However, despite its limitations, international law may be the best source of guidance available in the near future for what states ought not to do. The attacks on the validity of international law by members and supporters of the administration of George W. Bush have done grave harm and ought to be overcome (see e.g. Krauthammer, 1989; Goldsmith and Posner, 2005; for discussion of these attacks see Hongju Koh, 1997-1998; O'Connell, 2008). International law has serious problems, but ought to be improved, not disregarded.

Among the greatest threats of large scale violence in the world is the violence that may occur through military intervention. When we consider the issue of when it would or would not be morally justifiable for a state to intervene militarily in territory not its own and how one should think about

this problem, I conclude after examining various arguments that of the sources of recommendation available to us, international law is the most promising. And I conclude that the ethics of care would recommend respect for international law in the world as it now exists, though it would urge in the longer term less reliance on law and much more development of caring alternatives (Held, 2006:ch. 10). These would include various kinds of efforts across state boundaries to deal with problems before they lead to violence, and efforts to prevent hostilities through international arrangements, some formal, some informal. Nongovernmental organizations of various kinds, efforts to alleviate economic injustices, and agencies to foster peace and head off violence can much better exemplify care than can most law and its enforcement, but the latter may still be needed to prevent or limit explosions of violence, and the ethics of care would agree.

Relying on experience, we can conclude that norms that independent states agree to and agree to apply to themselves can facilitate progress toward a less violent and destructive and threatening and insecure world, and that international law is the best available source of such norms. We can acknowledge that international law should not *always* be determinative of policy, and still maintain that it is deserving of a very high degree of respect.

In her book *The Power and Purpose of International Law: Insights from The Theory and Practice of Enforcement*, Mary Ellen O'Connell considers how, to many theorists, "all law, including international law, is law because of community acceptance" and not only or primarily because of its ability to be enforced (O'Connell, 2008:7). Law does serve the interests of those to whom it applies, but this is not all that supports it. "The majority of society must voluntarily comply with the rules for a legal system to be maintained" (O'Connell, 2008:11). For international law these supports are more problematic, but there is much compliance, there are sanctions, and there is adjudication. O'Connell notes some efforts in the U.S. to undermine the authority of international law, but offers this conclusion: "Any effort to weaken international law only serves to undermine the prospects for achieving an orderly world and progress toward fulfillment of humanity's shared goals..." (O'Connell, 2008:14). There is much wrong with international law but our task should be to make it better. The ethics of care would support this task and help in the processes of improvement. And it would call on us to make other, even more promising efforts to care adequately for all persons so that punishing those who break the law would become decreasingly necessary. However, can an approach supporting international law survive the challenge of terrorism?

Terrorism and Unilateralism

The administration of George W. Bush has claimed that the attacks of September 11, 2001 so completely changed the world that its unilateral policies of preventive military intervention and disregard of international law are needed to defend the U.S. against the threat of terrorism. Using its “war on terror” as an excuse, it invaded Iraq in clear violation of international law, and insisted on a right to launch preventive wars to protect the U.S. from evildoers. In these policies it demonstrated what many of the most serious scholars dealing with terrorism consider a disastrous misunderstanding of terrorism, and what many of the most persuasive voices on international law and international relations consider a grievous threat to peace and world order.

In considering what U.S. policy ought to be, we should begin by rejecting the blanket condemnations that demonize all terrorists as exceptionally irrational and exceptionally immoral. As Martha Crenshaw, who has studied terrorism as a political scientist for several decades concludes, “terrorism has been an important part of successful struggles for independence from foreign domination” (Crenshaw, 1983:7). It is only rational that others learn from this experience. “Terrorism,” she continues, “is a highly imitable innovation in violent tactics; it combines drama, symbolism, low cost, and ease of implementation....Thus powerful models can stimulate the imitation of terrorism...” (Crenshaw, 1983:18).

Mia Bloom, another political scientist, reaches a comparable conclusion in her very useful study of suicide terrorism. She notes that “although the individual bombers might be inspired by several—sometimes complementary—motives, the organizations that send the bombers do so because such attacks are an effective means to intimidate and demoralize the enemy.... [Such] organizations are rationally motivated and use violence to achieve their goals. The operations are carefully calculated and aimed at ending a foreign occupation, increasing the prestige of the organization that uses them, and leading to regional autonomy and/or independence” (Bloom, 2007:3).

Robert Pape, supporting his view with a vast amount of empirical data, shows that the primary goals of nearly all terrorists are to rid the lands of the groups with which they identify of foreign military forces (Pape, 2005). This should certainly be considered in weighing arguments for military responses to terrorism. It was entirely foreseeable that invading Iraq would produce large numbers of new recruits for terrorism.

In her important book on terrorism, Louise Richardson makes clear how the “war on terror” is misguided. As should have been obvious, “it is

very difficult ever to declare victory in a war on terrorism or terror, much less evil” (Richardson, 2006:176). If the aim of the war, as Bush suggests, is to rid the world of terrorists, it makes it far too easy for them to thwart our aims with occasional attacks. Terrorists want to be thought of as soldiers at war.¹ To grant them this status and excellent recruiting tool, Richardson argues, is self-defeating (Richardson, 2006:177). A far better goal would be to contain the threat and reduce the appeal of terrorist groups to potential recruits. Richardson reviews the history of fighting terrorism with military force and “the lesson that has already been taught many times” that states cannot translate overwhelming military force into victory over terrorists (Richardson, 2006:180). The Russians in Chechnya, Israelis in Lebanon and the Occupied Territories, Peru against Shining Path, and many other cases provide evidence.

Richardson shows how terrorism, even religious terrorism, is not new and not especially linked with Islam. Like many others who have actually studied terrorists, she understands that terrorists are almost never the psychopaths or one-dimensional evildoers they are portrayed to be (Hoffman, 1998; Pape, 2005a; Pape, 2005b:511). They are usually “human beings who think like we do” and who have political goals they are trying to achieve (Richardson, 2006:xvii). They are often angry “young idealists wanting to do their part” for their country or group and “motivated by a desire to right wrongs and do their best” for what they consider a noble cause (Richardson, 2006:xv). The U.S. government’s failure to understand terrorism or learn from previous experience with it has been disastrous. “We cannot defeat terrorism by smashing every terrorist movement,” she writes. “An effort to do so will only generate more terrorists, as has happened repeatedly in the past. We should never have declared a global war on terrorism, knowing that such a war can never be won... Rather, we should pursue the more modest and attainable goal of containing terrorist recruitment and constraining the resort to the tactic of terrorism” (Richardson, 2006:xvii; Held, 2008).

Far from ending the violence of terrorism, massive reprisal attacks usually create more terrorists. Mia Bloom notes that “Israel has responded to every ceasefire of Palestinian suicide attacks with targeted assassination thus unleashing a new round of reprisals and counter attacks” (Bloom, 2007:190). The reasoning has been that assassinating their operatives saps the effectiveness of terrorist organizations. But it has not worked: the organizations “are fully capable of replacing operatives as fast as Israeli targeted assassination eliminates them” (Bloom, 2007:38) For every one killed, another two are available to take their place. The key, instead, in Bloom’s view, “is to reduce the Palestinians” motivations for suicide

bombing rather than their capabilities to carry them out.... There are no military solutions to terrorism” (Bloom, 2007:39-40). The lessons of the past, in case after case, are that harsh counter terror tactics have the inverse effect. Though they may be politically popular with the supporters of those who use them, terrorism has actually been ended when those resorting to it have found other means to pursue their goals.

There have been recent arguments that we are faced with a new kind of terrorism. It is asserted that although terrorists in the past may have been open to negotiation and capable of being deterred, the “new terrorism” of Islamic fanatics is closed to rational responses and cannot be contained, only eliminated. The argument serves to promote the “war” on terror, but has been effectively refuted by Martha Crenshaw and others (see e.g. Crenshaw, 2007). One of the gravest mistakes of the Bush administration’s response to terrorism has been to collapse very different elements of violent opposition to U.S. policies into one unified “enemy” who is evil. The context in which different groups resort to terrorism is important: different policies are needed for the very different situations that devolve into violence.

We can conclude that terrorism is not uniquely atrocious. It is political violence that often, though not necessarily, targets civilians. It often aims to create sufficient fear to cause others than those attacked to change their policies. It usually causes *far* fewer civilian casualties than war, and can be less unjustifiable than war. It resembles guerrilla war or small war in some ways, but it is not the same as war. Terrorist groups use crime to achieve their political goals and can be responded to in the short term with the apprehension, trial, and punishment of those involved in ways that minimize the appeal of such violence. Responding with wider war magnifies not only the violence, with all its moral costs, but also the sympathy felt for the war's victims and the terrorist groups who claim to fight for them. In the longer term, responses need to involve diplomatic, political, social, and economic measures.

Much is often made of the difference between intentionally targeting civilians, as terrorism often or on some definitions does, and only killing civilians unintentionally, as does conventional warfare in the view of those who think conventional warfare can be morally justified while terrorism never can. Together with many others, I do not believe the distinction can bear the moral weight it has been assigned.

The distinction between targeting civilians intentionally and only killing many more foreseeably as collateral damage means little to those who identify with the dead. Even if terrorism does target civilians (in fact it often, as well, attacks military targets) it is usually far, far less deadly than

conventional warfare. Conventional warfare may proclaim an intent to spare civilians, then yield to “military necessity,” bombing whole cities and all their inhabitants, as with Dresden or Hiroshima in World War II. Or, as weapons become more precise, it may target specific persons and only kill civilians inadvertently but in far greater numbers than those killed by terrorism. Over many years Palestinian civilian deaths have been very many times greater than Israeli civilian deaths resulting from the conflict.

When the U.S. responded with military force in Iraq to what was claimed to be a terrorist threat posed by Saddam Hussein, it caused the deaths of some ten thousand civilians in just the initial invasion (Massing, 2007:82-87). Since then, the war has led to the deaths of many tens of thousands and perhaps hundreds of thousands of civilians (Altman and Oppel, 2008:A14). Terrorism, in comparison, has killed relatively very small numbers.

