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LAW OF STATES, LAW OF PEOPLES:

Three Models of Sovereignty

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There are those who believe that the rules governing the international political system are changing fundamentally; a new universal constitutional order is in the making, with profound implications for the constituent units, competencies, structure, and standing of the international legal order (*cf.* Cassese 1986, 1991; Weller 1997). On the other side, there are those who are profoundly skeptical of any such transformation; they hold that states remain the leading source of all international rules—the limiting factor that ensures that international relations are shaped, and remain anchored to, the politics of the sovereign state (*cf.* Smith 1987; Holsti 1988; Buzan, Little, and Jones 1993). "In all times," as Hobbes put it, political powers are "in continual jealousies, and in the state and postures of Gladiators" (1968, 187–8). Despite new legal initiatives, such as the human rights regime, "power politics" remain the bedrock of international relations; *plus ça change, plus c'est la même chose*.

This paper focuses on this debate and, in particular, on the extent of the transformations underway in the international political realm. Three models of political power and international legal regulation are introduced in order to facilitate the inquiry. The first gives the state free reign in the constitution of political and economic relations, and is referred to here as the regime of classic sovereignty. It is the law of states. The second model, liberal international sovereignty, seeks to delimit political power and extend the liberal concern with limited government to the international sphere. Liberal international sovereignty embodies elements of both the law of states and the law of peoples. The third model, which I call "cosmopolitan sovereignty," conceives international law as a system of public law which properly circumscribes not just political power but all forms of social power. Cosmopolitan sovereignty is the law of peoples because it places at its center the primacy of individual human beings as political agents, and the accountability of power (*cf.* Rawls 1999; Kuper 2000).

Models can be thought of as ideal types or heuristic devices which order a field of inquiry. They assist in clarifying the primary elements or constitu-

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tive characteristics of a domain, although in so doing they bring them into sharper relief and delineation than can be found within the more "messy" world of everyday law and politics. For while one regime of sovereignty might predominate in any given political system, elements of others can often be found.

The paper is divided into two parts. It begins by exploring the classic regime of sovereignty and examines a number of transformations affecting the subject, scope, and sources of international law. These transformations, it is argued, amount to a shift from the classic to the liberal regime of sovereignty. The focus is on the nature of these legal and political changes, and an appraisal is offered of their strengths and limits at the end of Section I. Unlike Section I, which traces overarching trends in the development of sovereignty and the difficulties and dilemmas they have engendered, Section II engages in a reconstruction of some of the core concepts of the modern polity—sovereignty, accountability, and law. It builds on some of the significant changes ushered in by the liberal regime of sovereignty while suggesting ways in which challenges to it can be ameliorated and overcome. The model of cosmopolitan sovereignty is set out in some depth. Section II seeks to give some rigor to the meaning of cosmopolitanism in international law. A brief conclusion follows, bringing the strands of the paper together and offering some final remarks on the empirical and normative elements of the paper.

The paper's focus on the empirical and normative needs some clarification. The study of the nature and changing forms of sovereignty is the study of the shifting meaning of rightful political authority. Sovereignty is a contested phenomenon, and in tracing shifts in the regime of sovereignty, the concern is with the reconfiguration of the proper form and limits of political power and the changing connotation of legitimate political authority. The nature and proper form of sovereignty are constantly readdressed in the ebb and flow of politics itself. To the extent that one sovereignty regime replaces another on the grounds that it is a solution to outstanding questions and problems, clarity is needed about why this is so and how it is justified. Moreover, to the extent that a regime of sovereignty is marked by systematic problems and difficulties, questions are raised inevitably about its nature, scope, and rationale. If the proper basis of political power is in question, one needs to ask why, how, and what the consequences are. The paper addresses these issues as it moves from Section I to Section II. The result, it is hoped, is a contribution to a debate about the changing nature and form of political power and authority—a debate that, this paper shows, is of increasing significance. The process of adapting power relations to a rule-governed framework between and across communities has taken many forms, from *jus gentium* to varied types of interstate law in the modern period. It is now necessary to refocus on the complex principles and rule systems—customary and formal—that underpin international law, and ask about their meaning and appropriateness in a more regional and global age.

I.

A. Classic Sovereignty

Reflecting on the intense religious and civil struggles of the sixteenth century, Bodin argued for the establishment of an unrestricted ruling power competent to overrule all religious and customary authorities. In his view, an "ordered commonwealth" depended upon the creation of a central authority that was all-powerful. While Bodin was not the first to make this case, he developed what is commonly regarded as the first statement of the modern theory of sovereignty: that there must be within every political community or state a determinate sovereign authority whose powers are decisive and whose powers are recognized as the rightful or legitimate basis of authority (1967). Sovereignty, according to this account, is the undivided and untrammeled power to make and enforce the law and, as such, it is the defining characteristic of the state.

The doctrine of sovereignty developed in two distinct dimensions: the first concerned with the "internal," the second with the "external" aspects of sovereignty. The former involves the claim that a person, or political body, established as sovereign rightly exercises the "supreme command" over a particular society. Government—whether monarchical, aristocratic, or democratic—must enjoy the "final and absolute authority" within a given territory. The latter involves the assertion that there is no final and absolute authority above and beyond the sovereign state. States must be regarded as independent in all matters of internal politics and should in principle be free to determine their own fate within this framework. External sovereignty is a quality that political societies possess in relationship to one another; it is associated with the aspiration of a community to determine its own direction and politics without undue interference from other powers (Hinsley 1986).

The sovereign states system became entrenched in a complex of rules that evolved, from the seventeenth century, to secure the concept of an order of states as an international society of sovereign states (Bull 1977). The emergence of a "society" of states, first in Europe and later across the globe, went hand in hand with a new conception of international law that can be referred to as the "Westphalian regime" (after the peace treaties of Westphalia of 1648), but that I simply refer to as the classic regime of sovereignty. The regime covers the period of international law and regulation from 1648 to the early twentieth century (although elements of it, it can be argued plausibly, still have application today). Not all of its features were intrinsic to the settlement of Westphalia; rather, they were formed through a normative trajectory in international law that did not receive its fullest articulation until the late eighteenth and early nineteenth centuries, when territorial sovereignty, the formal equality of states, non-intervention in the domestic affairs of other recognized states, and state consent as the

basis of international legal obligation became the core principles of international society (*see* Crawford and Marks 1998).

The classic regime of sovereignty highlights the development of a world order in which states are nominally free and equal; enjoy supreme authority over all subjects and objects within a given territory; form separate and discrete political orders with their own interests (backed by their organization of coercive power); recognize no temporal authority superior to themselves; engage in diplomatic initiatives but otherwise in limited measures of cooperation; regard cross-border processes as a "private matter" concerning only those immediately affected; and accept the principle of effectiveness, that is, the principle that might eventually makes right in the international world—appropriation becomes legitimation (*see* Falk 1969; Cassese 1986, 396–9; Held 1995, p. 78).

To emphasize the development of the classic regime of sovereignty is not to deny, of course, that its reality was often messy, fraught, and compromised (*see* Krasner 1995, 1999). But acknowledging the complexity of the historical reality should not lead one to ignore the structural and systematic shift that took place from the late sixteenth century in the principles underlying political order, and their often bloody reality. States struggled to contain and manage people, territories, and resources—a process exemplified both by European state formation in the seventeenth and eighteen centuries and by the rapid carving out of colonies by European powers in the nineteenth century.

