

Review Essay

‘Globalization, Constitutionalism, and Sovereignty’¹

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Abstract: Jean L Cohen’s impressive new volume argues that the existing global order’s own internal attributes point the way to the possibility of attractive as well as realistic institutional reforms. Global dualism, she argues, suggests the advantages of constructing non-statist global federations, in which sovereign states would cooperate in far-reaching ways to tackle common problems, in conjunction with a ‘low-intensity’ – yet potentially path-breaking – constitutionalization of global governance. If properly achieved, such reforms could produce a global order better able to preserve legality, protect rights, and allow for far-reaching political autonomy. This review chiefly focuses on the author’s attempt to link her normative and political ideas, and especially her ideas about constitutional pluralism and global federations, to her analysis of the existing global order. Despite the many virtues of her reform ideas, they sometimes embody unfairly hostile views of cosmopolitan political and legal aims. Unfortunately, Cohen has not sufficiently responded to political and institutional cosmopolitans who seek potentially more far-reaching alterations to our global order than she deems desirable.

Keywords: cosmopolitanism; global constitutionalism; pluralism; state sovereignty; world state

Scholarly exchange about global law and politics today seems plagued by impassable gaps. Cosmopolitans do battle with statist, while legal pluralists take up arms against proponents of global constitutionalism. For their part, hard-boiled realists denounce emerging forms of global governance as power politics hiding behind the veil of universal human rights. Even as the debates remain mired in the usual political and scholarly divides, ongoing global political and legal changes call out for rigorous theoretical analysis.

¹ Review of Jean L Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge University Press, Cambridge, 2012). References appear parenthetically in the text of the review.

As Jean L Cohen observes at the outset of her ambitious attempt to move the discussion forward, the stakes are high. Novel forms of global governance have materialized to supplement and sometimes outrun the nation-state. Their many virtues notwithstanding, they open the door to ambivalent and sometimes suspect attacks on state sovereignty. Yet globalization renders defensive statism anachronistic as well. Proponents of human rights and global-level constitutionalism, with a reformed UN as their centrepiece, seek to overhaul global institutions along cosmopolitan lines. However, they risk downplaying the challenges posed by pluralism and social complexity, while obscuring the ways in which state sovereignty underpins self-government. Those hostile to 'the astonishing pace of regulation and juridification on the global level' close their eyes not only to its unavoidability, but also to its potential advantages (7–8). Yet how might we protect democracy, and also effectively rein in novel types of potentially unjust global power, without new global constitutional and legal devices?

What is now increasingly described as the 'constitutionalization of international law', Cohen believes, is the way to go.² The real question, however, is how best to do so.

Cohen's sophisticated book provides a marvellous guide to the complex scholarly exchange about global political and legal change. As much at home in international law as in political philosophy and legal theory, she refreshingly ignores the conventional disciplinary divides. The most immediate result is that she aptly demonstrates how otherwise seemingly disparate debates in myriad academic fields, many of which barely seem cognizant of their counterparts, address the same basic theoretical and political issues.³ Stated in the simplest terms, how can we do justice to global governance and human rights while preserving the modern sovereign state's indispensable achievements? How to make sense of the cosmopolitan as well as statist and pluralist features of our messy global order? For Cohen, ours is a fundamentally 'dualistic' global order, resting on interrelated but distinctive moral and legal commitments to state sovereignty and human

² Jürgen Habermas has helped popularize the term (*The Divided West*, edited by Ciaran Cronin [Polity Press, Cambridge, 2006]). On its broader usage, see Erika de Wet, 'The Constitutionalization of Public International Law' in Michel Rosenfeld and András Sajó (eds), *Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, Oxford, 2012) 1209–30.

³ There is, however, one oversight: Cohen seems unfamiliar with some important research in international relations theory, even when it speaks directly to her central concerns. For example, her diagnosis of ours as a dualistic global order overlaps with basic insights from the 'English School', as pioneered by Martin Wight and others (M Wight *et al*, *International Theory: The Three Traditions* [Holmes and Meier, New York, 1992]). This lacuna points to the large gap in US political science still separating 'political theory' from 'IR'.

rights. Still a pluralistic international society of separate states, it nonetheless increasingly relies on autonomous global-level political and legal institutions, some of which encapsulate admirable cosmopolitan moral impulses. So how can we make sense of global dualism's core traits? And how might we shape them so as to tap their normative and political potential, which Cohen considers considerable?