In conventional war, the killing of civilians becomes routine and often overlooked. In a review of several books on what the war in Iraq is really like on the ground, a reviewer cites the account of a supporter of the war who relates that, while his platoon was on its second patrol, “a civilian candy truck tried to merge with a column of our armed vehicles, only to get run over and squashed. The occupants were smashed beyond recognition... ripped open and dismembered, their intestines strewn across shattered boxes of candy bars...” The reviewer comments that “this incident is notable mainly for the fact that the platoon stopped; from the many accounts I have read of the Iraq war, when a U.S. convoy runs over a car, it usually just keeps going” (Massing, 2007:82)

Certainly, some terrorists commit atrocities that are absolutely horrendous. So do some armed forces members in the course of fighting wars. A difference is that the latter are much less often reported.

Terrorism is often associated with murder and terrorists with persons having blind and murderous intentions that are beyond rational control. Terrorists do not engage in what are often conceptualized as honourable contests between opposing armed forces, subject to the laws of war; they murder innocents and blow up children. They are not guided by the Just War principles that are thought to make it possible for the wars that we and our allies fight to be justifiable.

Consider, however, how the issue might be viewed from the point of view of an opponent. The demand that opponents of the U.S. fight the way the U.S. does, with armed forces and conventional weapons, amounts to an argument that they should meet us on our own ground, where we have vast superiority, so that we can defeat them. From an opponent’s point of view, it would be highly irrational, suicidal one might say, to do this. The ra-

tional course of action for anyone confronting the U.S. and its allies would of course be to confront the vast military arsenal arrayed against them in a way that would help to neutralize such superiority, as terrorism has shown itself able to do. Any rational opponent has reason to question a demand by states with powerful armed forces and sophisticated weaponry that attacks against them be confined to attacks against their armed forces. It asks opponents to fight with the weapons of the powerful where they will be at an enormous disadvantage. As Lionel McPherson said of Michael Walzer's demand that native groups seeking liberation must "earn" their freedom by confining their attacks to members of the armed forces and refraining from attacking anyone else: "this reeks of...condescension" (McPherson, 2008: typescript 8). From an impartial standpoint it can be understood that terrorism is a useful weapon or tactic that helps to neutralize the enormous military power possessed by some states. Using this weapon would be the rational course of action for such states' opponents, and not clearly more immoral than war.

Sheikh Ahmad Yasin, founder and spiritual leader of Hamas who was assassinated by Israel in March 2004 expressed the point as follows: "Once we have warplanes and missiles, then we can think of changing our means of legitimate self-defence, but right now, we can only tackle the fire with our bare hands and sacrifice ourselves" (*The Daily Star* [Beirut], February 8th 2002 cited in Bloom, 2007:3-4). The secretary-general of the Palestinian Islamic Jihad, as summarized by Ehud Sprinzak, put it this way: "Our enemy possesses the most sophisticated weapons in the world and its army is trained to a very high standard....We have nothing with which to repel killing and thuggery against us except the weapon of martyrdom. It is easy and costs us only our lives... [H]uman bombs cannot be defeated..." (Bloom, 2007:89-90).

The goals of some terrorists are, without doubt, morally abhorrent. So are the goals of some who use ordinary military power or brutal repression. If, however, their objectives are justifiable and if violence is only used as a last resort, the weapon of terrorism and how it is used are not necessarily morally worse than the weapon of conventional military force and how it is used.

The ethics of care would direct us to pay attention to the points of view of those who use terrorism, and to counter terrorism with policies that will be not only more caring in the ways that they themselves minimize violence but also more effective in undermining the violence of those opposing us.

The administration of George W. Bush instead used the "war on terror" as an excuse to invade Iraq and to ignore international law. It has insisted

on retaining the right to launch preventive wars to safeguard the U.S. and its citizens from “evildoers” who may engage in or aid others to commit terrorist attacks against it. The result has been an extraordinary decline in the power of the United States to gain support for and decrease opposition to its policies and interests.

O’Connell discusses how U.S. participation in the making and promoting of international law used to have great influence until the ascendancy in the administration of George W. Bush of neoconservative claims of U.S. superiority and exceptionalism entitling the U.S. to be above international law. Such views are not shared by the rest of the world. The result has been that “the U.S.’s reputation has plummeted, and with it the ability to influence” (O’Connell, 2008:129-131).

International law condemns terrorism, but it also rules out responses that violate the basic international norms of non-intervention. We do need to ask, however, whether preventing or responding to terrorism would be legitimate moral grounds for military intervention. Could such intervention be justified for humanitarian reasons? Or could military intervention to prevent terrorism be justified on classic grounds of self-defence?

When Is Military Intervention Justifiable?

If we look to international law for help in answering questions concerning terrorism, we may find some ambiguous answers but many helpful recommendations capable of guiding policymakers and their critics. Already clearly enunciated are the norms of international law requiring states to renounce aggression against one another and to resort to military force only on grounds of individual or collective self-defence authorized by the UN Security Council. The principles for the so-called Westphalian system of world order that was in place for centuries were formulated in the period after World War II, incorporated into the United Nations charter and subsequent Security Council resolutions and they have been implemented. They have been modified to include the allowing of pre-emptive strikes in cases of imminent attack, but to rule out the kind of right to launch a preventive war that the administration of George W. Bush has proclaimed for itself (Farer, 2003:621-628).³ Discussions of preventive war have also shown how unwise as well as illegal it would be (see e.g. Barber, 2004).

Also developed has been a considerable literature, starting in the 1990’s, on intervention for humanitarian reasons, including how military intervention to prevent such massive violations of human rights as occur in genocide and ethnic cleansing might be reconciled with international law (see e.g. Reed and Kaysen, eds., 1993; Hoffmann, 1996; Chesterman,

2001; International Commission on Intervention and State Sovereignty, 2001; Holzgrefe and Keohane, 2003; Chatterjee and Scheid, 2003). It can be concluded that respect for human rights has become part of the requirements recognized in international law, although norms concerning intervention to prevent violations of human rights remain in much greater uncertainty than the norms for self-defence. As Thomas Franck writes concerning contemporary international law, "it has become commonplace that the international system may lawfully intervene in situations of cataclysmic civil strife and other massive violations of human rights, with or without the consent of the government of the place where the violations are occurring" (Franck, 2006:99). Considerable disagreement remains on how to interpret these norms, but an independent commission did reflect some consensus in its report called *The Responsibility to Protect* (Barber, 2004). What remain much less clarified are reasonable norms that could be incorporated into international law for military intervention to prevent or deal with terrorism, and whether any intervention must have Security Council approval.

Contemporary international law pulls in contradictory directions concerning intervention. On the one hand, key and long established principles of international law demand respect for sovereignty and hence for non-intervention. At the same time, an imperative for intervention has developed: When governments trample egregiously on the rights of those they govern, or fail miserably to protect their citizens from such gross violations of rights as take place in ethnic cleansing or genocide, international law permits or even calls upon states to take action. A related international norm seems in the process of developing in the wake of the upheavals in the Balkans and demands for secession there and elsewhere. It demands that in pursuit of self-determination, there must be restraint on the part of states *resisting* secession as well as restraint on the part of those seeking independence (see Bayefsky, 2000: especially Pellet, in Bayefsky, 2000:118). Fairly clearly, sovereignty in international law today does not grant states complete immunity from intervention.

One can agree there is a grave danger in supporting "humanitarian intervention," as Margaret Denike shows (Denike, 2008:95-121). Enemies are demonized as barbaric, inflicting horrors on helpless victims, especially women and children, thus purportedly justifying Western intervention in the name of civilization. The U.S. invasion of Iraq gives every reason to be wary of such narratives. The conclusion, however, should not be that we must always avoid intervention, taking no responsibility for preventing massacres and genocides. Distinctions need to be made and international law is helpful in making them. One might think that because

of the contradictory pulls within it, international law would be of little help in arriving at moral evaluations of military intervention, but this should not be the conclusion. On the contrary, it may offer measured normative recommendations for a dangerous actual world.

Consider, briefly, three cases of military intervention or possible intervention in the grey areas of intervention on other grounds than self-defence: Rwanda, Kosovo, and Iraq. I do not include Afghanistan, since this has generally been interpreted as a case of self-defence against attack rather than of intervention (Franck, 2006; Stromseth, 2003). The U.N. Security Council determined, in the wake of the September 11 attacks, that when a state supports and harbours a non-state terrorist group it opens itself up to measures of individual or collective defence that may be taken against it, in accordance with accepted international rules, by those such groups attack (Franck, 2006:104). Many aspects of the U.S. military response in Afghanistan may have been unwise and unjustifiable, but it was not the threat to international law constituted by, for instance, the invasion of Iraq. Nor was it interpreted as a case of humanitarian intervention, and I am limiting the discussion here to military intervention on other grounds than U.N. authorized self-defence.

Concerning Rwanda, something of a consensus has developed that the world community should have intervened to prevent the genocide that occurred there in 1994, in which perhaps a million people were killed. I agree, though perhaps with less conviction than some others, and that international law would have accommodated itself to such intervention seems relatively clear.