Four important corollaries to the development of the classic regime of sovereignty should be emphasized. In the first instance, the crystallization of international law as interstate law conferred on heads of state or government the capacity to enter into agreements with the representatives of other states without regard to the constitutional standing of such figures; that is, without regard to whether or not heads of state were entitled by specific national legal arrangements to commit the state to particular treaty rights and duties. Second, interstate law was indifferent to the form of national political organization. It accepted "a *de facto* approach to statehood and government, an approach that followed the facts of political power and made few inquiries into how that power was established" (Crawford and Marks 1998, 72). Absolutist regimes, constitutional monarchies, authoritarian states, and liberal democratic states were all regarded as equally legitimate types of polity.

The third corollary involved the creation of a disjuncture between the organizing principles of national and international affairs. In principle and practice, the political and ethical rules governing these two spheres diverged. As liberal democratic nation-states became slowly entrenched in the West, so did a political world that tolerated democracy in nation-states and nondemocratic relations among states; the entrenchment of accountability and democratic legitimacy inside state boundaries and the pursuit of reasons of state (and maximum political advantage) outside such boundaries;

democracy and citizenship rights for those regarded as "insiders" and the frequent negation of these for those beyond their borders (Held 1999, 91). The gulf between *Sichtlichkeit* and *Realpolitik* was taken for granted.

The fourth corollary to the classic regime of sovereign international law concerns the delegitimation of all those groups and nonstate actors who sought to contest territorial boundaries, with paradoxical consequences. Stripped of traditional habitats and territories by colonial powers and hegemonic interests, such groups often had no alternative but to resort to coercion or armed force in order to press their claims to secure homelands. For they too had to establish "effective control" over the area they sought as their territory if they were going to make their case for international recognition (*see* Baldwin 1992, 224–5).

The retreat and defeat of European empires from the late nineteenth century, the spread of democratic ideas throughout the world's regions in the twentieth century, and the establishment of new transnational and multilateral forms of organization and activity throughout the last one hundred years have altered the political and legal landscape (*see* Held and McGrew, Goldblatt, and Perraton 1999, chs. 1, 2). The questions are: Has a new framework of international law been established? Has the balance changed between the claims made on behalf of the states system and those made on behalf of alternative political and normative positions?

B. Liberal International Sovereignty

The hold of the classic regime of sovereignty was dislodged within the boundaries of nation-states by successive waves of democratization (Potter, et al. 1997). While these were primarily aimed at reshaping the national polity, they had spillover effects for the interstate system (Bull 1977). Although it was not until after the Second World War that a new model of international regulation fully crystallized, the regime of liberal international sovereignty has origins which can be traced back further. Its beginning is marked by attempts to extend the processes of delimiting public power to the international sphere and by attempts thereafter to transform the meaning of legitimate political authority from effective control to the maintenance of basic standards or values that no political agent, whether a representative of a government or state, should, in principle, be able to abrogate. Effective power is challenged by the principles of self-determination, democracy, and human rights as the proper basis of sovereignty. It is useful to highlight some of the legal transformations that have taken place—in the domains of war, war crimes, human rights, democratic participation, as well as the environment—which underlie this shift. In the main, these transformations have been ushered in with the approval and consent of states, but the delegation and changes in sovereignty have, it will be seen, acquired a status and momentum of their own.

Rules of Warfare and Weaponry

The formation of the rules of warfare has been based on the presupposition that, while war cannot be completely abolished, some of its most appalling consequences, for soldiers and citizens alike, should be made illegal. The aim of these rules is to limit conduct during war to minimum standards of civilized behavior that will be upheld by all parties to an armed conflict. While the rules of warfare are, of course, often violated, they have served in the past to provide a brake on some of the more indiscriminate acts of violence. The major multilateral conventions governing war date back to the Declaration of Paris of 1856, which sought to limit sea warfare by prohibiting privateering, and to specify the conditions under which a blockade could be said to be effective with determinate legal consequences. Important milestones include the Geneva Convention of 1864 (revised in 1906), the Hague Conventions of 1899 and 1907, and the Geneva Conventions of 1929 and 1949 which, together, helped codify humane treatment for the wounded in the field, acceptable practices of land warfare, the rights and duties of the parties to a conflict and of neutral states and persons, and a plethora of rules governing the treatment of prisoners and the protection of civilians. In addition to these and other regional treaties, the behavior of belligerents is, in principle, circumscribed by elements of customary international law and by a general acknowledgment of a "law of humanity" forbidding "unwarranted cruelty or other actions affronting public morality" (Plano and Olton 1988, 193; *see* Byers 1999).

The rules of warfare form an evolving framework of regulations seeking to restrain the conduct of parties to an international armed conflict. The rules are premised on the "dual notion that the adverse effects of war should be alleviated as much as possible (given military necessities), and that the freedom of the parties to resort to methods and means of warfare is not unlimited" (Dinstein 1993, 966). These guiding orientations and the agreements to which they have given rise mark, in principle, a significant change over time in the legal direction of the modern state; for they challenge the principle of military autonomy and question national sovereignty at one of its most delicate points—the relation between the military and the state (what it is that each can legitimately ask of the other) and the capacity of both to pursue their objectives irrespective of the consequences.

Conventions on the conduct of war have been complemented by a series of agreements on the use of different types of weapons, from the rules governing the use of dumdum bullets (the Hague Convention, 1907) and the use of submarines against merchant ships (the Paris Protocol of 1936) to a whole range of recently negotiated agreements on conventional and nuclear, chemical, and biological weapons (*see* SIPRI 1999). As a result, arms control and regulation have become a permanent feature of international politics. Agencies for arms control and disarmament (or sections within foreign ministries) now exist within all the world's major states, managing what has become a continuous diplomatic and regulatory proc-

ess (*see* Held and McGrew, Goldblatt, and Perraton 1999, 123–133). Many recent agreements, moreover, have created mechanisms of verification or commitments that intrude significantly on national sovereignty and military autonomy. For example, the 1993 Chemical Weapons Convention, a near-universal disarmament treaty, creates an international inspectorate to oversee its implementation (anxiety about which filled the U.S. Senate with complaints about "surrendered sovereignty" [Wright 2000]). Accordingly, it is not unreasonable to claim that the international laws of war and weapons control have shaped and helped nurture a global infrastructure of conflict and armaments regulation.

War Crimes and the Role of the Individual

The process of the gradual delimitation of state power can be illustrated further by another strand in international legal thinking that has overturned the primacy of the state in international law and buttressed the role of the individual in relation to and with responsibility for systematic violence against others. In the first instance, by recognizing the legal status of conscientious objection, many states have acknowledged there are clear occasions when an individual has a moral obligation beyond that of his or her obligation as a citizen of a state (*see* Vincent 1992, 269–92). The refusal to serve in national armies triggers a claim to a "higher moral court" of rights and duties. Such claims are exemplified as well in the changing legal position of those who are willing to go to war. The recognition in international law of the offenses of war crimes, genocide, and crimes against humanity makes clear that acquiescence to the commands of national leaders will not be considered sufficient grounds for absolving individual guilt in these cases. A turning point in this regard was the decisions taken by the International Tribunal at Nuremberg (and the parallel tribunal in Tokyo). The tribunal laid down, for the first time in history, that when *international rules* that protect basic humanitarian values are in conflict with *state laws*, every individual must transgress the state laws (except where there is no room for "moral choice," i.e., when a gun is being held to someone's head) (Cassese 1988, 132). Modern international law has generally endorsed the position taken by the tribunal and has affirmed its rejection of the defense of obedience to superior orders in matters of responsibility for crimes against peace and humanity. As one commentator has noted: "since the Nuremberg Trials, it has been acknowledged that war criminals cannot relieve themselves of criminal responsibility by citing official position or superior orders. Even obedience to explicit national legislation provides no protection against international law" (Dinstein 1993, 968).