As Cohen powerfully outlines, the seemingly insurmountable tension between state sovereignty and cosmopolitan global governance can be successfully navigated if we discard conventional views of the former as a static, basically unalterable, irrepressible political 'fact'. Legitimate as well as effective global dualism depends on the emergence of what she dubs a 'new sovereignty regime', guaranteeing that states 'continue to play the key role in the production of international law' while allowing for unprecedented global-level decision-making (5). Functioning as protective armour for state-based self-determination, sovereignty needs to be conceived as 'a normative concept and an international legal entitlement to political autonomy' (15). Only unduly cramped traditionalistic ideas about sovereignty lead political cosmopolitans mistakenly to dump it, or, alternately, their critics to reify it so as to prevent them from understanding global dualism's main traits, e.g., the fact that states can surrender their monopoly on global-level law-making without thereby surrendering sovereignty altogether. Globalization notwithstanding, sovereignty remains a pivotal empirical as well as normative category. It can continue to help us preserve political autonomy and pluralism.

For Cohen, the existing global order's *own* internal attributes point the way to the possibility of attractive as well as realistic institutional reforms. Global dualism, she argues, suggests the advantages of constructing non-statist global federations, in which sovereign states would cooperate in far-reaching ways to tackle common problems, in conjunction with a 'low-intensity' – yet potentially path-breaking – constitutionalization of global governance. If properly achieved, such reforms could produce a global order better able to preserve legality, protect rights, and allow for far-reaching political autonomy.

No review article can hope to deal with all facets of a book as rich and wide-ranging as this one. So I focus mainly on the author's attempt to link her normative and political ideas, and especially her ideas about constitutional pluralism and global federations, to her analysis of the existing global order. Despite the many virtues of her reform ideas, they sometimes embody unfairly hostile views of cosmopolitan political and legal aims. Unfortunately, Cohen has not sufficiently responded to political and institutional cosmopolitans who seek potentially more far-reaching alterations to our global order than she deems desirable.

I.

Cohen's account of global dualism operates, as she notes, on 'two levels: empirical-diagnostic and normative-prescriptive' (7). On the one hand, hers aspires to be a hard-headed and realistic empirical assessment of the global status quo, warts and all. So the idea of a dualistic global order refers to some key descriptive and social-scientific claims. Most obviously, she heeds the findings of a large body of literature highlighting the existence of ambitious forms of viable global governance having far-reaching independence vis-à-vis existing states. Ours is a political universe where global-level institutional mechanisms have garnered both substantial autonomy and staying power. At the same time, states continue to play a major and even predominant role in many legal and policy arenas. Like many sensible commentators, Cohen seems sceptical of claims that globalization has already dismembered the nation-state's capacity to negotiate – and potentially harness – global-level political and economic forces. Finally, she accommodates legal pluralist and systems-theoretical theses that global-level 'differentiated subsystems' have gained extensive functional autonomy, even expressing some scepticism about the possibility of subjecting them effectively to global constitutional mechanisms (5, 321).

The second and more substantial pillar of Cohen's empirical-diagnostic argument is 'the internal dualist structure of the UN Charter,' which takes *both* the sovereign equality of all states *and* some cosmopolitanism aspirations seriously (320). Because of the UN's competing commitments to state sovereignty and human rights, as well as the fact that it remains our most important global political organization, global dualism possesses legally binding force, i.e., UN members are obliged to protect its main attributes as well. Not surprisingly, when laying out her own normative and political views, Cohen suggests that she hopes to help create 'a better, more just, and more effective version of that system' (ix). Hers is depicted as a *reform* of the UN system which immanently draws on its own internal legal (and normative) impulses. In this way, she hopes to distinguish her approach from more 'idealistic' or even utopian perspectives.

Her interpretation of the UN then proffers a convenient stepping stone to a series of normative and political proposals, envisioned as merely bringing to fruition its own dualistic logic. In Cohen's view, the Security Council's existing structure (e.g., the veto power granted to each of its permanent members) subverts its core commitment to sovereign state equality. In order to make sure that the UN can consistently maintain both human rights and state sovereignty, it needs to be made subject to constitutional reforms, whose details she lays out in a lengthy concluding chapter (266–319). Exploiting 9/11 and other recent crises, the Security

Council has begun to act in illegitimate and even reckless ways. So we need to institutionalize new legal and constitutional devices checking its tendency to do so. Only by doing so might the UN better maintain fidelity to sovereign state equality. In contrast, those who want a full-fledged cosmopolitan or ‘monistic’ global constitutional order, outfitted with extensive authority to trump existing states, ignore political realities and obfuscate state sovereignty’s contributions to political autonomy and pluralism. Such globalist visions, Cohen believes, provide a Trojan Horse for neo-imperialism.⁴

Even more ambitiously, she advocates a version of constitutional pluralism, described here as potentially representing ‘the theoretical analogue of the sociological concept of the dualistic sovereignty regime’ (6). Non-statist global federations, her favoured ideal-typical framework for reforming global institutions, then constitute its key institutional analogue. Her normative-prescriptive theses gain some of their initial force from the fact that they purportedly build on the global status quo’s core political and legal traits.