I also think that the U.S.'s part in the NATO intervention in Kosovo in 1999 was morally defensible, although much more should have been done earlier to curb the violence in the region and to prevent the deterioration in the coexistence of ethnic groups that occurred in the breakup of the former Yugoslavia. Depending on the interpretation, international law may well agree with the conclusion that intervention here was justified. Even though the NATO intervention was not in compliance with the requirement of Security Council authorization, it seems to have been found permissible under international law (Franck, 2003). Strong arguments for intervention have been offered by the Independent International Commission on Kosovo, which concluded that the intervention was "illegal, but legitimate" (Independent International Commission on Kosovo, 2000). Richard Falk, himself a member of the commission, writing in the *American Journal of International Law*, said that "in Kosovo the moral and political case for intervention seemed strong: a vulnerable and long abused majority population facing an imminent prospect of ethnic cleansing by Serb rulers, a

scenario for effective intervention with minimal risks of unforeseen negative effects or extensive collateral damage, and the absence of significant non-humanitarian motivations on the intervening side. As such, the foundation for a principled departure under exceptional circumstances from a strict rendering of Charter rules on the use of force seemed present” (Falk, 2003:591)

The intervention in Iraq, however, was very different. I think it is clear that the U.S. invasion of Iraq in early 2003 was morally wrong as well as a grave violation of international law. International law clearly ruled out this violation of sovereignty and has continued to reaffirm that judgment since the invasion. There seems to have developed in recent years a kind of “retroactive endorsement” or “ex post facto validation” of some interventions (Franck, 2003; Stahn, 2003. For a nuanced and different interpretation of retroactive justification, see Byers and Chesterman, 2003:804-823). For instance, even though NATO’s intervention in Kosovo did not receive prior authorization from the Security Council (because of the threat of a Russian veto) the Security Council *subsequently* took action implicitly endorsing the intervention. In this and several other cases (Liberia, Sierra Leone) although international law was technically violated, it was not seriously undermined because the offending action was legitimated after the fact. But the U.S. invasion of Iraq was not like this. It not only failed to receive Security Council authorization, it was clearly *not* an expression of the “collective will.” And it has *not* received retroactive justification.

To many defenders of international law, the system’s refusal to be bullied by the U.S. to authorize the invasion of Iraq or even to accommodate itself to it by retroactive justification is a sign that the system of international law does indeed have considerable strength (Falk, 2003; Franck, 2006; Stahn, 2003). Franck notes that “the Security Council has been scrupulous in its resolutions pertaining to Iraq to avoid anything that could be interpreted as a retrospective validation of the invasion” (Franck, 2006:97n35). Retroactive justification is certainly not a very satisfactory expression of international legality or of global moral consensus. But it is far better than failing to obtain even this. And it may provide the source for a tentative normative principle with which to make the necessary distinctions between different cases of intervention. It allows us to say that *only those interventions capable of receiving at least retroactive justification in international law if not prior Security Council authorization should even be considered candidates for morally justifiable intervention*. Using this test, the invasion of Iraq fails, the NATO intervention in Kosovo passes, and intervention in Rwanda would have passed. These are the outcomes I think we need to reach, using the version of the method of reflective equilibrium

for moral justification that I have advocated, and being mindful of the considerations of care articulated by the ethics of care (see especially Held, 1989:chs. 4;15; Held, 1993:ch. 2; Held, 2008:ch. 8).

International Law and the Ethics of Care

There are different theories of international law, of course. It is amorphous and hard to define, yet it can have what scholars aptly call “law’s power to pull states toward compliance” (Franck, 2006:90). Morality is even more amorphous and hard to define and there are even greater differences among conflicting theories, yet it also can and obviously should affect what we do. International law is not limited to explicit documents, resolutions, or decisions. It includes the arguments of scholars and commentators, and the shared principles of the world community. One can argue that international law, even more than domestic law, ought to be respected as morally compelling because it is more dependent for its interpretations and power on good moral arguments and less dependent on flawed and actual institutions. Moral philosophers are accustomed to learning much from legal scholars and judicial decisions in domestic law; they should become accustomed to doing the same with international law.

It seems apparent that in a world dominated by states striving to promote their own interests and threatened periodically by war, terrorism, and catastrophe, the rule of law and thus international law ought to be promoted. This can be demanded on many moral grounds, such as Kantian ethics and utilitarianism, but it can also be demanded by the ethics of care. On the other hand, from the perspective of the ethics of care, international law is not as much of an answer to the problems and conflicts of the world as many theorists suggest. From the perspective of care, law is a limited approach for a limited domain of human activity. For that domain, implementing it may be the best we can hope for in the short run. International law may help us escape the worst impending disasters of violent conflicts between states and groups, and of imperialism, fanaticism, and ignorance. However, as we look ahead to how humanity needs to progress, the ethics of care offers hope of something more satisfactory than a world of states and groups all pursuing their own interests, at best restrained by international law.

As Fiona Robinson argues, a feminist political ethic of care, with its relational view of persons and attention to actual care, contextualizes the human condition. In contrast with neo-liberal policies, it focuses on the “social, economic and political contexts in which particular claims... arise,” and thus on how these contexts need to be improved (Robinson,

2006:14). “A care-based framework for ethical globalization,” she shows, “can provide the basis for normative critique, transformative global social policy and innovative local and global institutions to address inequality, poverty and suffering on a global scale” (Robinson, 2006:22). Joan Tronto has suggested that peacekeeping is a kind of care work. She sees an important shift in discourse about humanitarian intervention from something like a “right to intervene” to a “responsibility to protect.” And she interprets this as being in line with a shift in moral discourse about international affairs from an ethic of justice to an ethic of care (Tronto, 2007).

Guided by the ethics of care, we would encourage states to take responsibility for protecting vulnerable populations and for promoting peaceful resolutions of conflicts before they escalate into violence. Negotiating disputes, non-coercively if possible, and addressing the problems of those politically disenfranchised or economically exploited can become practices of care. They can much better exemplify care than can applying sanctions to lawbreaking states or punishing individuals who commit war crimes. Properly developed, they should make the need for military intervention, for forces to keep the peace between warring groups, and for enforcement of the reasonable restraints of law, to which all can become accustomed, ever less demanded. Instead of focusing on rules to be followed and violations to be punished, the ethics of care would attend to the political and social and economic problems that make the rules so often inadequate in their protection of actual persons and groups. It would focus our attention on providing for the needs of all, caring for the environment, and fostering relations of trust and mutual concern.

Gradually, within networks of interaction and caring, the need for military intervention and the enforcement of international law might be reduced, though not eliminated. We can hope and work for this, though changes in the direction of the world toward a caring global order will take vast, prolonged, and organized efforts. We can be encouraged, however, at how the interest in human rights has transformed international law and the policies of many states in a mere half century. This could come to be matched by an interest in caring networks. It is caring networks that sustain the human beings whose rights are to be respected and caring networks that allow persons to flourish.

Notes

* This paper is based in part on my books *The Ethics of Care: Personal, Political, and Global* (Held, 2006) and *How Terrorism Is Wrong: Morality and Political Violence* (Held, 2008).

1. Statements by Khalid Shaikh Mohammed illustrate this. See Liptak (2007: 1; 23).
2. Massing writes that “10,000 civilians at a minimum were killed during the invasion, the large majority victims of the coalition.”
3. For an analysis of the George W. Bush administration’s “aggressive unilateralism,” see Hammond (2005).

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GLOBAL CIVIL SOCIETY AND INTERNATIONAL MORALITY

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1. The politics of identity, particularly in its nationalist form, provokes a cosmopolitan reaction. Nationalists hold that we have special obligations to our compatriots in view of our shared national identity. Cosmopolitans, by contrast, deny this, holding instead that we have the same ethical obligations to everyone in the first instance, with the possible exception of family and friends. But, more especially, we have no ethical obligations deriving directly from our membership of national or similar identity groups; none, that is, from the positions we are in corresponding to our actual or desired political memberships. We may, of course, have political obligations and they may thus give rise indirectly to special ethical obligations. But this is, broadly speaking, the result of political arrangements justified by administrative convenience, and, perhaps, psychological constraints. Such special obligations to compatriots are not fundamental and thus cannot themselves ground political groupings, which would, ideally, be genuinely cosmopolitan. Nor, on the cosmopolitan view, can such special obligations be allowed to obscure the fact that our fundamental ethical outlook should be that of a citizen of the world “in which we look neither to this corner nor to that, but measure the boundaries of our nation by the sun,” as the Stoic philosopher Seneca put it. (Dower, 2003:22)

This view is commonly backed up by a claim seemingly not available to the ancient Stoics, namely that we now live in a global civil society, if only in an emergent form. This claim is, I think, intended to support cosmopolitanism in at least three ways. The first is psychological: we are able to think of ourselves as citizens of the world rather than only of smaller units, and thus to embrace wider obligations, in view of our sense of being members of a worldwide society. The Greeks and Romans, for example, with their knowledge of, but lack of contact with, societies beyond their own were not in this position, leaving the Stoic aspiration to world citizenship purely notional. The second plank of the argument is normative: on

the assumption that the special obligations supposed to derive from national identity are generated by certain sorts of relationship in which we stand to our compatriots, it is held that relationships in no way ethically different subsist between members of global civil society, so that the same sort of obligations exist among them too. Our fundamental identity, insofar as identity is ethically relevant, is a global identity. The third plank is political: whatever grounds there are for basing the political arrangement of statehood on its correspondence to a civil society carry over in principle to global governance and, at the least, to the sort of political equality among people generally that exist among members of an equitable state; for this sort of claim to shared governance and political equality will derive from their shared membership of a global civil society.

2. There are some large and fairly fuzzy philosophical assumptions involved in these lines of thought in favour of a cosmopolitan political ethic. My purpose here, however, is only to interrogate the notion of a global civil society that they employ. But, in order to see what global civil society might be, whether it exists in any form and what ethical consequences would follow, we need to look at what civil society generally might involve. And this is not easy, for it is a highly ambiguous and contested concept, so that we will need to identify the specific conception congenial to the use made of it by cosmopolitans.

While the contemporary concept of civil society in all its variations has grown a long way from its roots, it has not, I believe, entirely ceased to draw from them. In the seventeenth century, of course, civil society was contrasted with the state of nature. On the Hobbesian account the state of nature is, notoriously, a war of all against all, devoid of social relationships. On the Lockean one there are already social relationships because the law of nature requires us to respect the rights of others as well as permitting us to defend our own rights. And Locke allows rights of liberty and prosperity in the state of nature, in addition to the Hobbesian right to life, in the sense of a right of self-preservation. But for both what were lacking were the sorts of relationship that can underpin a modern state. In Hobbes's case this is because something like a state is required for civil society to exist at all; in Locke's, because although people can come together into a society prior to statehood, that society will then require a government which constitutes them as members of a state. For both it was the America of their day that was the pre-modern exemplar of what was lacking before civil society came into being (see Hobbes, 2008:ch. 13; Locke, 1993). What seemed to such thinkers to be lacking there?