The most notable recent extension of the application of the Nuremberg principles has been the establishment of the war crimes tribunals for the former Yugoslavia (established by the UN Security Council in 1993) and for Rwanda (set up in 1994) (*cf.* Chinkin 1998; *The Economist* 1998). The Yugoslav tribunal has issued indictments against people from all three

ethnic groups in Bosnia and is investigating crimes in Kosovo, although it has encountered serious difficulty in obtaining custody of the key accused. (Significantly, of course, ex-President Slobodan Milosevic has recently been arrested and brought before The Hague war crimes tribunal.) Although neither the Rwandan tribunal nor the Yugoslav tribunal have had the ability to detain and try more than a small fraction of those engaged in atrocities, both have taken important steps toward implementing the law governing war crimes and, thereby, reducing the credibility gap between the promises of such law, on the one hand, and the weakness of its application, on the other.

Most recently, the proposals put forward for the establishment of a permanent international criminal court are designed to help close this gap in the longer term (*see* Crawford 1995; Dugard 1997; Weller 1997). Several major hurdles remain to its successful entrenchment, including the continuing opposition from the United States (which fears its soldiers will be the target of politically motivated prosecutions) and dependency upon individual state consent for its effectiveness (Chinkin 1998, 118–9). However, it is likely that the court will be formally established and will mark another significant step away from the classic regime of sovereignty and toward the firm entrenchment of the framework of liberal international sovereignty.

The ground which is being staked out now in international legal agreements suggests that the containment of armed aggression and abuses of power can be achieved only through both the control of warfare and the prevention of the abuse of human rights. For it is only too apparent that many forms of violence perpetrated against individuals and many forms of abuse of power do not take place during declared acts of war. In fact, it can be argued that the distinctions between war and peace and between aggression and repression are eroded by changing patterns of violence (Kaldor 1998a and b). The kinds of violence witnessed in Bosnia and Kosovo highlight the role of paramilitaries and of organized crime and the use of parts of national armies that may no longer be under the direct control of a state. What these kinds of violence signal is that there is a very fine line between explicit formal crimes committed during acts of war and major attacks on the welfare and physical integrity of citizens in situations that may not involve a declaration of war by states. While many of the new forms of warfare do not fall directly under the classic rules of war, they are massive violations of international human rights. Accordingly, the rules of war and human rights law can be seen as two complementary forms of international rules that aim to circumscribe the proper form, scope, and use of coercive power (*see* Kaldor 1998b, chs. 6, 7). For all the limitations of its enforcement, these are significant changes that, when taken together, amount to the rejection of the doctrine of legitimate power as effective control, and its replacement by international rules that entrench basic humanitarian values as the criteria for legitimate government.

Human Rights, Democracy and Minority Groups

At the heart of this shift is the human rights regime (*see* Held 1995, ch. 5; Held and McGrew, Goldblatt, and Perraton 1999, ch. 1). The basic elements of this regime, the extent and scope of its coverage are set out in tables 1, 2, and 3. Three interrelated features of the regime are worth dwelling on: (1) the constitutive human rights agreements; (2) the role of self-determination and the democratic principle that were central to the framework of decolonization; and (3) the recent recognition of the rights of minority groups.

On (1): The human rights regime consists of overlapping global, regional, and national conventions and institutions (*see* Donnelly 1998; Evans 1997). At the global level, human rights are firmly entrenched in the International Bill of Human Rights, the building blocks of which are the UN Declaration of Human Rights of 1948 and the Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, which were adopted in 1966 and came into force in 1976. These were complemented in the late 1970s and 1980s by the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. The UN Commission of Human Rights is responsible for overseeing this system and bringing persistent abuses to the attention of the UN Security Council. In addition, the International Labor Organization is charged, in principle, with policing the area of labor and trade union rights.

Within most of the world's regions there is an equivalent legal structure and machinery. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is particularly significant. For it was designed to take the first steps toward the "collective enforcement," as its preamble states, of certain of the rights enumerated in the Universal Declaration. The European agreement, in allowing individual citizens to initiate proceedings against their own governments, is a most remarkable legal innovation. Although its implementation has been far from straightforward and is fraught with bureaucratic complexities, it seeks to prevent its signatories from treating their citizens as they think fit, and to empower citizens with the legal means to challenge state policies and actions that violate their basic liberties. Human rights have also been promoted in other regions of the world, notably in Africa and the Americas. The American Convention on Human Rights, which came into force in 1978, and the African (Banjul) Charter of Human and People's Rights (1981), were useful steps in this regard. But perhaps as important in promoting human rights, if not more so, have been the multiplicity of political and international nongovernmental organizations (INGOs) that have actively sought to implement these agreements and, thereby, to reshape the ordering principles of public life (*see* Held and McGrew, Goldblatt, and Perraton 1999, ch. 1).

On (2): There is a notable tendency in human rights agreements to entrench the notion that a legitimate state must be a state that upholds certain core democratic values (*see* Crawford and Marks 1998). For instance,

Table 1

A Selected List of Human Rights Initiatives and Agreements

Date	
Jun 1945	Charter of the United Nations
Jun 1946	UN Commission on Human Rights
Dec 1948	Genocide Convention / Universal Declaration of Human Rights
Nov 1950	European Convention on Human Rights
Jul 1951	Convention Relating to the Status of Refugees
Dec 1952	Convention on the Political Rights of Women
Sep 1954	Convention on the Status of Stateless Persons
Sep 1956	Convention Abolishing Slavery
Jun 1957	ILO's Convention on the Abolition of Forced Labor
Nov 1962	Convention on Consent to Marriage
Dec 1965	Convention on the Elimination of Racial Discrimination
Dec 1966	International Covenants on Economic, Social, and Cultural Rights / Civil and Political Rights; Optional Protocol
Nov 1973	Convention on the Suppression of Apartheid
Jun 1977	Two additional protocols to the Geneva Conventions
Dec 1979	Convention on the Elimination of all Forms of Discrimination against Women
Dec 1984	Convention against Torture
Nov 1989	Convention on the Rights of the Child
May 1993	International Criminal Tribunal for the Former Yugoslavia
Nov 1994	International Criminal Tribunal for Rwanda
Jul 1998	UN conference agrees treaty for a permanent International Criminal Court

Source: UN and *The Economist* 1998

in Article 21 the Universal Declaration of Human Rights asserts the democratic principle along with enumerated rights as a common standard of achievement for all peoples and nations (*see* UN 1988, 2, 5). Although this principle represented an important position to which anticolonial movements could appeal, the word "democracy" does not itself appear in the Declaration and the adjective "democratic" appears only once, in Article 29. By contrast, the 1966 UN International Covenant on Civil and Political Rights (enacted 1976) elaborates this principle in Article 25, making a number of different declarations and other instruments into a binding treaty (*see* UN 1988, 28). According to Article 25 of the Covenant:

> Every citizen shall have the right and the opportunity, without . . . unreasonable restrictions:

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(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) to have access, on general terms of equality, to public service in his country.

The American Convention of Human Rights, along with other regional conventions, contains clear echoes of Article 21 of the Universal Declaration as well as of Article 25 of the Covenant on Civil and Political Rights, while the European Convention on Human Rights is most explicit in connecting democracy with state legitimacy, as is the statute of the Council of Europe, which makes a commitment to democracy a condition of membership. Although such commitments often remain fragile, they signal a new approach to the concept of legitimate political power in international law.