Constitutional pluralism refers to the idea of ‘independent yet interdependent legal systems that compete for but do not have to resolve’ the final locus of authority (40).⁵ So Cohen rejects a great deal of modern jurisprudence and political theory by insisting that autonomous yet interconnected constitutional orders can simultaneously possess binding force. The traditional and apparently misleading emphasis on legal hierarchy notwithstanding, overlapping and seemingly conflicting constitutional orders can in fact fruitfully operate in a heterarchical (i.e., non-hierarchical) relationship. Inspired by the example of the European Union, which she describes as ‘the prime example of constitutional pluralism’, as well as a massive

⁴ Her target here is the views of scholars like Bruno Fassbender (‘The United Nations Charter as Constitution of the International Community’ [1998] 36 *Columbia Journal of Transnational Law* 529–619). Although unmentioned, her argument is also intended as a critical response to Habermas’ own – and more unambiguously cosmopolitan – ideas about the ‘constitutionalization of international law’. The debate on global constitutionalism is massive. For important contributions, see Petra Dobner and Martin Loughlin (eds), *The Twilight of Constitutionalism?* (Oxford University Press, Oxford, 2010); Jeffrey L Dunoff and Joel P Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge University Press, Cambridge, 2009); Nicholas Tsagourias (ed), *Transnational Constitutionalism: International and European Models* (Cambridge University Press, Cambridge, 2007); also the useful survey by Antje Wiener, Anthony F Lang Jr., James Tully, Miguel Poiares Maduro and Matthias Kumm, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ (2012) 1(1) *Global Constitutionalism* 1–15.

⁵ A key inspiration here for Cohen, as for many others in the debate, is Neil Walker’s work (e.g., ‘The Idea of Constitutional Pluralism’ [2002] 65 *Modern Law Review* 317–59).

burgeoning literature struggling to make sense of its unusual legal traits,⁶ Cohen argues that

what is involved here is a complex of political communities *within an overarching political association of communities* each of which has its own legal order of constitutional quality. The core claim is that interrelations between the constitutional legal orders of states with that of the overarching political community of which they are members, can be characterized as legal, even constitutional, without preemptive closure, imposition of hierarchy, leveling unity, or final resolution of ultimate supremacy claims. (70) (emphasis in original)

Constitutional pluralism requires of the relevant social actors a shared commitment to maintaining an overarching legal order, as well as co-equal respect for the constitutional autonomy for each of its component units. Even though Hans Kelsen and almost every other major legal theorist would have expressed scepticism about such a prospect, Cohen thinks that they were wrong to do so. In one of the book's more interesting jurisprudential contributions, she calls on H L Hart to defend her position (38–41). Properly conceived constitutional theory, in alliance with the illuminating example of the present-day EU, demonstrates 'that the idea of constitutional tolerance between independent yet interdependent legal systems' lacking a final authoritative instance 'is at least conceivable' (41). Even absent some ultimate constitutional (and political) authority, legal conflicts can potentially 'be solved in a non-hierarchical manner' (70).

How then does constitutional pluralism relate to global politics? Cohen identifies a fruitful elective affinity between the two: constitutional pluralism's underlying logic meshes well with the realities of global dualism. 'There now exists alongside the domestic constitutional law of each sovereign state an increasingly autonomous legal order coupled to the global political system in general' (6). Because we need to pay proper and indeed equal attention to both state-based constitutional systems *and* our emerging shared system of global governance, constitutional pluralism offers a useful framework for thinking about how we might best do so.

The other key piece of the puzzle is the idea of a global federation. Rejecting the familiar binary straitjacket of a (loose) confederation vs. (tightly integrated) federal state, one of the book's strongest chapters points to the possibility of a third institutional possibility, i.e., non-statist global federations (80–158). As with its legal-theoretical correlate, constitutional pluralism, the final locus of sovereignty is left unresolved

⁶ For example, JHH Weiler and M Wind (eds), *European Constitutionalism Beyond the State* (Cambridge University Press, Cambridge, 2003).

here, since federated ‘unions of states and people’ preserve far-reaching constitutional and legal autonomy at the level of their (state-based) constituent units, while also advancing extensive policy measures at the poststatist level, which need to take a suitably constitutionalized form. Cohen rejects the traditional view that constitutionalism necessarily presupposes a state, as recently reargued by Dieter Grimm, Martin Loughlin and others.⁷ In fact, constitutionally organized global federations need not result in new global states. In contrast to federal states, heterarchy would be preserved here since the component units would not be made subordinate to an overarching federal constitution. Global federations also differ from loose confederations, whose shared functions are typically more circumscribed, and which need not undergo extensive constitutionalization ‘beyond the nation state’. Even if it may prove impossible to employ the ideal-type of global federations to overhaul all forms of global governance immediately, Cohen claims, it still provides the best tools for thinking about how they might be reformed.