It is unhelpful when considering the contemporary concept of civil society to reply directly to this question that a social contract was missing in native American societies which prevented them from qualifying as *civil* society. Rather it was what Adam Ferguson later emphasised (Ferguson, 1767) as necessary, namely civility itself. Ignorant of the rules that actually regulated the conduct of native Americans, the thinkers of the seventeenth century viewed their relationships as uncontrolled and violent. Then, since they thought of the required rules as arising through the kind of mutual agreement represented by a contract, they inferred the absence of one, and hence a state of nature. It is a continuing feature of conceptions of civil society that its members are bound together by the observance of common rules. Ferguson himself clearly thinks in these terms while breaking with the social contract condition, and, though he does not, like later thinkers, contrast state and civil society, he does think of compliance with the rules that provide the framework of civil society as achieved otherwise than simply by state sanctions, in his case, through the exercise of civic virtue.

Hegel, while contrasting state and civil society, sees the latter as an area in which "each member is his own end, everything else is nothing to him" (Hegel, 1967:3;ii;182). But to achieve individual ends participation in a system of interdependence with others is required, a system requiring compliance with rules. Hegel sees this as neither a matter of private morality, since it can be forcibly required, nor as motivated simply by fear of such sanctions. Rather it is a consequence of occupying one's role in civil society; and here Hegel stresses the variety of roles that comprise the system of interdependence which civil society involves. Many of these are identified in terms of economic factors, and this led Marx to view civil society as a site of conflict between competing individual interests. This leads away, of course, from the idea that Hegel preserves from earlier accounts of rules required for the functioning of society generally. It is perhaps for this reason that contemporary accounts follow Gramsci rather than earlier theorists in excluding economic interactions as well as relations with the state from the sphere of civil society. For economic man is taken to be motivated in a more crudely and directly self-interested way than Hegel seems to have envisaged, while arguably occupancy of the social roles comprising civil society requires a different sort of motivation.

Thus the usual contemporary account of civil society, which cosmopolitans take over for their global conception, is of a system of social relationships other than those of a directly political or economic character. And, though this is generally implicit and underspecified, it is the sort of system of social relationships which conduces to just political relation-

ships and fair economic ones. The thought here seems to be that the rules governing the social relationships of civil society are in, a broad sense, moral rules, incompatible with grossly oppressive or exploitative political or economic interactions—a notion that sceptics about civil society like Marx have, of course, rejected. It is, however, an important feature of the thinking behind the idea of a global civil society. For while such theorists discern an absence of those gross political and economic ills within states supposedly corresponding to healthy civil societies they detect their presence at an international level and believe that the growth of a global civil society will serve to mitigate them. They claim that this is just what is emerging now.

3. How do cosmopolitans see global civil society? There are, I think, a number of distinct aspects to the claim that such a society exists, at least in a nascent form, common to most cosmopolitans who employ the idea, though they place different emphases upon them. The first is the fact that processes of globalisation such as increased access to communication, information, travel and trade across state borders has led to the development of social relationships between people from different countries on a large scale. The second point is that this sort of development has enabled people to see themselves not just as citizens of particular states but as global citizens. The third, and not necessarily related, notion is that the status of global citizen is bestowed in virtue of the growing extent to which international law recognises individuals worldwide as bearers of rights and duties. The fourth fact adduced is that there has been a rise in social movements with various international objectives including the promotion of human rights, the reduction of world poverty and disease, countering climate change and so forth. While often realised through associations of individuals, many become institutionalised as non-governmental organisations and as such may be linked to the changes in the status of individuals previously mentioned which stem from actions by the United Nations and international courts. The final idea that must be mentioned is that all the above features of the contemporary scene are taken to reflect a growing attachment to a cosmopolitan political ethic, in that the values presupposed are global in scope.

We can, however, leave this last point to one side, since, even if it is true, it does nothing to show why we *should* adopt a cosmopolitan ethic. Those growing numbers of people who do so may lack an adequate justification. Indeed they may be misguided; falling into a trap set by international capitalist elites, as some neo-Gramscians allege (Katz, 2006), and abandoning local allegiances which could offer more effective sites of

resistance to the injustices of globalisation. The most the alleged growth in a cosmopolitan ethic could show is that there is no psychological barrier to it, as some identity theorists may claim. Similar considerations apply to the second point mentioned above, namely that people increasingly see themselves as global citizens, with the wider loyalties and responsibilities which this entails. So far we are given no reason for so thinking of ourselves. Nor does the mere fact of cross border relationships mentioned in the first point provide a justification, only an explanation. What might give a reason would be that these relationships mirror those within states in establishing an Hegelian system of interdependence that generates reciprocal obligations. But it is hard to think what might *systematically* do this for the relationship in question. The best candidates might be economic relationships; and certainly embarrassment at the conditions under which articles consumed in the West are produced elsewhere has led to attempts at improvements. Yet such economic relationships are precisely what most cosmopolitan theorists exclude from the sphere of civil society. An exception is John Keane (Keane, 2003).

The other area excluded is, of course, political relationships and this is what disqualifies the third point mentioned from consideration, though this seems to escape the theorists who refer to it (see e.g. Dower 2003:141; Kaldor, 2003:588). For the supposed status of global citizen that arises from being made a legal subject in international law essentially involves a political relationship to the agents of those states which have acceded to the relevant treaties or in other ways become answerable to international legal norms. The notion of citizen is ambiguous as between membership of a state or supra-state organisation on the one hand and dweller in a city or analogous residential community on the other. It is not that the latter is metaphorical usage (pace Dower 2003:26) dependent on the former, but rather that the former is a more specialised usage than the latter. And it is, surely, the latter notion that the cosmopolitan who thinks of global civil society in terms of a collection of global citizens needs, namely the notion of people dwelling in the same place—the whole world—in a way that produces relationships analogous to those of dwellers in a shared city. Here again it would be better for such cosmopolitans to think of this designation to apply to everyone, as in the inadmissible third point, which trades on an equivocation in the sense of “citizen”. For if, as some suppose (see Dower 2003:144), it applies only to those who so think of themselves then the analogy between the relationships fails. But I shall return to the possibility of such an analogy shortly.

Meanwhile we must consider the fourth point claimed to indicate the growth of a global civil society, namely the rise in associations with inter-

national membership, global objectives and, perhaps, cosmopolitan values, together with related institutions such as NGOs. Leaving aside the objection that these are, for the most part, political organisations which work by bringing pressure to bear on particular states, albeit in a concerted way, there is, surely, an over-narrow view of what sort of association characterises civil society involved here. Although organisations like churches, cultural groups, professional associations and trade unions are regularly cited as examples of foci of relationships in civil society, they are highly formalised ones, presupposing rather than illustrating the civility of civil society. For that we need to turn instead to the sort of mundane association involved in relationships with neighbours, colleagues and fellow participants in a wide range of shared activity. Arguably it is this which gives rise to the sort of special obligations that cosmopolitans wish to generalise to a global scale. Mere membership of formal associations surely does not. So if it is membership of such international associations that is taken to be expressive of a sense of world citizenship then even the psychological claim that this sense enables us to embrace wider obligations is poorly supported, let alone the normative or political claims. All in all, then, the case made for an emergent global civil society so far fails to advance the case for a cosmopolitan political ethic.

4. What has misled cosmopolitans is, I believe, a mistake about the sort of morality that is involved in the relationships of civil society. It involves an illegitimate shift from the idea that through such relationships shared goods are promoted to the assumption that it is valuing such goods that motivates the relationships and the patterns of reciprocal obligation they involve. The formulation that it is through such relationships that shared goods are *pursued* ((see e.g. Dower 2003:xii) is ambiguous between them. Then, cosmopolitans claim, just because *soi disant* global citizens value globally shared goods they can undertake the associated obligations and thereby enter the relationships so constituted. Yet these relationships, I suggest, are not so easily established. They are real relationships founded on actual interdependencies, in particular those involved in the performance of certain roles. The obligations involved flow from this, irrespective of what the participants value, so that it is immaterial whether the participants in them are motivated by the pursuit of shared goods or not. All that is required is that they undertaken the relevant roles or other rule governed positions. But in the absence of the associated interdependencies on a global scale these positions are simply unavailable to *soi disant* world citizens. Valuing shared goods is no substitute.

It is no substitute because it does not institute a regime of rules which, however vague and unstated they may be, is what constitutes civil society. And it is precisely such a regime of rules that is lacking in the global case. This is why, to return to a point mentioned earlier, the analogy between citizens of states and so-called global citizens breaks down; not because the former are members of a political organisation which is absent for the latter, but because their state citizenship is founded on a social role of citizen that is unavailable to the latter. This social role stemming from occupancy of the same place as others is itself a complex one, involving not only behaving in a way that does not harm or offend others but making, as it is put, one's contribution to society, through one's work and other dealings with those with whom one associates. Hence to be a citizen in this sense requires occupancy of a variety of other roles, the proper performance of which is necessary to being a good citizen—a point that Aristotle made by comparing citizenship to membership of a ship's crew each of whom has a different function (Aristotle, 1992:book III). This analogy points up the difficulty in the idea of global citizenship. For, while one can see how the proper performance of these ordinary roles in life can contribute to the good of a city or a country, and the neglect of them be damaging to it, it is quite unclear what this would mean on a global scale. And this is at least partly because one can see at the more local level that a society's good is constituted by its members' adherence to its rules, rather than their acting in ways so uncontrolled and unpredictable that life in the society is intolerable. Yet no universal regime of such rules does, or probably could, exist globally.

Political citizenship is, I have been urging, derived from social citizenship of this sort, its more precise and articulated rules a development of the latter's tacit ones. Since the sort of thing that cosmopolitans mean by global civil society does not make such social citizenship available it follows that the analogy between state citizenship and global citizenship fails. And with it fail the political arguments for global governance or related arrangements that are founded on the claim that we already have a global civil society. If it exists at all it is just not the right sort of thing to support such arrangements.