On (3): Since 1989 the intensification of interethnic conflict has created an urgent sense that specific minorities need protection (renewing concerns voiced clearly during the interwar period). In 1992 the United Nations General Assembly adopted a Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities. Proclaiming that states "shall protect the existence and national, cultural, religious and linguistic identity of minorities," the Declaration sets out rights for members of minorities to be able "to participate effectively in cultural, religious, social and public life." While the Declaration is not legally binding, it is widely regarded in the UN system and in some leading INGOs (Amnesty International, Oxfam) as establishing a future trajectory of international legal change. In other contexts, the impetus to secure protection for minority rights is also apparent. Within the Council of Europe, a Charter for Regional and Minority Languages and a Framework Convention for the Protection of National Minorities have been elaborated. Moreover, the Organization for Security and Cooperation in Europe has adopted a series of instruments affirming minority rights and has founded the office of High Commissioner for National Minorities to provide "early warning" and "early action" with respect to "tensions involving national minority issues" (Crawford and Marks 1998, 76–7).

Changes in human rights law have placed individuals, governments, and nongovernmental organizations under new systems of legal regulation—regulation that, in principle, is indifferent to state boundaries. This development is a significant indicator of the distance that has been traveled from the classic, state-centric conception of sovereignty to what amounts to a new formulation for the delimitation of political power on a global basis. The regime of liberal international sovereignty entrenches powers and constraints, and rights and duties, in international law that—albeit ultimately

Table 2

Rights Recognized by the International Bill of Human Rights

	*Document and Article**
Equality of Rights without Discrimination	D1, D2, E2, E3, C2, C3
Life	D3, C6
Liberty and Security of Person	D3, C9
Protection against Slavery	D4, C8
Protection against Torture and Cruel and Inhuman Punishment	D5, C7
Recognition as a Person before the Law	D6, C16
Equal Protection of the Law	D7, C14, C26
Access to Legal Remedies for Rights Violations	D8, C2
Protection against Arbitrary Arrest or Detention	D9, C9
Hearing before an Independent and Impartial Judiciary	D10, C14
Presumption of Innocence	D11, C15
Protection against Ex-Post-Facto Laws	D11, C15
Protection of Privacy, Family, and Home	D12, C17
Freedom of Movement and Residence	D13, C12
Seek Asylum from Persecution	D14
Nationality	D15
Marry and Found a Family	D16, E10, C23
Own Property	D17
Freedom of Thought, Conscience, and Religion	D18, C18
Freedom of Opinion, Expression, and the Press	D19, C19
Freedom of Assembly and Association	D20, C21, C22
Political Participation	D21, C25
Social Security	D22, E9
Work, under Favorable Conditions	D23, E6, E7
Free Trade Unions	D23, E8, C22
Rest and Leisure	D24, E7
Food, Clothing, and Housing	D25, E11
Health Care and Social Services	D25, E12
Special Protections for Children	D25, E10, C24
Education	D26, E13, E14
Participation in Cultural Life	D27, E15
Self-Determination	E1, C1
Humane Treatment when Detained or Imprisoned	C10
Protection against Debtor's Prison	C11
Protection against Arbitrary Expulsion of Aliens	C13
Protection against Advocacy of Racial or Religious Hatred	C20
Protection of Minority Culture	C27

Note: *D=Universal Declaration of Human Rights; C=International Covenant on Civil and Political Rights; E=International Covenant on Economic, Social and Cultural Rights.
Source: Donnelly 1998, 6.

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Table 3

Status of Ratification of the Two Principal International Human Rights Treaties

Covenant on Civil and Political Rights	
Countries that have not signed	47
Countries that have only signed	3
Countries party through accession or succession	86
Countries party to treaty through ratification	57
Total	193
Covenant on Social and Economic Rights	
Countries that have not signed	47
Countries that have only signed	5
Countries party through accession or succession	87
Countries party to treaty through ratification	54
Total	193

Notes:
1. The United Nations Charter did not include anything more than a general reference to "human rights and fundamental freedoms." The Universal Declaration of Human Rights was accepted in December 1948. It was adopted by fifty-six countries, with eight abstentions. In 1966 the Declaration was transformed into two detailed treaties, both of which entered into force in 1976.
2. The total of 193 countries is made up of 189 UN member states and four nonmember states. The total that is given in the treaty information published by the UN Human Rights Commission is slightly different from the above, as it includes Macao as a treaty signatory separate to China. Macao is excluded here.
3. The forty-seven states that have not signed the Covenant for Social and Political Rights are not the same forty-seven that have not signed the Covenant on Economic and Social Rights.
4. Data from the UN Human Rights Commission, updated August 17, 2000. *See* http://www.unhchr.ch/html/menu2/convmech.htm.

formulated by states—go beyond the traditional conception of the proper scope and boundaries of states, and can come into conflict, and sometimes contradiction, with national laws. Within this framework, states may forfeit claims to sovereignty if they violate the standards and values embedded in the liberal international order; and such violations no longer become a matter of morality alone. Rather, they become a breach of a legal code, a breach that may call forth the means to challenge, prosecute, and rectify it (*see* Habermas 1999). To this end, a bridge is created between morality and law where, at best, only stepping stones existed before. These are transformative changes that alter the form and content of politics, nationally, regionally, and globally. They signify the enlarging normative reach, extending scope, and growing institutionalization of international legal rules and practices—the beginnings of a "universal constitutional order" in which the state is no longer the only layer of legal competence to which people have transferred public powers (Crawford and Marks 1998, 2; Weller 1997, 45).

But a qualification needs to be registered at this stage in order to avoid misunderstanding. The regime of liberal international sovereignty should not be understood as having simply weakened the state in regional and global legal affairs. The intensification of international law and the extension of the reach of human rights instruments do not signal alone the demise of the state or even the erosion of its powers. For in many respects, the changes under way represent the extension of the classic liberal concern to define the proper form, scope, and limits of the state in the face of the processes, opportunities, and flux of civil life. In the extension of the delimitation of public powers, states' competencies and capacities have been, and are being, reconstituted or reconfigured—not merely eroded (*see* Held and McGrew, Goldblatt, and Perraton 1999, "Conclusion").

Further, states remain of the utmost importance to the protection and maintenance of the security and welfare of their citizens. For in the regime of liberal international sovereignty it is not a question of international law versus national regulation, but rather of a multiplicity of overlapping legal competencies, institutions, and agencies seeking to provide the administration necessary to protect and nurture human rights. Within this framework it is not envisaged, nor is it thought desirable or feasible, that a supranational authority could provide the sole means both to articulate and enforce the new international law. At most, it is typically considered that such an authority ought to provide a set of common standards for states or substate authorities within their jurisdiction to observe, and some system of incentives or disincentives to encourage the weakest to obtain these standards (*see* Beetham 1998). The resort to force in this sovereignty model is an option of last resort to be activated only in the context of a severe threat to human rights and obligations by tyrannical regimes, or by circumstances that spiral beyond the control of particular people and agents (such as the disintegration of a state).

Environmental Law

The final legal domain to be examined in this section is the law governing the environment, wildlife, and the use of natural resources. Within this sphere the subject and scope of international law embrace not just humankind as individuals but the global commons and our shared ecosystems. While attempts to regulate the trade and use of rare species date back over a hundred years, the pace of initiatives in environmental regulation has quickened since the end of the Second World War (Hurrell and Kingsbury 1992). The first convention on the regulation of international whaling was signed in 1946, and early treaties on the international carriage of toxic substances, minor habitat protection schemes, and some regulation of the international nuclear cycle were agreed in the 1950s and 1960s. However, it was only in the late 1960s and early 1970s that the extent and intensity of international environmental regulation began to increase significantly (*see* Held and McGrew, Goldblatt, and Perraton, 1999, ch. 8). The key moment

in this regard was the 1972 Stockholm conference on the international environment sponsored by the UN Environment Program. This was the first occasion at which multilateral agencies and national governments gathered to consider the whole panoply of shared environmental problems and the proper scope of the response.