Yet would not constitutional-pluralist global federations necessarily stumble, or at least suffer from undue political and legal inefficiency and perhaps instability, as the conventional view predicts? What happens when postnational or global-level constitutional claims clash with equally valid national constitutional obligations? Even if contra Kelsen and others ‘at least conceivable’, how viable would such a polity ever prove, given its seemingly built-in tendency for irresolvable legal and constitutional conflict? Somewhat unfairly, Cohen tends to attribute such anxieties to Carl Schmitt and his so-called ‘realist’ friends (134–6, 147–9). Yet one hardly has to be a Schmittian (or even a Hobbesian) to worry about such matters, or to suggest that their empirical implausibility might generate normative problems. As she aptly notes elsewhere in the volume

[i]t is only by virtue of a concrete public legal order that has direct effect on individuals, endowing them with actionable rights that their external liberty in the Kantian sense as well as their security, the stability of their expectations, and the preservation of their rights can be in principle guaranteed (203).

Even if we at least initially accept her rejection of the idea that a global or world state could guarantee the legal presuppositions of liberty and equal rights, and join her in endorsing the postulate that a public legal order should be realized at the national or at least sub-global level, it remains the

⁷ Dieter Grimm, ‘The Constitution in the Process of Denationalization’ (2005) 12(4) *Constellations* 447–63; Martin Loughlin, ‘In Defence of *Staatslehre*’ (2009) 49(1) *Der Staat* 1–28.

case that its insecurity or instability might prevent fulfilment of its core normative functions. Disruptive battles between competing national and postnational constitutional legal orders might easily undermine rights.

Cohen responds to such anxieties by insisting that as long as 'there is the political will to maintain the federal form of political coexistence', then 'constitutional tolerance, cooperative interactions, mutual and common interests' could function to counteract disintegrative tendencies (152–3). She underscores the ways in which constitutional pluralism potentially strengthens deliberation and dialogue, while contributing to a useful 'mutual monitoring of and by each level' of governance (152). At various junctures, she also highlights the need for social actors who pay heed to a Weberian ethic of responsibility, as well as some shared legal and probably political culture premised on mutual respect and a common commitment to maintaining constitutional pluralism (72). Her proposed system also presupposes 'a form of political integration that generates [the requisite] solidarity and trust' if legal conflicts are to be peaceably resolved in a non-hierarchical fashion (152).

In short, no pressing reasons imply the impossibility or even improbability of constitutionally messy and heterarchical global federations, despite the ubiquitous hostility to them within mainstream political and legal theory. In fact, Cohen insists, weighty empirical evidence suggests that this inspiration constitutes much more than another reformist pipe dream. The United Provinces of the Netherlands (1759–95), Swiss Confederation (until 1789, and then 1815–48), early US (1781–7, and maybe also 1789–1865), and perhaps also modern Canada offer examples of successful global federations that circumvented the centralizing and hierarchical logics of modern state formation (88–9, 148). The European Union, as noted, provides an even more vivid illustration of constitutional pluralism's potential strengths.

II.

Cohen's exposition relies on a creative linkage between *is* and *ought*, and *facts* and *norms*. Though she identifies many separate grounds for her political and normative preferences, she regularly underscores their plausibility by linking them to existing features of the global political and legal status quo, whose latent dualism she aspires to refine and thus reform.

But what if her portrayal of the global status quo remains incomplete and inadvertently misleading? In the book's preface, she concedes that her account neglects 'injustices generated by contemporary forms of capitalist globalization' as well as the 'challenges posed by increasingly powerful' and sometimes reactionary religious movements. She admits that 'legal and

political sovereignty is certainly at stake in both' types of social and political conflict. Even if Cohen is surely right that 'no one book can do everything', the resulting lacunae nonetheless generate some real problems (ix).

Most obviously, she never really acknowledges one possibility why many scholars and activists now seem far more willing to countenance a radical *transformational* global agenda: ours is a congenitally unjust and pathological global order, where terrible injustices (e.g., thousands of avoidable daily fatalities and unremitting misery for countless others) call out for a qualitatively different global order. For cosmopolitans as otherwise different as Thomas Pogge and Richard Falk, legitimate anxieties about global poverty and injustice, in part linked to a more alarming empirical diagnosis, play a considerable role in their willingness to defend a correspondingly more globalist and cosmopolitan agenda than those still fundamentally wedded, like Cohen, to the dualistic logic of the UN Charter system.⁸ Even if Cohen may be justified in accentuating the ways in which sovereign states still provide vital sites for self-government and political autonomy, the existing state system *also* remains complicit in terrible injustices.

Having simply bracketed explosive forms of social strife, Cohen's empirical-diagnosis risks ignoring a vital piece of the puzzle. That oversight, in turn, leads her to downplay potential complications for her normative and political ideas.