5. There are other, and perhaps better, arguments for cosmopolitanism which do not rely on the idea of a global civil society. But the one that I have rejected is aimed to undercut the supposed basis for a politics of identity in its nationalist form. Yet nothing I have said about the nature of civil society gives any support to such a politics either: it is, indeed, entirely independent of it. In the first place there is no implication in my

account that the social relationships of civil society are founded on a shared national identity, so that the obligations of citizenship are felt in virtue of such an attachment. Quite the contrary; for this would, I believe, be to make a similar mistake to that with which I charged cosmopolitans, namely to base such obligations on the participants' values. Rather they arise from the social roles they play, and the obligations of citizenship spring, not from a single source, but from the variety of these roles and the way they contribute to a system of interdependence.

Secondly, though I have hinted that the rules regulating civil society will be different in different places, so that no universal requirements for world citizenship are forthcoming, this does not imply that these diverse rules somehow mirror national differences. Perhaps they sometimes do. At others they reflect differences in the variety of occupations and forms of social life to be found both within and across national borders. In the latter case the mores of élites tend to be more similar than those of other social groups, and this has no doubt contributed to the illusion of the possibility of world citizenship. In general, however, whether different mores can give rise to common citizenship admits of no abstract answer. Connected to this, then, is that there seems to be no principle for individuating separate civil societies. A fortiori nationhood would not provide such a principle, even on the questionable assumption that shared national identity is conducive to the existence of civil society.

Yet rejecting a cosmopolitan political ethic founded on global civil society does not plunge us into a world bereft of international morality any more than it returns us to a nationalist scenario. We do not need the notion of global citizenship to ground such a morality. For arguably state citizenship alone is sufficient to support the idea that the citizens of other states should be treated with fairness and benevolence in our own state's relations with them and in our dealings with them through economic transactions. In the role of citizen one can to some extent affect foreign policies and international trade; and it is reasonable to suppose that, other things being equal, people will tend to be guided by the thought that they should do so in ways that produce amity with others rather than animosity. For, especially in conditions of globalisation with increased travel and communications, people are uncomfortably exposed to the consequences of other policies and practices. This is especially true, of course, of the statesmen and stateswomen who represent citizens, and who have to meet and negotiate with their fellows. Their dealings need to be governed by international rules even if the dealings of ordinary citizens cannot be.

My overall conclusion, then, is that the supposed benefits of our thinking of ourselves as global citizens can be had without this, which is fortu-

nate since, if I am right, there is no adequate basis for our so thinking of ourselves.

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GLOBAL CITIZENSHIP AS THE COMPLETION OF COSMOPOLITANISM*

LUIS CABRERA

The No More Deaths volunteer, a recent college graduate who was spending her summer conducting humanitarian patrols in search of border crossers stranded in the harsh desert of southern Arizona, struggled for words. The question grated. “I think that’s ridiculous,” she finally said, in response to those who would contend it is wrong to aid unauthorized crossers. “One of the first questions a reporter ever asked me was ‘why, as an American, are you doing this?’, That’s always funny to me, when people ask that. It’s not really an American thing. It’s a people thing. You know, thirsty people should be given water. It seems to me just to make sense” (Author interview, 6-05). Her co-volunteer at the No More Deaths patrol camp expressed a similar mix of difficulty and exasperation when asked why she felt compelled to seek out migrants in distress. “There’s this imaginary line drawn across the desert. That doesn’t make any sense to me. For someone to become illegal as soon as they cross that line— They are just people. It’s that simple to me” (Author interview, 6-05).

Meanwhile, participants in the Minuteman effort, who stand armed vigil on some of the same stretches of desert, hoping to spot unauthorized entrants and report them to US authorities, expressed quite a different sentiment toward the crossers. “The country belongs to us. The country doesn’t belong to them,” said one retiree who had traveled from Eunice, New Mexico, to take part in the inaugural Minuteman action on the border in southeastern Arizona (Author interview, 4-05). “I didn’t force them to come to the United States,” said David Jones, a Minuteman leader in Arizona who had served as “line boss” on several vigils. Addressing a group at Minuteman field headquarters on a rural ranch, he indicated a jug of murky brown water, likely filled in a cattle tank, that had been taken from two crossers his group had helped apprehend. “If they want to come and drink that, that’s their problem,” he said, while adding that he would not refuse water to a crosser (Author interview, 10-06).

In this article, I discuss how the understanding of obligation and human community expressed by the No More Deaths patrollers captures the core of a defensible conception of global citizenship. More centrally, I explore ways in which such a conception is necessary to developing a comprehensive cosmopolitanism. That is, global citizenship, appropriately understood, should be viewed not as separate from or synonymous with the cosmopolitan moral orientation, but as a primary component of it. Global citizenship is fundamentally concerned with individual moral requirements in the global frame. Such requirements, framed here as belonging to the category of individual cosmopolitanism, offer guidelines on right action in the context of global human community. They are complementary to the principles of moral cosmopolitanism, or those to be used in assessing the justice of global institutions and practices, that have received the great majority of attention from cosmopolitan political theorists. Considering principles of individual and moral cosmopolitanism together can help to provide greater clarity concerning individual duties in the absence of fully global institutions, and individual obligations of justice in relation to still-developing institutions in interstate trade, the global environment, human rights, and other substantive areas. Ultimately, the fuller incorporation of global citizenship into the cosmopolitan moral discourse is an important step toward developing an overarching conception of cosmopolitan right, one that would detail appropriate courses of action and reform in relation to individuals and institutions in the current global system.

The Cosmopolitan Moral Orientation

The concept of global citizenship often has been presented as strongly synonymous with, or equivalent to, a cosmopolitan moral outlook (Heater, 2002; see Carter, 1997). While the global citizen and cosmopolitan orientations share many commonalities, significant insight can be gained by recognizing the two as distinct, and by considering the discrete variants of both approaches. This section is concerned with identifying the main currents within recent cosmopolitan thought. I will note first that cosmopolitan moral orientation is generally understood as one in which individuals, rather than societies or states, are presumed to be the ultimate units of moral concern. All individuals are presumed to have equal status as the objects of moral concern and all individuals “are ultimate units of concern for everyone—not only for their compatriots, fellow religionists, or such-like (Pogge, 2002: 169; see Caney, 2005a:3-4).

Thus, when applied to substantive issues such as distributive justice, a conception of cosmopolitanism would hold that obligations to distribute

resources to compatriots are not categorically stronger than obligations to those who do not share our citizenship. In fact, for those living in affluent states, duties to redistribute to those in less-affluent states easily could trump duties to compatriots, given the greater exposure of the former to hunger and other poverty-related ills (see Beitz, 1999a; Brock, 2005). Other substantive concerns include the justice in operation of such global institutions as the World Trade Organization (Moellendorf, 2005), as well as the defensibility, in a cosmopolitan moral frame, of particular kinds of interstate or inter-group conflict (Buchanan and Keohane, 2004; Caney, 2005a: 201-14). In the context of political justice, theorists of cosmopolitan democracy have argued that respect for individual autonomy in an age of eroding state sovereignty requires the creation of suprastate participatory mechanisms better able to afford meaningful input to individuals within states (Archibugi, 2004; Held, 2004).

Important theoretical distinctions are drawn within the cosmopolitan approach, in particular between institutional and moral cosmopolitanism, and within moral cosmopolitanism itself. Institutional cosmopolitanism is understood by most commentators as concerned with the creation of some comprehensive network of global governing institutions, i.e., a world state, in order to just global distributive and other outcomes (Beitz, 1999b:129; see Barry, 1998:144; Waldron, 2000:228-29). Most reject any suggestion that a cosmopolitan orientation necessarily entails a specific commitment to institutional cosmopolitanism, though some, including this author, have argued that in practice something like a global government likely would be required to ensure that all individuals had sufficient access to life resources and opportunities (Cabrera, 2004; see Tannsjo, 2008).

Moral cosmopolitanism has been characterized as primarily concerned not with institution building, but with assessing the justice of institutions in the existing global system according to how individuals fare in relation to them. Further, both Charles Beitz and Thomas Pogge, probably the two most influential recent cosmopolitan theorists, have argued that moral cosmopolitanism should be understood as including two categories of principles (Beitz, 1999c:519; Pogge, 2002:170).¹ The first, which Beitz calls cosmopolitan liberalism, essentially is identical to what had been called moral cosmopolitanism. It remains an approach to assessing institutions or broad schemes of cooperation by “identifying principles that are acceptable when each person’s prospects, rather than the prospects of each society or people, are taken fairly into account” (Beitz, 1999c:519). The second variant Beitz calls individual cosmopolitanism. It is described as a guide for individual conduct consistent with cosmopolitan principles. However, Beitz defers any further discussion on individual cosmopolitan-

ism, and he has not since returned to the topic. Pogge, while noting that individual ethical principles may complement principles of justice applicable to global institutions (2002:170-72), has focused almost exclusively on the institutional side. My claim again is that individual cosmopolitanism can be understood as global citizenship, appropriately configured, and that it is necessary to incorporate a defensible conception of global citizenship into cosmopolitanism in order to present a complete view of cosmopolitan right.

Cosmopolitan Right

The concept of cosmopolitan right is most directly traceable to Kant's political writings (see Reiss, 1970). As outlined in "Theory and Practice," the basic concept of right entails "the restriction of each individual's freedom so that it harmonizes with the freedom of everyone else... And public right is the distinctive quality of the external laws which make this constant harmony possible" (Kant, 1970:73). By extension, cosmopolitan right would address comprehensively the principles that should rightly govern global human interactions, primarily intersocietal ones but also some at the individual level.

For Kant, appropriate principles are derived in an approach in which all individuals imagine themselves as co-legislators in a global ethical commonwealth or "kingdom of ends," concerned to respect the autonomy of all others (Kant, 2001; Linklater, 1999a:41). He also adopts the normative claim that the earth is a common human holding, and he emphasizes empirical tendencies for groups to come into contact and often conflict with each other (Waldron, 2000:230). The resulting principles of cosmopolitan right are most fully elaborated in *Perpetual Peace* (Kant, 2003; see Hayden 2005:21). There, the first definitive article addresses the republican principles that Kant believes should prevail in domestic societies. The second definitive article mandates the familiar global federation of republics, and the third article outlines a duty of universal hospitality that should be extended to all individuals, one based in the principle of common ownership of the earth.