Throughout the 1970s and 1980s, the regulation of international waters and the control of marine pollution became extensively institutionalized with the adoption and ratification of the London Dumping Convention (1972), the MARPOL convention on ship pollution (1978), the UN Convention on the Law of the Sea (1982), and a multiplicity of regional seas agreements on cooperation and control of pollution (the Helsinki, Barcelona, Oslo, and Paris conventions as well as the UN regional seas program). At the heart of the classic conception of sovereignty, natural resources were regarded as legitimately falling under the sovereign authority of states on the condition that whoever possessed a resource, and exercised actual control over it, secured a legal title (*see* Cassese 1986, 376–390). Although this principle has been extended in recent times to cover the control of resources in a variety of areas (including the continental shelf and "economic zones" that stretch up to 200 nautical miles from coastal states), a new concept was expounded in 1967 as a means for rethinking the legal basis of the appropriation and use of resources—the "common heritage of mankind."

Among the key elements of this concept are the exclusion of a right of appropriation; the duty to use resources in the interest of the whole of humanity; and the duty to explore and exploit resources for peaceful purposes only. The notion of the "common heritage" was subject to intense debate in the United Nations and elsewhere; it was, nevertheless, enshrined in two seminal treaties, the 1979 Convention on the Moon and Other Celestial Bodies and the 1982 Convention on the Law of the Sea. Introduced as a way of thinking about the impact new technologies would have on the further exploitation of natural resources—resources that were beyond national jurisdiction on the seabed or on the moon and other planets—its early advocates saw it as a basis for arguing that the vast domain of hitherto untapped resources should be developed for the benefit of all, particularly developing nations. As such, the introduction of the concept was a turning point in legal considerations, even though there was considerable argument over where and how it might be applied. It was significantly revised and qualified by the 1996 Agreement relating to the Implementation of Part XI (of the Law of the Sea).

Further significant conventions were signed in the 1980s and 1990s to combat the risks flowing from degraded resources and other environmental dangers, including the international movement of hazardous wastes (the Basel Convention in 1989), air pollution involving the emission of CFCs (the Vienna and Montreal Protocols in 1985 and 1987) as well as a range of treaties regulating transboundary acid rain in Europe and North America.

Alongside these agreements, environmental issues became points of contention and the focus of regional cooperation and regulation in the EU, the Nordic Council, NAFTA, APEC, MERCOSUR, and other areas.

Against the background of such developments, the impetus was established for the 1992 Rio conference (and for the Kyoto meeting in 1997). Conducted under the auspices of the UNEP and involving negotiations between almost every member state of the UN, Rio sought to establish the most far-reaching set of global environmental agreements ever arrived at. The Rio Declaration took as its primary goal the creation of "a new and equitable global partnership through the creation of new levels of cooperation among states, key sectors of societies and people" (UNEP 1993, vol. 1, 3). Principle 7 of the Declaration demanded that states cooperate "in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem"; and Principle 12 called for "environmental measures addressing transboundary or global environmental problems" which should, "as far as possible, be based on an international consensus" (1993, 4, 5). The results included conventions on biodiversity, climate change and greenhouse emissions, the rain forests, and the establishment of international arrangements for transferring technology and capital from the North to the South for environmental programs (*see* UNEP 1993).

Rio committed all states to engage "in a continuous and constructive dialogue," to foster "a climate of genuine cooperation," and to achieve "a more efficient and equitable world economy" (UNEP 1993, 14; and *cf.* 111, 238). Traces of the concept of the "common heritage" can be found in its many documents, as it sought to create a new sense of transborder responsibility for the global commons and signaled the urgency of establishing a legal order based on cooperation and equity. Implementation of its many agreements has, of course, been another story. Agreement on the scope and scale of environmental threats was difficult to achieve, as was anything resembling a consensus on who is responsible for creating these and how the costs should be allocated to ameliorate them. Even where agreement was possible, international organizations have lacked the authority to ensure it is upheld. Other than through moral pressure, no mechanism exists for forcing recalcitrant states into line, and the latter retain an effective veto over environmental policy via inaction and indecision. The Rio Declaration had a great deal to say about "the new global partnership" tackling transborder problems that escape national jurisdiction, but it offered little precision on the principles of accountability and enforcement. Accordingly, while international environmental law constitutes a large and rapidly changing corpus of rules, quasi-rules, and precedents that set down new directions in legal thinking, the implications of these for the balance between state power and global and regional authority remain fuzzy in many respects. International environmental treaties, regimes, and organizations have placed in question elements of the sovereignty of modern states—that is, their entitlement to rule exclusively within delimited borders—but have not

yet locked the drive for national self-determination and its related "reasons of state" into a transparent, effective, and accountable global framework. The limits of the liberal international order may have been reached. For while this order seeks the means and mechanisms to delimit and divide public power, it does not have a legitimate and adequate basis to tackle the transborder overspill of national decisions and policies, and the collective problems that emerge from the overlapping fortunes of national communities. Whether this is a contingent inadequacy or a necessary feature of the conceptual resources of liberalism is a matter to which this paper will return.

C. The Achievements of Liberal Sovereignty

The classic regime of sovereignty has been recast by changing processes and structures of regional and global order. States are locked into diverse, overlapping, political and legal domains—that can be thought of as an emerging multilayered political system. National sovereignty and autonomy are now embedded within broader frameworks of governance and law in which states are increasingly but one site for the exercise of political power and authority. While this is, in principle, a reversible shift, the classic regime of state sovereignty has undergone significant alteration. Tables 4 and 5 summarize this transformation. It is useful to rehearse and emphasize the most substantial changes before reflecting on the difficulties, dilemmas, and limitations of these processes.

The most substantial points can be put briefly. Sovereignty can no longer be understood in terms of the categories of untrammeled effective power. Rather, a legitimate state must increasingly be understood through the language of democracy and human rights. Legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards. The latter set a limit on the range of acceptable diversity among the political constitutions of states (Beitz 1979, 1994, 1998).

States and their representatives must submit, moreover, to new and intensified forms of surveillance and monitoring in the face of the increasing number of international regimes (tracking everything from arms control to human rights abuses), international courts (from the International Court of Justice to the ICC) and supranational authorities (from the EU to the UN system). As one commentator aptly put it apropos the UN covenants on human rights, although they "have the status of an intergovernmental treaty, once a state has ratified them it in effect acknowledges the right of a supranational body to investigate and pass judgment on its record. How a state treats its own citizens can thus no longer be regarded as a purely internal matter for the government concerned" (Beetham 1998, 61–2). The catalog of human rights failures is, of course, all too familiar. But the

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Table 4

The Transformation of International Law

	Types of International Legal Order	
International Law	*Classic*	*Liberal International*
Subject	States	States, single persons, and minority groups
Scope	Geopolitics	Geopolitics
		Geoeconomic affairs
	International society of states	Restrictions on use of coercive power
		Human rights and democratic participation
		Environment/global commons
Sources	States and state consent	States and state consent
		The international community

acknowledgment of this can itself be interpreted as a testimony to the extent to which the new regime of human rights has laid down, and codified, new conceptions about the proper form and limits of state action (*see* Rosas 1995; Forsythe 1991). Hence one can speak of a transformation, albeit an incomplete and fragile transformation, of the international regime of political power.