Revealingly perhaps, Cohen ultimately seems conflicted about the basic parameters of global dualism. On the one hand, she describes 'our epoch as *permanently* and productively dualistic' (my emphasis, viii), and much of her analysis, as noted, focuses on how reforms might contribute to the full employment of dualism's own untapped resources. In other words, global dualism is here to stay: the theoretician's task is to figure out how its implicit normative energies might be usefully unleashed. At other junctures, having outlined her reform ideas, she declares that 'for now this may be as good as we can get' (20; also, 326). So perhaps global dualism, as well as the various reforms corresponding to its logic, merely represent a transitional stage to a superior (and perhaps more directly cosmopolitan?) order.

In any event, Cohen's incomplete empirical-diagnostic analysis means that she overstates the potential appeal of constitutional pluralism and non-statist global federations. Even if she has probably succeeded, pace Kelsen's dogmatic neo-Kantian rigourism, in demonstrating that such novel

⁸ Richard Falk, *On Humane Governance: Towards a New Global Politics* (Polity Press, Cambridge, 1995); Thomas Pogge, *World Poverty and Human Rights* (Polity Press, Cambridge, 2002).

institutional possibilities are in fact 'conceivable', this hardly demonstrates their real-life *viability*. Do we have sufficient empirical grounds for expecting 'constitutional tolerance' and 'cooperative interactions' between and among the relevant legal actors in light of the uglier political realities of our socially divided – and not just dualistic – global order? In some contexts, constitutional pluralism might help engender respectful and productive dialogue, and perhaps even a 'mutual monitoring' of different levels of governance. Yet in many and perhaps most others (e.g., in the context of deeply rooted conflict), it could easily culminate in deep legal and constitutional disagreement, institutional gridlock, and even disorder and violence.

Whatever their limits, conventional features of political and legal order – or what we might describe as *stateness*⁹ – provide well-tested instruments for mitigating and sometimes civilizing otherwise poisonous political conflicts. To be sure, they cannot and should not be realized under all political or social conditions; their creation at the postnational level raises many tough questions. Yet if we unnecessarily abandon them, in part because of unjustifiably high expectations for alleged alternatives, the price may prove costly.

Significantly, Cohen here reverts to a category generally employed to describe *political* relationships: the ethic of responsibility. Dualist constitutional pluralism in fact demands of legal actors that they internalize what we conventionally describe as political virtues (e.g., moderation). Because of its heterarchical structure, legal sources would in effect soon 'run out': faced with competing and equally valid constitutional and legal obligations, the relevant agents would eventually have to rely primarily on non-legal (e.g., political) virtues. With Cohen, one might hope that they would then embrace an ethic of responsibility as a way of negotiating disagreements. Given the conflictual character of political and social life, however, one might just as easily remain sceptical. In fact, constitutional pluralism might simply provide rival actors with equally legitimate and perhaps appealing legal arguments with which they might arm themselves for the political battle, and thus aggrandize rather than mitigate conflict.

Such scepticism requires, by the way, no sympathy for Schmittian sovereignty or existential friend/foe politics, or obsolescent ideas about the early modern state drawn from Bodin or Hobbes. Yet it *does* derive from a rich body of political and historical experience, much of which Cohen tends to downplay because of her selective empirical-diagnostic assessments.

⁹ William E Scheuerman, 'Cosmopolitanism and the World State' *Review of International Studies* (forthcoming).

Cohen admits that her reform ideas could only work given a shared commitment to upholding the dualistic pillars of constitutional pluralism, as well as ‘a form of political integration that generates solidarity and trust’ (152). Yet *how* might such commitments emerge, and what would their political and social preconditions look like? What broader set of political and social reforms could help us achieve them, and would they prove consistent with a dualist global order? At the very least, more needs to be said here.

Part of the appeal of Cohen’s defence of global dualism is precisely the promise that it can do justice to political pluralism, and especially the thesis that self-government and political liberty are effectively realized in a plural system of states. The underlying basis for constitutional pluralism and global federation rests in part on both an empirical acknowledgement of the ‘fact of pluralism’, as well as a normative endorsement of its virtues. Yet does the call for integrative solidarity and trust mesh well with pluralism? If in fact constitutional-pluralist global federations turn out to require extensive solidarity and trust, pluralism might have to undergo potentially significant reductions. As solidarity and trust were perhaps deepened and extended, why not move towards a more forthrightly federal (and conventionally statist) form of political order?

When outlining her proposed UN reforms, Cohen tellingly backs off somewhat from the general thesis that nonstatist global federations offer the best approach to institutional reform. Why? – because at the global level ‘the heterogeneity of political regimes of member states precludes’ any but the most minimal and modest forms of federation. Against the general tendency to promote global federations as an untapped institutional resource, Cohen even admits that it remains ‘debatable whether it makes sense to use the terminology and imaginary of federation’ in this context (313). This point could be taken as implying something Cohen otherwise is hesitant to concede: for global federations to work properly, they in fact will need to approximate to well-integrated political communities – and perhaps even (federal) states. But then her highlighting of the distinctive traits of nonstatist global federations begins to look somewhat blurred.