Kant's third definitive article is titled "*The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality*," and indeed, his *ius cosmopolitanicum*, in its emphasis on not treating strangers as enemies, has been seen by some as quite limited. That is in part for its failure to attempt a global regulation of individuals who are members of the same political community (Benhabib, 2001:43), for an ostensible lack of consideration to distributive relations between societies (though see Loriaux,

2007), and for a lack of attention to bringing individuals into some global program of actual co-legislation, as per current proposals for cosmopolitan forms of democratic rule (Linklater, 1998: ch. 6). Even so, Kant's conception of world citizenship, or a common human community, has served as a significant model or starting place for many current conceptions (see Habermas, 2006:123-26), and his multi-level framework offers invaluable guidance toward a more encompassing concept of cosmopolitan right.

A more systematic or detailed framework, and one that has influenced the divisions within current cosmopolitanism, is offered by John Rawls. Like Kant, Rawls explores within a concept of right moral principles that could be appropriately applied at the individual, societal, and intersocietal levels (Rawls, 1999a:93-101; see Kokaz, 2007:326). Each set of principles is chosen within a discrete original position, the familiar Rawlsian device for deriving appropriate moral guidelines by depriving each participant of the knowledge of her or his own social standing, particular talents, and related information. Rawls gives predominant attention, of course, to the principles he believes would be chosen to apply to domestic institutions, and he is explicit that those should be the first principles chosen. Principles of individual duty are to be chosen in a second original position, along with principles of individual obligation in relation to institutions. The individual principles are expected to be significantly influenced or limited by the principles of justice for institutions chosen in the first original position. Finally, principles to govern intersocietal relations, or in Rawls's specific term the law of peoples, are chosen in the third original position (Rawls, 1999a:331-35; Rawls, 1999b).

Schematically, each set of principles is seen as necessary to complete a concept of right, which itself is a component, alongside concepts of value and moral worth, of an overarching concept of practical reason to guide moral action in various contexts (Rawls, 1999a:94). I will note that, as was the case with Kant, the framework or schematic structure of Rawls's concept of right is more salient here than the specific conceptions of justice, individual duty and obligation, and intersocietal relations that Rawls believes would emerge from the choosing situations at each of the levels. Rawls's favored principles to govern intersocietal relations, for example, would not require the kinds of high-level, trans-state distributions that many cosmopolitans have argued are obligatory (Moellendorf, 2002: ch. 2; Hayden, 2002). However, giving some attention to the individual ethical principles that ostensibly would be chosen will help to make clearer some ways in which conceptions of global citizenship would fit within a conception of right that is specifically cosmopolitan in its orientation.

In Rawls's schema, both natural duties and obligations are incumbent on all individuals. Obligations arise within, and are to be defined according to, the rules or practices of specific institutions. Natural duties accrue to all persons regardless of their membership in specific institutions or schemes of social cooperation; include negative duties to avoid injuring others and positive duties of mutual respect, mutual aid, and upholding justice. Mutual aid, characterized as "helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself" (Rawls, 1999a:98) is particularly significant here, as is the duty to uphold justice, which includes a requirement that all persons comply with existing just institutions of which they are a part, as well as to "further just arrangements not yet established" (Rawls, 1999a:98-99).

A duty to comply with existing institutions may face special difficulties in relation to gaps in justice between the principles of justice Rawls believes would be chosen in the first original position—equal basic liberties and the difference principle—and the justice of any actual scheme of institutions (Lyons, 1998), as well as more direct theoretical challenges concerned with political obligation *per se* (Simmons, 1979:145-46; see Pogge, 2002:134-39). It will be appropriate to limit the focus here to duties of mutual aid and a duty to further or possibly create just arrangements, given their strong significance to questions arising in a global frame, where no cohesive, comprehensive institutional structure exists. It is here where conceptions of global citizenship become salient, in terms of offering the most discrete and detailed forms of guidance for individual ethical action in the absence of a fully elaborated institutional framework.

Global Citizenship

Global citizenship, as a theory of citizenship, is fundamentally concerned with appropriate individual action (Dower, 2005:105; see O'Byrne, 2003). In fact, inherent in the concept of citizenship *per se* are probably the most concrete and comprehensive expressions of individual moral requirement. This "legal dimension" of citizenship (Dagger, 1997:99; Janoski, 1998:8-11) is formalized domestically in constitutions or sets of constitution-like documents, as well as in the subsequent court rulings interpreting those documents and giving more detailed substantive content to packages of rights. In the same vein, a fully elaborated conception of global citizenship holds the promise of delineating both the rights that individuals should be presumed to possess in the global human community, and the duties and institutionally linked obligations that can be

viewed as incumbent on individuals in order to better secure the fulfillment of those rights.

In this section, I consider three broad ways of thinking about how citizenship above the state might be conceived, formulated, or put into practice. Throughout, I strive for sympathetic immanent critique, addressing the arguments on their own terms as conceptions of global citizenship, and developing in context an approach to global citizenship that could both encompass core aspects of many of the specific conceptions discussed, and serve as a conception of individual cosmopolitanism in the broader framework of cosmopolitan right.

International Citizenship

This approach essentially takes the sovereign states system as it is structured and exhorts states, or state leaders, to pursue ethical foreign policies, including respecting individual rights, assuming strong foreign aid obligations, acting responsibly on environmental issues (see Linklater, 1992; Carter, 2001:173-74; Williams, 2002). The approach is longstanding, with some significant resonance of Kant's prescriptions for states in *Perpetual Peace*. Aspects of it are present in the Liberal idealism of Woodrow Wilson and others in the early 20th Century, and in current human rights doctrine (see Beitz, 1999b:127).

The statist emphasis of international citizenship might be viewed as putting the approach in immediate tension with the inherent universalism of a fully global conception of citizenship. It will be useful to consider a nuanced recent account, however, to clarify some sources and expressions of such tensions, and to move toward a conception of international citizenship that could be compatible with cosmopolitanism. Bryan Turner, one of the most prominent current citizenship theorists, has offered an argument for international citizenship that could be demanding in its individual moral prescriptions, and which, while not rigidly statist, remains rooted in a states system (Turner, 2002). For Turner, patriotism, or love of one's country, is compatible with a global citizen orientation, which would consist in large part of the promotion of universal human rights and obligations to secure them. One first learns to love one's own country, ideally in a way that allows for an ironic, critical distance from it, and the development or inculcation of such attachment serves as preparation for the development of respect for other state cultures (Turner, 2002:49).

Noting the difficulties inherent in obtaining compliance from individuals with the duties embedded in any conception of global citizenship, Turner argues for an emphasis not on a core of rights ostensibly evident across all cultures (see Ignatieff, 2001). Rather, he advocates an emphasis

on the “unity of human misery,” or a consensus that he sees having emerged around actions or events that are considered insufferably wrong (Turner, 2002:55). Respect for other cultures is noted as a key value, but Turner rejects strong cultural relativism, for example, allusions to “Asian values” as a means of critiquing claims for universal human rights (46-47; see Sen, 1997; Langlois, 2001). Rather, individuals within specific nation-states are to be educated in a way that promotes love of country, and at the same time educated to adopt a “cool” or thin identification that does not preclude support for international citizenship or human rights doctrine.

Turner’s account is explicitly universalist in its promotion of a relatively strong conception of human rights, yet it emphasizes the importance of particular communities in ways that recall more straightforwardly particularist accounts of community and belonging. For example, Michael Walzer would cite principles of state sovereignty, in particular non-intervention and the ability of a community to admit or exclude outsiders as it chooses, as vital in sustaining “communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life” (Walzer, 1983:62; see also Walzer, 1977:90). However, for Walzer, the presumed uniqueness of the way of life that has been developed within the nation-state tends to preclude the development of relatively thick conceptions of universal human rights.

In Turner’s approach, the presumed uniqueness of national communities is not emphasized. Rather, the state context is a training ground for the kinds of values that can encourage individuals to adopt a genuinely universalistic stance toward human rights. If that is the case, however, it is not clear why the state *per se* must be viewed as the appropriate inculcator of global citizenship values, or in Turner’s term, cosmopolitan virtue. For example, states and state sovereignty could be seen as merely a means to the end of protecting and promoting the interests of individuals. Cosmopolitan theorists commonly note, with commentators on human rights theory and practice, that principles of state sovereignty, especially of non-intervention, often have facilitated the violation of human rights within states (Pogge, 2002:139-44; see Donnelly, 2002), though of course that outcome is not categorical (Falk, 2000: ch. 4). However, in a universal individualist frame such as cosmopolitanism, if some other global institutional configuration were found to better achieve the promotion of core individual rights, or to better promote just outcomes for individuals in general, then that system would be viewed as preferable. The advocate of a more explicitly universalist form of international citizenship will have

difficulty demonstrating why such institutional evolution should not be prescribed if it would better promote human rights.

In fact, an approach to international citizenship that offers such an instrumental view, in addition to presaging a remarkable range of insights offered by current cosmopolitan and global citizenship theorists, originates with John MacCunn (1899). MacCunn, who is most often identified with the British Idealists, in his more cosmopolitan vein cited the Westphalian system as a frequent impediment to the realization of cosmopolitan ideals, as well as their best institutional hope. The core individual duty identified by MacCunn, and one that receives current expression in the capabilities-based cosmopolitanism of Martha Nussbaum (2000), is for individuals to help others realize “the capacity for a good life” (1899:155). For MacCunn, helping others realize that capacity, whether they are compatriots in a relatively wealthy state or living in a distant, impoverished state, is our fundamental duty as human beings.

The ideal for MacCunn is a system structured so that one’s duties to act as a global citizen are discharged in also acting as a good national citizen, i.e., by helping compatriots to realize their capacity for a good life. Again the importance of working through the existing institutional structure is considered instrumental. That is, one could attempt to “walk the noble but less effectual path” of the missionary or others delivering direct aid to individuals overseas (MacCunn, 1899:167), but the existing states system is likely the best available means of fulfilling natural duties of mutual aid.