At the beginning of the twenty-first century, each of the four main corollaries of the system of interstate law is open to revaluation—that is, recognition of heads of state irrespective of their constitutional standing; international law's de facto approach to sovereignty; the disjuncture between considerations of appropriate rules and organizations for domestic politics and those thought applicable in the realm of *Realpolitik*; and the refusal to bestow legitimacy or confer recognition on those who forcefully challenge established national regimes or existing boundaries. Today, the legitimacy of state leadership cannot be taken for granted and, like the constitutional standing of a national polity, is subject to scrutiny and tests with respect to human rights and liberal democratic standards (Crawford and Marks 1998, 84–5). In addition, the growth of regional and global governance, with responsibility for areas of increasing transborder concern from pollution and health to trade and financial matters, has helped close the gap between the types of organization thought relevant to national and transnational life. Finally, there have been important cases where governments within settled borders (such as the Southern Rhodesian government after its unilateral declaration of independence in 1965) have remained unrecognized by the international community while, at the same time, national liberation movements have been granted new levels of recognition

Table 5

Regimes of Sovereignty

Dimensions of Sovereignty		*Classic Sovereignty*	*Liberal International Sovereignty*
Idea of the State		Supreme power or authority	Impersonal (legally circumscribed) structure of power, delimited nationally and (increasingly) internationally
Principle of Legitimacy		Safety, security, divine right	Protection from rulers, Self-determination, Popular sovereignty
Modality	internal	Pacification	Rule of law, Division of state powers, Electoral accountability and interest-group competition
	external	Rivalry / conflictual / coercive Effective control Appropriation becomes legitimation	Geopolitics and geoeconomics, Diplomatic interchange, Spread of regimes and international law, Use of coercive power remains option, in principle, of last resort
Reach	internal	Preeminent jurisdiction over (an increasingly) unified territorial area	Fixed borders and delimited boundaries
	external	Overseas exploration, Colonization, Imperialism	Decolonization, Regionalization (EU, NAFTA, Asia-Pacific), Global geopolitics
Characterization of Political Interconnectedness		Discrete worlds, Growing global links and interaction	Increasing enmeshment across borders Institutionalization of multilateral and transnational governance
Approximate Period of Efficacy		Circa 1648 onwards	Elements with roots in the nineteenth century Key period: 1945 onwards

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or respect (for example, the ANC in the late 1980s during the closing stages of apartheid in South Africa). In addition, some struggles for autonomy have been accepted by significant powers, for instance the Croatian struggle for nationhood, prior to borders being redrawn and recast.

Boundaries between states are of decreasing legal and moral significance. States are no longer regarded as discrete political worlds. International standards breach boundaries in numerous ways. Within Europe the European Convention for the Protection of Human Rights and Fundamental Freedoms and the EU create new institutions and layers of law and governance that have divided political authority; any assumption that sovereignty is an indivisible, illimitable, exclusive, and perpetual form of public power—entrenched within an individual state—is now defunct (Held 1995, 107–113). Within the wider international community, rules governing war, weapon systems, war crimes, human rights, and the environment, among other areas, have transformed and delimited the order of states, embedding national polities in new forms and layers of accountability and governance (from particular regimes such as the Nuclear Nonproliferation Agreement to wider frameworks of regulation laid down by the UN Charter and a host of specialized agencies) (*see* Held and McGrew, Goldblatt, and Perraton 1999, chs. 1, 2). Accordingly, the boundaries between states, nations, and societies can no longer claim the deep legal and moral significance they once had in the era of classic sovereignty; they can be judged, along with the communities they embody, by general, if not universal, standards. That is to say, they can be scrutinized and appraised in relation to standards that, in principle, apply to each person, each individual, who is held to be equally worthy of concern and respect. Concomitantly, shared membership in a political community, or spatial proximity, is not regarded as a sufficient source of moral privilege (Beitz 1998, *cf*. 1979; Pogge 1989, 1994a; and Barry 1999; and see below). Elements are in place not just for a liberal but for a cosmopolitan framework of international law.

D. An Assessment of Liberal Sovereignty

The political and legal transformations of the last fifty years have gone some way toward circumscribing and delimiting political power on a regional and global basis. Several major difficulties remain, nonetheless, at the core of the liberal international regime of sovereignty that create tensions, if not faultiness, at its center. In the first instance, any assessment of the cumulative impact of the legal and political changes must acknowledge their highly differentiated character because particular types of impact—whether on the decisional, procedural, institutional, or structural dimensions of a polity—are not experienced uniformly by all states and regions.

Second, while the liberal political order has gone some way toward taming the arrogance of princes and princesses and curbing some of their worst ex-

cesses within and outside their territories, the spreading hold of the regime of liberal international sovereignty has compounded the risks of arrogance in certain respects. This is so because in the transition from prince to prime minister or president, from unelected governors to elected governors, from the aristocratic few to the democratic many, political arrogance has been reinforced by the claim of the political elites to derive their support from that most virtuous source of power—the *demos*. Democratic princes can energetically pursue public policies—whether in security, trade, technology, or welfare—because they feel, and to a degree are, mandated so to do. The border spillover effects of their policies and agendas are not prominent in their minds or a core part of their political calculations. Thus, for example, some of the most significant risks of Western industrialization and energy use have been externalized across the planet. Liberal democratic America, geared to domestic elections and vociferous interest groups, does not weigh heavily the ramifications across borders of its choice of fuels, consumption levels, or type of industrialization—George W. Bush's refusal after his election in 2001 to ratify the Kyoto agreement on greenhouse gas omissions being a case in point. From the location of nuclear plants, the management of toxic waste, and the regulation of genetically modified foodstuffs, to the harvesting of scarce resources (e.g., the rain forests) and the regulation of trade and financial markets, governments by no means simply determine what is right or appropriate for their own citizens, and national communities by no means exclusively "program" the actions and policies of their own governments.

Third, the problem of spillover consequences is compounded by a world increasingly marked by "overlapping communities of fate"—where the trajectories of each and every country are more tightly entwined than ever before. While democracy remains rooted in a fixed and bounded territorial conception of political community, contemporary regional and global forces disrupt any simple correspondence between national territory, sovereignty, political space, and the democratic political community. These forces enable power and resources to flow across, over, and around territorial boundaries and escape mechanisms of national democratic control. Questions about who should be accountable to whom, which socioeconomic processes should be regulated at what levels (local, national, regional, global) and on what basis do not easily resolve themselves and are left outside the sphere of liberal international thinking.

Fourth, while many pressing policy issues, from the regulation of financial markets to the management of genetic engineering, create challenges that transcend borders and generate new transnational constituencies, existing intergovernmental organizations are insufficient to resolve these—and resolve them legitimately. Decision-making in leading IGOs, for instance the World Trade Organization (WTO) and the International Monetary Fund (IMF), is often skewed to dominant geopolitical and geo-economic interests whose primary objective is to ensure flexible adjustment in and to the international economy (downplaying, for example, the

external origins of a country's difficulties and the structural pressures and rigidities of the world economy itself). Moreover, even when such interests do not prevail, a crisis of legitimacy threatens these institutions. For the "chains of delegation" from national states to multilateral bodies are too long, the basis of representation often unclear, and the mechanisms of accountability of the technical elites themselves who run the IGOs are weak or obscure (Keohane 1998). Agenda-setting and decision procedures frequently lack transparency, key negotiations are held in secret, and there is little or no wider accountability to the UN system or to any democratic forum more broadly. Problems of transparency, accountability, and democracy prevail at the global level. Whether "princes" and "princesses" rule in cities, states, or multilateral bodies, their power will remain arbitrary unless tested and redeemed through democratic processes that embrace all those significantly affected by them.