What then of Cohen’s own empirical examples of constitutional pluralism and global federalism? Given their centrality to her argument, she says surprisingly little about them. In fact, the US under the Articles of Confederation was plagued by internal disunity and external incompetence: legitimate fears of civil war and foreign invasion helped generate the Federalist movement, spearheaded by those who had witnessed at first hand the exorbitant human costs of ineffective government, and ultimately the more centralized federal republic established under the US Constitution. Even if we consider the antebellum US (1789–1861) a non-state federation,

as Cohen proposes, it hardly provides robust empirical support for the idea of a decentralized poststatist global federation, in part because it collapsed in a horrific civil war.¹⁰ Nor does the Swiss Confederation offer a paragon of peaceful constitutional pluralism, as even a cursory examination of its bloody and unstable history quickly reveals.¹¹ As for the contemporary European Union, I leave it to those more versed in its complexities to render a judgment. Yet if Cohen is right to see the EU as an exemplar of constitutional pluralism, one might ask whether its ongoing crisis should at least temper her enthusiasm. She might even need to address the possibility that its non-statist and constitutionally pluralist attributes are playing some role in its ongoing crisis.

III.

Cohen proffers additional reasons why those of us committed to a just global order should not pursue far-reaching cosmopolitan reforms, e.g., global democracy or a 'monist' version of global constitutionalism. Most important, and as already briefly mentioned, she not only believes that ours *is* a global pluriverse resting on a principled commitment to state sovereignty, but also that sound normative grounds suggest it *ought* to stay that way. The sovereign territorial state remains for her the key locus of those legally-backed subjective rights alone capable of securing political liberty and legal security. Of course, not all states do so successfully. Yet '[e]ven if a particular polity does not guarantee equal subjective rights to all members, it is within the framework of an autonomous sovereign state as a distinct legal and political order with domestic jurisdiction that such rights can be fought for, acquired, and secured' (203). Unlike those (e.g., David Miller or Michael Walzer)¹² who defend the nation-state on communitarian or nationalist grounds, Cohen's position follows Kant – or at least Kant when rejecting world government – in emphasizing modern

¹⁰ A similar view of the antebellum US is found in Daniel Deudney's *Bounding Power: Republican Security Theory from the Polis to the Global Village* (Princeton University Press, Princeton, 2007).

¹¹ The 'Realist' Morgenthau still makes worthwhile reading: as he points out, the Swiss experience was highly idiosyncratic (*Politics Among Nations: The Struggle for Power and Peace*, 2nd edn [Alfred Knopf, New York, 1954], 482–4). Unfortunately, Cohen interprets international realism as little more than a footnote to Schmitt's existentialist concept of the political. This view – which Habermas has helped popularize – requires substantial revision (see William E Scheuerman, *The Realist Case for Global Reform* [Polity Press, Cambridge, 2011]).

¹² David Miller, *On Nationality* (Oxford University Press, Oxford, 1995); Michael Walzer, *Arguing about War* (Yale University Press, New Haven, 2004).

statehood's indispensability to political and legal autonomy, and thus to 'political participation in processes and relationships that are and ought to be uniquely theirs' (202). Sovereignty goes hand in hand with 'autonomous collective self-government and collective self-determination (public autonomy)' (203).

Not only does this version of pluralism promise to avoid the usual communitarian dead ends, but it also need not culminate in 'illegitimately generalizing liberal-democratic institutional norms' (22). According to Cohen, it would be mistaken to construe self-determination narrowly in terms of familiar types of liberal democracy. Because of its relative indeterminacy, the principle of self-determination is consonant with far-reaching political pluralism and with many different political and legal institutions (254).

Cohen is right to link self-determination and the modern state.¹³ She is also justified in arguing that modern ideals of self-determination can be plausibly instantiated in politically variegated ways. Although I cannot sufficiently argue this point here, I remain more sceptical that its indeterminacy is coextensive with as rich a menu of institutional possibilities as she sometimes apparently wants to suggest. Political rights (and meaningful possibilities for equal participation), the rule of law, and constitutionalism can surely be institutionally embodied in various ways. Yet no order which abandons substantial components of them deserves today to be categorized as resting on the principle of self-determination. So a shared commitment to self-determination does in fact still significantly delimit the normatively justifiable range of political possibilities.