The state instrumentalism implicit in such an account bears important similarities to many cosmopolitan-liberal arguments, where states are held to have potentially strong instrumental value as institutions capable of securing rights and organizing the discharge of individual obligations, but they are not seen as having intrinsic value or interests independent of the individuals within them (Beitz, 1999a). It represents a departure from a more straightforward international citizenship view, which would see state membership as intrinsically significant. Such an approach can be seen as an important potential bridge between international citizenship and more encompassing conceptions of global citizenship, as well as between the global citizenship and cosmopolitan literatures.

Global Citizenship as Moral Orientation

One more encompassing approach to global citizenship involves the promotion of a global ethic or attitude toward the other across national boundaries. Examining some particular arguments here may be useful for clarifying individual duties, and especially for highlighting a key differ-

ence between the individual global citizen and the kind of individual moral agent that may be presumed within moral cosmopolitanism. That is, moral cosmopolitanism, while it may consider the interests of all individuals, does not necessarily presume the existence of some actual or potential global community of which each individual is in some substantive way a member (Van den Anker, 2002:166). Implicit in the concept of the global citizen is the understanding that one is part of a discrete global community, with duties toward specific others in that community, rather than a bearer of essentially abstract rights or duties to all others. As Dower and Williams note, in essentially all accounts of fully global citizenship, “what is being asserted is that humans are in some fundamental sense members of a wider body as contrasted to the membership of a particular political community such as the city-state, nation-state, or even an empire. All the latter are accidents of one’s birth or circumstance... There is something... that ties us together in terms of identity, loyalty or commitment” (Dower and Williams, 2002:2).

That is not to say that the global citizen must be construed as a member of some solidarist Republican world state, with some form of global-national consciousness being promoted by state institutions and absorbed by its members. Rather, individuals, by imagining themselves in global community with all others, may be more inclined to consider the interests of particular, concrete individuals across borders, and may be more inclined to engage in open, mutualistic dialogue with them. Likewise, a global citizenship approach presumes that, even if some comprehensive set of moral principles could be derived from the bare facts of what humans need and what they deserve, those principles likely could not be effectively enacted without the actual negotiation of difference through dialogue that is inherent in the concept of community. An emphasis on global citizenship helps to promote sensitivity to such variation and can help to promote an attitude of respect in dialogue where traditions, or local practices of power or domination, may seem to be at odds with cosmopolitan principles (see Nussbaum, 1999).

So, presuming some sort of membership in a global human community, theorists of global citizenship as a moral attitude have been concerned foremost with identifying the ethical orientation most appropriate to guiding individual action in that community. Along with offering accounts that are clearly rooted in the Kantian ethical commonwealth (see Carter, 1997; Hutchings, 1999), theorists have examined ways in which some sort of global loyalty might be inculcated in individuals to promote the observance of human rights (Roche, 1997; Midgley, 1999), how a global ethic could be formed and promoted around principles shared by

the world's major religions (Küng, 1997), or how a global civic culture (Boulding, 1988) might be developed.

Richard Falk offers an account that is less specific in its moral prescriptions than some, but which may offer the best overall guidance for the kind of moral attitude the global citizen could adopt. Falk has developed the ideal of the global citizen as "citizen pilgrim" (Falk, 1995; 2002). The citizen pilgrim is one who possesses "the spirit of a sojourner, committed to transformation that is spiritual as well as material, that is premised on the wholeness and equality of the human family" (Falk, 2002:27). Citizen pilgrims are not interested in "technical fixes" to improve the efficiencies of neoliberal economic integration, while giving insufficient attention to what Falk sees as its many harmful effects (2002:27). Nor are they multinational elites who consider themselves at home in an intercontinental world of posh hotels and restaurants while giving little thought to the struggles faced by the less-affluent who constitute most of the world's population (Falk, 2005).

Citizen pilgrims are expected to act in a way that is resonant in some ways of Plato's guardians. Bearing appropriate values and an orientation of solidarity in global community toward others, they will address challenges and opportunities as they emerge in an integrating global system, with an eye to promoting sustainable development and humane governance (Falk, 2002:28). While Falk does not elaborate specific institutional changes that a citizen pilgrim might be expected to undertake, his outline of the orientation that should be adopted actually is quite demanding and can offer useful guidance for accounts more directly concerned with necessary or appropriate trans-state institutions. In particular, Falk's account can provide a means of understanding how current trans-state activists, such as those noted at the beginning of this article, can be viewed as practicing a normatively and empirically meaningful form of trans-state or global citizenship, or at least embodying significant aspects of it.

Global Citizenship and Global Institution Building

Theorists working within this approach do advocate the creation of supranational institutions capable of enabling a concrete practice of trans-state citizenship, and there is a potentially significant link between institutional global citizenship and the conception of natural duty outlined by Rawls. Recall that in Rawls's scheme of natural duties, all individuals, regardless of their institutional affiliations, would have a duty to further just arrangements (Rawls, 1999a:98), or "to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves" (Rawls, 1999:294). Some cosmopolitan theorists

have extrapolated from this a straightforward individual duty to promote the creation of global institutions capable of regulating trans-state interactions, though not a comprehensive world state (see Tan, 2004:170). Others have identified a closely related duty to promote the creation of global institutions generally capable of securing just outcomes (Jones, 1999:69), and possibly including a world state (Copp, 2005).

I have argued elsewhere that, given biases against cosmopolitan distributive justice inherent in a sovereign states system, the cosmopolitan theorist should advocate comprehensive, democratically accountable integration between states, from the regional to the fully global level (Cabrera, 2004; 2005). In that context, a conception of global citizenship could identify the very specific duties incumbent on all to promote the creation of an actual global political community, up to and including some comprehensive form of world state. It is not necessary, however, to firmly press the institutional claim in order to identify the ways in which a conception of global citizenship can help to clarify the parameters of individual cosmopolitanism. I will offer here an approach to global citizenship that is broad enough to be consistent with a range of particular conceptions, and yet is specific enough to play the role identified for global citizenship as individual cosmopolitanism. According to this conception, individuals act as global citizens when they

- a) reach across international boundaries, or internal boundaries of differential citizenship
- b) in order to help secure those fundamental rights that would be better protected if there were a just system of global institutions in place, and
- c) work to help put such a system in place.

I will note first that implicit in criterion “a” is that such cross-border outreach is undertaken in a spirit of community with all others. Individuals imagine themselves embedded in a global community, rather than as members of discrete, “separate but equal” moral communities, and they are concerned to ensure the justice and sustainability of the global community. Thus, the desert humanitarians noted at the beginning of this article cite their sense of belonging to a common humanity as reason enough to reach across barriers of citizenship, nationality, and in the frame of some more critical observers, criminality, to fulfill felt duties of mutual aid. The Minutemen, adopting more a rigidly nationalistic approach to membership, express a much different sense of duty to the non-citizen other, in particular those attempting to cross a national boundary without authorization.

Emphasized in criterion “b” is the importance of envisioning a fully just system of global institutions and the principles that would obtain within it. It offers an approach to identifying a firm schedule of moral requirements, i.e., to conceiving of ourselves as embedded in a framework of just institutions that would enable us to move from somewhat weak and vaguely specified natural duties of aid, to a clearly delimited set of obligations to be discharged in global community: a “legal dimension” of global citizenship. This approach can be seen as positing a duty to act as though one had firm obligations of justice within an actually existing scheme of institutions. As such, it would not draw a sharp distinction between individual duties and obligations, as discussed below. Finally, under criterion “c,” individuals are understood to have a duty to help promote the kind of institutional transformation under which all in the global human community would be offered due protection. It attempts to fill in the contours of Kant’s imagined global community of co-legislators by positing actual institutions within which members of a global community would engage in dialogue, coordinate action and regulate shared practices.

To reinforce, the characterization offered here would accommodate a range of specific conceptions of global citizenship. It is consonant with, and could be enriched by, many within the global ethic approach, including Falk’s account of the citizen pilgrim. It could accommodate an instrumentalist international citizenship such as MacCunn’s, given that it is possible to conceive and move closer at least to some ideal form of Westphalian states system in which all states would be equally empowered to protect the rights or vital interests of their citizen charges. The approach also would accommodate many discrete conceptions of institutional global citizenship. Those would include moderate institutional accounts that would stop short of advocating some comprehensive global government while still calling for extensive global integration (Van den Anker, 2002), or Kantian “constitutionalization” (Habermas, 2006: ch. 8) to secure more just outcomes for individuals within states.

I will close this section by focusing on a particular, discourse-based account of institutional global citizenship offered by Andrew Linklater, (1998; 1999a; 1999b). Emphasis will be given to its potential significance and some important possible challenges to it. Both should provide further clarification on the contours of a defensible global citizenship, as well as the fit of such a conception within a broader concept of cosmopolitan right.

Linklater argues that Kant’s imaginary kingdom of co-legislators should be transformed where feasible into actual transnational citizenries (1998:205-06). Like the cosmopolitan democrats, he emphasizes ways in

which the processes of economic integration may be reducing the ability of those within states to exercise democratic control over a range of policy issues (1998:191-92). He gives attention to the harms that may be perpetrated by a state on others as further reason to move toward supranational institutions within which a more concrete trans-state citizenship can be practiced, and in which individuals “can exercise their moral right to refuse and renegotiate offers” (Linklater, 1999a:51). He is, however, explicit that the individual duty to create supranational institutions arises among members of like-minded societies, “in the sense of having broadly similar conceptions of citizenship” (1999a:51).

Linklater’s approach is concerned not only with the kinds of institutions which could embody a conception of trans-state or global citizenship, but with the kinds of duties that may be incumbent on individuals to create them. It thus offers a route to conceiving of and actually moving toward the implementation of forms of trans-state citizenship, and its emphasis on converting an imaginary commonwealth of co-legislators into an actual process of dialogue and contestation among trans-state citizens is potentially quite significant. There could be, however, significant theoretical friction between the universals that underlie the conception of trans-state citizenship Linklater advocates, and an implementation scheme that would place strong emphasis on interdependence or like-mindedness.