Fifth, serious deficiencies can, of course, be documented in the implementation and enforcement of democratic and human rights, and of international law more generally. Despite the development and consolidation of the regime of liberal international sovereignty, massive inequalities of power and economic resource continue to grow. There is an accelerating gap between rich and poor states as well as between peoples in the global economy (UNDP 1999). The human rights agenda often has a hollow ring. The development of regional trade and investment blocs, particularly the Triad (NAFTA, the EU, and Japan), has concentrated economic transactions within and between these areas (Thompson 2000). The Triad accounts for two thirds to three quarters of world economic activity, with shifting patterns of resources across each region. However, one further element of inequality is particularly apparent: A significant proportion of the world's population remains marginal or excluded from these networks (Pogge 1999, 27; *see* UNDP 1997, 1999; Held and McGrew 2000).

Does this growing gulf in the life circumstances and life chances of the world's population highlight intrinsic limits to the liberal international order? Or should this disparity be traced to other phenomena—the particularization of nation-states or the inequalities of regions with their own distinctive cultural, religious, and political problems? The latter are contributors to the disparity between the universal claims of the human rights regime and its often tragically limited impact (*see* Pogge 1999; Leftwich 2000). But one of the key causes of the gulf lies, in my judgment, elsewhere—in the tangential impact of the liberal international order on the regulation of economic power and market mechanisms. The focus of the liberal international order is on the curtailment of the abuse of political power, not economic power. It has few, if any, systematic means to address sources of power other than the political (*see* Held 1995, pt. 3). Its conceptual resources and leading ideas do not suggest or push toward the pursuit of self-determination and autonomy in the economic domain; they do not seek the entrenchment of democratic rights and obligations outside the

sphere of the political. Hence it is hardly a surprise that liberal democracy and flourishing economic inequalities exist side by side.

The implications of the above points for international law have been well summarized by Chinkin when she insists that "the capability of the international legal system to be relevant to human rights requires dislodging legal and conceptual boundaries between . . . human rights law and international economic law, between state sovereignty and transnational law, between international humanitarian law and military necessity" (1998, 121). The prevailing uncertainty of the meaning and implications of the regime of liberal international sovereignty is compounded by these divisions; legal uncertainty both articulates and expresses important gulfs between politics and economics (*cf.* Gessner 1998). Section II addresses some of these concerns.

II.

A. Cosmopolitan Sovereignty

The problems and dilemmas of the liberal regime of sovereignty can be referred to, following Waldron, as the "circumstances of cosmopolitanism" (2000, 236–239); that is, the background conditions and presuppositions that inform and motivate the case for a cosmopolitan framework of law and sovereignty. These circumstances can be summarized by reference to the processes and forces of globalization that increasingly enmesh us in overlapping communities of fate. Not only are we "unavoidably side by side" (as Kant put it), but the degrees of mutual interconnectedness and vulnerability are rapidly growing. The new circumstances of cosmopolitanism give us little choice but to establish a "common framework of political action" given shape and form by a common framework of law and regulation (Held 1995, pt. III).

How should cosmopolitanism be understood in this context? In the first instance, cosmopolitanism can be taken as those basic values that set down standards or boundaries that no agent, whether a representative of a government, state, or civil association, should be able to cross. Focused on the claims of each person as an individual or as a member of humanity as a whole, these values espouse the idea that human beings are in a fundamental sense equal and that they deserve equal political treatment; that is, treatment based upon the equal care and consideration of their agency irrespective of the community in which they were born or brought up. After over two hundred years of nationalism and sustained nation-state formation, such values could be thought of as out of place. But such values are already enshrined in, and central to, the laws of war, human rights law, and the statute of the ICC, among many other international rules and legal arrangements.

There is a second, important sense in which cosmopolitanism defines a set of norms and legal frameworks in the here and now and not in some remote utopia. This is the sense in which cosmopolitanism defines forms of political regulation and law-making that create powers, rights, and con-

straints that transcend the claims of nation-states and have far-reaching consequences in principle. This is the domain between national and global law and regulation—the space between domestic law, which regulates the relations between a state and its citizens, and traditional international law, which applies primarily to states and interstate relations (Eleftheriadis 2000). This space is already filled by a host of legal regulation, from the plethora of legal instruments of the EU and the international human rights regime as a global framework for promoting rights, to the diverse agreements of the arms control system and environmental regimes. Cosmopolitanism is not, thus, made up of political ideals for another age but embedded in rule systems and institutions that have already transformed state sovereignty in many ways.

Yet the precise sense in which these developments constitute a form of "cosmopolitanism" remains to be clarified, especially given that the ideas of cosmopolitanism have a complex history from the Stoics to contemporary political philosophy. For my purposes here, cosmopolitanism can be taken as the moral and political outlook that offers the best prospects of overcoming the problems and limits of classic and liberal sovereignty. It builds upon some of the strengths of the liberal international order, particularly its commitment to universal standards, human rights, and democratic values that apply, in principle, to each and all. It specifies, in addition, a set of general principles upon which all could act (O'Neill 1991, 1996); for these are principles that can be universally shared and can form the basis for the protection and nurturing of each person's equal interest in the determination of the institutions that govern his or her life.

Cosmopolitan Principles

What are these principles? Seven are paramount. They are the principles of:

1. equal worth and dignity;
2. active agency;
3. personal responsibility and accountability;
4. consent;
5. reflexive deliberation and collective decision-making through voting procedures;
6. inclusiveness and subsidiarity;
7. avoidance of serious harm and the amelioration of urgent need.

The meaning of these principles needs unpacking in order that their implications can be clarified for the nature and form of political community today. An account of each will be built up, explaining its core concerns and setting out elements of its justification. Inevitably, given the length of an article, this will not amount to a definitive exposition. It will, however, offer an elucidation of what cosmopolitanism should mean in contemporary circumstances.

The first principle recognizes simply that everyone has an equal moral

status in the world. It might seem a weak principle as it is currently formulated, in that it does not generate much specific content. But it is a basic constitutive principle specifying that all people are of equal moral significance and should enjoy, in principle, equal consideration of their interests. Without the acknowledgment of this principle, there would be no basis for a cosmopolitan outlook.

It should be acknowledged from the outset that this formulation of "moral personality" is intertwined with liberalism and the Enlightenment, although its roots stretch back much further (*see* Nussbaum 1997). Its origins are clearly tied to particular traditions and places. But this fact alone does not invalidate the egalitarian conception of the moral worth of persons. To conceive of people as having equal moral value is to make a general claim about the basic units of the world comprising persons as free and equal beings (*see* Kuper 2000). This broad position runs counter to the common view that the world comprises fundamentally contested conceptions of the moral worth of the individual and the nature of autonomy. It does so because, to paraphrase (and adapt) Bruce Ackerman, there is no Islamic nation without a woman who insists on equal liberties, no Confucian society without a man who denies the need for deference, and no developing country without a person who yearns for a predictable pattern of meals to help sustain his or her life projects (*see* Ackerman 1994, 382–3). Principle 1 is the basis for articulating the equal worth and liberty of all humans, wherever they were born or brought up. It is the basis of underwriting the liberty of others, not of obliterating it. Its concern is with the irreducible moral status of each and every person—the acknowledgment of which links directly to the possibility of self-determination and the capacity to make independent choices. Or, as Nussbaum put it, "one should always behave so as to treat with equal respect the dignity of reason and moral choice in each and every human being" (1997, 31).