But if public autonomy and statehood go together, why not then consider the possibility of more inclusive forms of postnational – and maybe even someday *global* – statehood? Why not perhaps start moving in the direction of cosmopolitan world government, to be built eventually on more 'monistic' global constitutional bases? If, in fact, the commitment to self-determination is increasingly universal, and if that principle ultimately entails identifiably democratic ideals, why not envision a complex, differentiated, multi-level cosmopolitan (and democratic) polity as a potentially attractive long-term goal? A global polity would seem especially well suited to providing precisely that 'concrete public legal order' we need in order to secure the presuppositions of political and legal autonomy in a rapidly globalizing age.

¹³ Rainer Schmalz-Bruns thus speaks aptly of the (democratic) 'normative grammar of statehood' ('An den Grenzen der Entstaatlichung. Bemerkungen zu Jürgen Habermas' Modell einer 'Weltinnenpolitik ohne Weltregierung' in Peter Niesen and Benjamin Herborth [eds], *Anarchie der kommunikativen Freiheit. Jürgen Habermas und die Theorie der internationalen Politik* [Suhrkamp, Frankfurt, 2007] 269–93).

Of course, the political impediments to such a project remain weighty. As Cohen would properly retort, one would need to show how it could realistically emerge out of the dualistic realities of the existing global order, and also how it could ever do justice to the global 'fact of pluralism', e.g., the ways in which self-determination can be legitimately realized in diverse ways at the local or sub-global level.¹⁴ An ethic of responsibility would have to guide its gradual evolution, which could only be envisioned a long-term political process. Pragmatic reasons suggest that it remains vastly more 'realistic' to reform our existing dualistic global order. On the other hand, if our dualist global order too often unnecessarily *undermines* the legal and political bases of self-determination, and if it cannot successfully tackle major social challenges and should probably be seen as complicit in some of them (e.g., global poverty, environmental degradation), there are also pressing moral and political reasons for preferring more fundamental changes, if only as long-term goals. So why hold onto the modern state's *particular* and *exclusionary* forms of *territoriality*, as Cohen apparently believes we should? (203)¹⁵

Like most others today writing about global politics, Cohen considers such overtly globalist aspirations at best naive and at worst irresponsible. However, I remain unconvinced that she has provided a satisfactory principled response to them, even if she is obviously right to be sceptical of their present-day political prospects. Here she tends to repeat the usual stock criticisms, without offering enough in the way of a sustained critique.

As Cohen mentions, Kant himself generally seems to have rejected the idea of world government (203). Yet he also sometimes suggested that a mature global republican political order might eventually need to take on state-like coercive force.¹⁶ In any event, good Kantian defences can be provided for world government, despite Kant's own occasional hesitation.¹⁷ Cohen also asserts that self-government is simply unrealizable at the global

¹⁴ One would obviously need to think hard about how any postnational and nascent cosmopolitan order should properly interact with profoundly non-liberal and non-democratic states, i.e., those which arguably do not rest on self-determination in some meaningful sense of the term.

¹⁵ Like Ulrich K Preuss ('Disconnecting Constitutions from Statehood: Is Global Constitutionalism a Viable Concept?' in Dobner and Loughlin [eds], *The Twilight of Constitutionalism?* 23–46), Cohen ultimately sees the modern state's *territoriality* as an essential attribute of modern sovereignty. But do we need to link concrete, limited territoriality to political autonomy as strongly as she seems to imply?

¹⁶ George Cavaller, *Kant and the Theory and Practice of International Right* (University of Wales Press, Cardiff, 1999); Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Idea of World Citizenship* (Cambridge University Press, Cambridge, 2012).

¹⁷ For example, see Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (Beck, Munich, 1999).

level since meaningful participation is impossible there. Geographically smaller polities apparently do a better job at achieving self-government than large and populous ones (97). This rather old-fashioned republican view is vulnerable to a number of criticisms, however. Most obviously perhaps, it rests on a misleading view of the political and social significance of space: geography is not a static and historically *given* social fact, determining the proper extent of self-government in some rigid and immediately identifiable manner, but instead a historically alterable condition subject to what David Harvey describes as the ‘compression of space and time’.¹⁸ Democracy’s geographical and spatial presuppositions are dynamic and ever changing. Weren’t the Federalists ultimately right to reject the (republican) Anti-Federalist view that meaningful self-government was impossible at the federal level?

Cohen also mentions the world state’s supposedly ‘totalizing’ character, suggesting that it would eliminate any ‘outside’ to which one could flee in the face of injustice or even tyranny (81–2).¹⁹ Yet this criticism is parasitic on the unproven presupposition that a global state must violate democratic legitimacy and the rule of law, and that it would be congenitally susceptible to tyranny. There are solid grounds for rejecting such claims, even if they tend to get repeated mantra-like in the literature.²⁰ Like Hannah Arendt (and many others), Cohen also worries about the world state’s allegedly built-in martial and imperialist tendencies (209–11):

In the existing condition of world-political plurality, strong (and even weak) states would violently resist the abolition of their sovereignty, and only an imperial strategy could force them to submit to worldwide integration no matter how beautifully designed ... And this they would, rightly or wrongly (we think rightly), resist, turning cosmopolitanism, no matter how well intentioned, into an imperial project of conquest.²¹

Unfortunately, this familiar criticism ignores many innovative ideas sketched out by cosmopolitan reformers over the last century concerning the

¹⁸ David Harvey, *The Condition of Postmodernity* (Blackwell, Oxford, 1989).