Consider how the interdependence issue has been addressed in terms of cosmopolitan distributive justice. In that frame, Beitz initially argued that it was the fact of global economic interdependence that justified speaking in terms of a global basic structure to which principles of distributive justice should be applied, and within which there were recognizable obligations of justice to extend distributions (Beitz, 1999). Later, however, Beitz moved away from a strong emphasis on the actual character of relations between states in determining the distributions that individuals within and across states owe to one another (Beitz, 1983). Instead, he made reference to universal human characteristics. Such a move helps in part to avoid circumstances under which individuals could be construed as appropriately excluded from trans-state distributions because of wholly contingent factors that caused them not to be integrally embedded in the global economy, including their states’ level of development or possession of valuable resources, or decisions made by elites in hierarchical states (see Cabrera, 2004: ch. 3; Caney, 2005b). Others, including Brian Barry (1995:52-67) and Jeremy Waldron (1993:21), also have focused on universal human characteristics, rather than interstate relations, in developing and defending principles of cosmopolitan justice.

The guiding aim of the dialogic approach Linklater outlines is to enable individuals, especially the vulnerable within states, to engage in dialogue as equals in a global public sphere, and by so doing to highlight and oppose injustices both within and above states. However, if global citizenship, or regional trans-state citizenship, is presumed to be appropriately differentiated according to a state's level of economic interdependence with others, or its "like-mindedness" with nearby states, then the most vulnerable may still have no voice. That is not, of course, to pose some universal imperative to intervene in hierarchical states or otherwise pursue integration by force. Rather, it is to say that a more straightforward emphasis on the universalist ethical underpinnings of Linklater's approach could better enable it to achieve its goal of ultimately bringing all individuals into the global public sphere as interlocutors.

Objections: Duty and Obligation

Interdependence and related questions, in fact, speak to the core defensibility of the concept of global citizenship. Consider the challenge to the definitional coherence of global citizenship offered by Hannah Arendt, among others. It holds that one simply cannot be a global citizen in the absence of state-like global institutions. Since there are no such bodies to define and enforce citizen duties and rights, to specify participatory procedures, avenues of institutional access and other parameters of concrete citizenship practice, there is no global citizenship (Arendt, 1968a:81; see Walzer, 1996). The claim also could be understood more narrowly in terms of duty and obligation. That is, since concrete obligations of justice arise only in the context of institutions, and there are no fully cohesive global institutions, it may be incoherent to speak of firm global citizen requirements in the current system. Thus, David Held speaks of the institutions of cosmopolitan democracy as potentially a context within which "the elusive and puzzling meaning of global citizenship becomes a little clearer" (Held, 2004:115).

First, I will note that Arendt's claim must be formally true. Individuals do not hold membership in cohesive global institutions and thus cannot be global citizens. They can, however, act "as" global citizens, and in a non-trivial sense. As outlined above, they can be viewed as having a natural duty to act as though there were a just global institutional frame in place, and to discharge their presumed obligations toward others accordingly. I will suggest that such an approach is defensible in large part because the line between duty and obligation is not so bright as is sometimes claimed. To elaborate, I will consider distinctions Thomas Pogge has drawn be-

tween the two, and some ways in which his firmly obligations-based approach may rely implicitly on the moral force of natural duties to aid.

Pogge has argued strenuously that the cosmopolitan should not place strong emphasis on individual natural duties of mutual aid, in part because it would be difficult to motivate individuals to act on such positive duties to others, especially to noncompatriots. He views obligations not to harm others as potentially much more capable of motivating action consistent with cosmopolitanism, including fulfilling cosmopolitan distributive demands (Pogge, 2002:132-36). For Pogge, those in affluent states are implicated in a range of harms perpetrated through unjust global institutions, including the global trade regime, intergovernmental organizations, norms regulating interstate borrowing that allow corrupt leaders to enrich themselves, and a host of others. Thus “the worse-off are not merely poor and often starving, but are *being* impoverished and starved under our shared institutional arrangements, which inescapably shape their lives” (Pogge, 2002:201).

Pogge places greatest emphasis on the responsibility of decision-makers and other influential elites within affluent states to initiate changes in the global order (2002:172-73). He maintains, however, that ordinary individuals in affluent states also are responsible for institutional harms. An analogy is drawn between current citizens of affluent states and those living in the slaveholding states of the past. Even if citizens of those states did not hold slaves themselves, Pogge asserts, they could be held responsible at some morally significant level for the institutional scheme which they helped to uphold through their routine daily actions. Thus, they had clear obligations of justice to promote the transformation of unjust societal institutions (Pogge, 1989:178).

A harm interdependence approach is potentially extremely valuable as one frame of obligation, not least for encouraging individuals to consider the institutional effects their freely made choices could have. However, Pogge’s scheme, besides being subject to some of the same critique noted above in Beitz’s turn from interdependence, will face specific challenges in its emphasis on collective responsibility. First, we can note that Pogge, like many who ground cosmopolitan distributive obligations in interdependence or intense mutual influence, appears to presume that there is a threshold of mutual influence among states that, once reached, justifies the application of some distributive principle that would apply to all equally. But it is not clear why, if states are to qualify for some scheme of distribution based on their level of interaction or influence with other states, some variable principle would not be more appropriately applied (Caney, 2005:396-97; cf. Beitz, 1999a:165). David Hume, for example, argued

that, since human interaction or mutual influence was weaker at the inter-state level than within states, moral principles applied with less force above the state (see Cohen, 1984). Such a principle would at least have to be considered if individuals were to be included or not in a global distributive scheme based on some variable status such as their state's level of interaction with other states, rather than on their status as human beings.

Pogge would hold direct decision makers and influential elites, who have a clearer chain of accountability, more responsible for harms imposed. All non-elites, however, also would be held accountable at some equal baseline level. All are exhorted to promote movement toward a more just institutional structure, and institutional transformations of the kinds mandated would require significant tax-financed revenues to execute. Regardless of their personal participation in the kinds of institutional regimes implicated, all would appear to be held to an equal standard of responsibility and amount of rectification.

Further, and perhaps more significantly, in adopting an approach that would hold all in a state responsible and obligated to rectify injustices, Pogge must show how even very young children and others who cannot be said to have participated in imposing harms are justifiably implicated. Related critiques have been made of collective-responsibility arguments that would reject cosmopolitan distributions on grounds that less-affluent states are rightly held responsible for their own policy choices (Rawls, 1999; Miller, 2004). How, some critics have asked, can ordinary individuals, much less children, be implicated in such policy choices? (LaFollette and May, 1996:79; Dworkin, 2000:322). A harm-interdependence approach may fare somewhat better in response to this critique, given that children born into affluent states would be held responsible for actions by a state that likely can offer them many benefits. Significant questions would remain, however, about holding individuals directly responsible for events over which they exercise no control, e.g., their luck of birth.

Finally, and most salient here, implicit positive duties to aid or further just institutions actually may be doing much of the work that is claimed for obligations not to harm in Pogge's scheme. Pogge himself has acknowledged that it may not be possible for individuals in affluent states to avoid contributing to the harms he identifies. Even so, he states, those in affluent countries are obligated to promote institutional transformation. "Those presently most disadvantaged have virtually no means for initiating such reforms. We do. And our responsibility vis-à-vis existing injustices hinges upon our ability to initiate and support institutional reforms" (Pogge, 1989:11-12). It is difficult to see, short of re-placing themselves in a less-favored position within a less-affluent state, how individuals can be

held firmly responsible for harms they could not have conceivably avoided causing. It is not the case, for example, that they could or should have been more careful prior to some accident that injured others. Rather, all are somehow equally implicated by their life placement in an affluent state. That being the case, the force of the moral requirement to promote institutional reforms may actually spring from implied positive duties to further just institutions. As in the case above, individuals who are so placed as to be capable of rendering aid in the form of institutional change are said to be required to do so, but the moral requirement does not clearly spring from any harms they have caused.

The foregoing should be sufficient to show that the case for focusing almost exclusively on individual obligations to avoid harming is not so clear cut. Rhetorically, encouraging individuals to avoid harming others may carry more general weight than exhorting them to act on positive duties per se. In practice, however, it is not a straightforward matter to demonstrate how far or whether any specific non-elite within an affluent state can be held responsible for injustices produced by current global institutions. More centrally, the insight that individual natural duties of mutual aid and furthering just institutions may be implied within a harm interdependence approach helps to strengthen the case for treating duties and obligations as closely interconnected, or as both vital to the overall cosmopolitan project (Caney, 2007). As such, it reinforces the coherence of a conception of global citizenship that, in the absence of cohesive global institutions, would speak in terms of individual duties to act according to the obligations, or “legal dimension,” of a fully global citizenship that would obtain were a just system of global institutions in place.

Conclusion

In this article, I have argued that global citizenship, appropriately understood, is an integral part of a comprehensive conception of cosmopolitan right. By conceiving of global citizenship as filling the theoretical space of individual cosmopolitanism, we can clarify both the parameters of a defensible conception of global citizenship and the duties and obligations that are incumbent in a frame which treats individuals, rather than states or other groupings, as the ultimate units of moral concern.

According to the approach detailed here, individuals are acting as global citizens when they reach out to others across international boundaries, or internal boundaries of differential citizenship, in order to help secure those fundamental rights that would obtain were there a just global system of institutions already in place, and when they work to help put a

system in place. Such an approach is consonant with a broad range of specific conceptions of global citizenship, including those that would argue for the creation of supranational institutions within which a more encompassing, actual global citizenship could be practiced. In positing a natural duty to act as though there were a just system of global institution already in place, the approach helps to highlight connections between individual natural duties and obligations of justice. Thus, it can help to clarify individual moral requirements that are unmediated by institutions, those that arise in relation to the transformation of existing global institutions, and those that may arise in relation to institutions that do not yet exist.

Notes

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1. Pogge uses different, somewhat singular, terms to express essentially the same division. In the interest of consistency with the bulk of the cosmopolitan literature, I will follow Beitz's terminology.

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