¹⁹ On Arendt’s contributions to international theory, see especially Patricia Owens, *Between War and Peace: International Relations and the Thought of Hannah Arendt* (Oxford University Press, Oxford, 2007).

²⁰ For recent attempts to respond to the usual stock arguments against world government, see Raffaele Marchetti, *Global Democracy: For and Against* (Routledge, London, 2008); William E Scheuerman, *The Realist Case for Global Reform* 149–68; Ronald Tinnevelt, ‘Federal World Government: The Road to Peace and Justice?’ (2012) 47(2) *Cooperation and Conflict* 220–38.

²¹ Jean L Cohen (with Andrew Arato), ‘Banishing Sovereignty? Internal and External Sovereignty in Arendt’ in Seyla Benhabib (ed), *Politics in Dark Times: Encounters with Hannah Arendt* (Cambridge University Press, Cambridge, 2010) 166.

possibility of a *peaceful* (and probably evolutionary) path to a mature global polity. It also ignores some preliminary evidence that global state-formation is already under way.²² Of course, under present conditions, any attempt prematurely to set up a world state would culminate in horrific political violence. The same, revealingly, might be said about many other potentially desirable long-term institutional aspirations, e.g., a more egalitarian global economy or radical overhaul of gender relations. So the criticism does not in fact perhaps speak to the specificities of world government, but instead to any agenda for radical political and social change. Yet radical aspirations sometimes remain worthy, even if they raise complicated moral and political questions. The criticism also perhaps clashes with Cohen's own well-grounded rejection of the conventional view of sovereignty as static and unalterable. If sovereignty's key normative function is that it helps preserve self-determination and political autonomy, why dogmatically preclude the possibility of a new 'monist' globally-based form of cosmopolitan sovereignty as a superior way to do so?

IV.

Cohen's work has long been influenced by one of the most impressive intellectual voices of the last half-century, Jürgen Habermas. That influence, though not always obvious, can be detected at crucial junctures here as well. Yet her latest book is also occasionally haunted by another great political thinker, Hannah Arendt. Although Arendt rejected the concept of sovereignty for reasons Cohen deems unacceptable, Cohen sees her as an important inspiration for creative thinking about postnational federations (93).²³ Arendt's republican scepticism about cosmopolitanism and world government sometimes shape Cohen's own hostile and occasionally dismissive views of it.

Yet Arendt's idiosyncratic republican enmity to cosmopolitanism clashes with key features of Habermas' recent thinking, as well as that of his recent cosmopolitan disciples. Not surprisingly, perhaps, Cohen's position sometimes seems tension-ridden. As noted earlier, she occasionally seems conflicted about whether our dualistic global order represents a permanent and desirable state of affairs, or perhaps instead a transitional stage that is

²² William I Robinson, 'Social Theory and Globalization: The Rise of a Transnational State' (2001) *Theory and Society* 20(2) 157–200. Martin Shaw, *Theory of the Global State: Globality as an Unfinished Revolution* (Cambridge University Press, Cambridge, 2000). I am grateful to Marek Hrubec for bringing this literature to my attention.

²³ I am grateful here to Seyla Benhabib for some helpful comments on Arendt's international theory.

only 'as good as it gets' under present conditions. Similarly, in the volume's conclusion, she repeats the call for global-level *constitutional* reforms to the UN, distinguishing her advocacy of them from proposals for far-reaching global *democratization*, which she rejects. Yet, following Habermas, she remains normatively committed to the notion that constitutionalism and democracy represent 'co-original and co-equal ideals' (325). Even if global democracy is presently unattainable, she admits, '[t]he cat is out of the bag with respect to the moral presuppositions of equality ... and thus questions of democratic legitimacy will inevitably recur regarding supranational constitutionalization' (325). Even modest attempts to constitutionalize the UN or other global institutions will probably raise questions about democratic legitimacy. Although global constitutionalization and democratization rest on relatively autonomous analytic as well as institutional logics, one will inexorably generate demands for the other.

A global democratic state today indeed seems utopian. However, if Cohen is right to see democracy and constitutionalism as unavoidably interconnected, we can hardly 'abandon more radical democratic utopian aspirations for global governance institutions' (325). To the extent that global dualism potentially impedes such aspirations more than Cohen concedes, we need to think not only about tinkering with the existing global order, but also prospectively overhauling it in a more unambiguously cosmopolitan direction.