The second principle recognizes that, if principle 1 is to be universally recognized and accepted, then human agency cannot be understood merely as the product of coercive forces or as the passive embodiment of fate; rather, human agency must be conceived as the ability to act otherwise—the ability not just to accept but to shape human community in the context of the choices of others. Active agency connotes the capacity of human beings to reason self-consciously, to be self-reflective, and to be self-determining. It involves the ability to deliberate, judge, choose, and act upon different possible courses of action in private as well as public life. It places at its center the capability of persons to choose freely, to enter into self-chosen obligations, and to enjoy the underlying conditions for the reflexive constitution of their activities.[1]

The active agency of each must recognize and coexist with the active

1. The principle of active agency does not make any assumption about the extent of self-knowledge or reflexivity. Clearly, this varies and can be shaped by both unacknowledged conditions and unintended consequences of action (*see* Giddens 1984). It does, however, assume that the course of agency is a course that includes choice and that agency itself is, in essence, defined by the capacity to act otherwise.

agency of all others. Principle 2 affirms that all human beings must be able to enjoy the pursuit of activity without the risk of arbitrary or unjust interference while recognizing that this liberty applies to everyone. The principle of active agency bestows both opportunities and duties—opportunities to act (or not as the case may be) and duties to ensure that independent action does not curtail and infringe upon the action possibilities of others (unless, of course, sanctioned by negotiation or consent: see below). Active agency is a capacity both to make and pursue claims and to have such claims made and pursued in relation to oneself. Each person has an equal interest in active agency or self-determination.

The connotations of principles 1 and 2 cannot be grasped fully unless supplemented by principle 3: the principle of personal responsibility and accountability. At its most basic, this principle can be understood to mean that it is inevitable that people will choose different cultural, social, and economic projects and that such differences need to be both recognized and accepted. People develop their skills and talents differently and enjoy different forms of ability and specialized competency. That they fare differently, and that many of these differences arise from a voluntary choice on their part, should be welcomed and accepted (*see* Barry 1998, 147–9). These prima facie legitimate differences of choice and outcome have to be distinguished from unacceptable structures of difference that reflect conditions that prevent or partially prevent the pursuit of self-chosen activities for some (Held 1995, 201–6). In particular, actors have to be aware of and accountable for the consequences of actions, direct or indirect, intended or unintended, that may restrict or delimit the choices of others—choices that may become highly constrained for certain groups who have had no role in or responsibility for this outcome. In other words, it is important to recognize that actors (and social processes) may shape and determine the autonomy of others without their participation, agreement, or consent.

Under such circumstance, there is an obligation to ensure that those who are "choice-determining" for some people (who, in turn, risk becoming "choice-takers") are fully accountable for their activities. If people's equal interest in principles 1 and 2 are to be safeguarded, it means giving close attention to those groups of people who become vulnerable or disabled by social institutions from fully participating in the determination of their own lives. Individuals, thus, have both personal responsibility rights as well as personal responsibility obligations. The freedom of action of each person must be one of accommodation to the liberties (and potential liberties) of others. The obligations taken on in this context cannot all be fulfilled with the same types of initiative (personal, social, or political) or at the same level (local, national, or global), but whatever their mode of realization, all such efforts can be related to one common denominator: the concern to discharge obligations we all take on by virtue of the claims we make for the recognition of personal responsibility-rights (*cf.* Raz 1986, chs. 14, 15, esp. 407–8, 415–17).

Principle 4 recognizes that a commitment to equal worth and personal

responsibility requires a noncoercive process in and through which people can pursue and negotiate their interconnections, interdependence, and difference. Interlocking lives, projects, and communities require forms of deliberative procedures and decision-making that take account of each person's equal interest in such processes. The principle of consent constitutes the basis of collective agreement and governance. When coercion and force take the place of deliberative and consensual mechanisms, discussion is halted and conflict settlements are typically made in favor of sectional interests. Against this, the idea of self-determining agency must acknowledge that, if it is to be equally effective for all, people should be able to participate on a free and equal basis in a process in which their consent (or lack of it) can be registered in the government of their collective affairs.

Participation in a process of consent requires that all people enjoy an equality of status with respect to the basic decision-making institutions of relevant political communities. Agreed judgment about rules, laws, and policies should ideally follow from public debate and the "force of the better argument"—not from the intrusive outcome of nondiscursive elements and forces (Habermas 1973; Held 1995, ch.7). It might seem that, ideally, collective decisions should follow from the "will of all." However, principles 4 and 5 must be interpreted together. For principle 5 acknowledges that while a legitimate public decision is one that results from "the deliberation of all," this needs to be linked with voting at the decisive stage of collective decision-making and with the procedures and mechanisms of majority rule (*see* Manin 1987). The will of all is too strong a requirement of collective decision-making and the basis on which minorities (of even one) can block or forestall public responses to key issues. The deliberation of all recognizes the importance of inclusiveness in the process of consent, as required by principle 4, while interpreting this to mean that an inclusive process of participation can coexist with a decision-making procedure that allows outcomes that accrue the greatest support (Dahl 1989).[2] If people are marginalized or fall outside this framework, they are disadvantaged not primarily because they have less than others in this instance, but because they can participate less in the processes and institutions that govern their lives. It is their "impaired agency" that becomes the focus of concern and the proper target for compensatory measures (Doyal and Gough 1991, 95–96; *see* Raz 1986, 227–40).

Principles 4 and 5 depend for their efficacy on their entrenchment in a

2. Minorities clearly need to be protected in this process. The rights and obligations entailed by principles 4 and 5 have to be compatible with the protection of each person's equal interest in principles 1, 2, and 3—an interest which follows from each person's recognition as being of equal worth, with an equal capacity to act and to account for his or her actions. Majorities ought not to be able to impose themselves arbitrarily upon others; there must always be institutional arrangements to safeguard the individuals' or minorities' position, that is, protective rules and procedures. The principles of consent and reflexive deliberation have, in this context, to be understood against the background specified by the first three principles; the latter frame the basis of their operation. Together, these principles can form the essential ingredients—the constitutive and self-binding rules and mechanisms—of public life, allowing it to function and reproduce over time.

political community or communities. During the period in which nation-states were being forged—and the territorially bound conception of democracy was consolidated—the idea of a close mesh between geography, political power, and democracy could be assumed. It seemed compelling that political power, sovereignty, democracy, and citizenship were simply and appropriately bounded by a delimited territorial space. These links were by and large taken for granted and generally unexplicated (Held 1995). Principle 6 raises issues concerning the proper scope of democracy, or democratic jurisdiction, given that the relation between decision-makers and decision-takers is not necessarily symmetrical or congruent with respect to territory (see Section I.D above).

The principle of inclusiveness and subsidiarity seeks to clarify the fundamental criterion for drawing proper boundaries around those who should be involved in particular domains, those who should be accountable to a particular group of people, and why. At its simplest, it states that those significantly (i.e., nontrivially) affected by public decisions, issues, or processes should, *ceteris paribus*, have an equal opportunity, directly or indirectly through elected delegates or representatives, to influence and shape them. Those affected by public decisions ought to have a say in their making (*see* Whelan 1983; Saward 2000). Accordingly, democracy is best located when it is closest to and involves those whose life chances and opportunities are determined by significant social processes and forces.

Principle 6 points to the necessity of both the decentralization and centralization of political power. If decision-making is decentralized as much as possible, it maximizes the opportunity of each person to influence the social conditions that shape his or her life. But if the decisions at issue are translocal, transnational, or transregional, then political institutions need not only be locally based but also to have a wider scope and framework of operation. In this context, the creation of diverse sites and levels of democratic fora may be unavoidable. It may be unavoidable, paradoxically, for the very same reasons as decentralization is desirable: It creates the possibility of including people who are significantly affected by a political issue in the public (in this case, transcommunity public) sphere. If diverse peoples beyond borders are, for example, effectively stakeholders in the operation of select regional and global forces, their de facto status as members of diverse communities would need to be matched by a de jure political status, if the mechanisms and institutions that govern these political spaces are to be bought under the rubric of principle 6. Stakeholders in de facto communities and networks of local, national, regional, and global processes will be politically empowered only if they achieve the necessary complementary de jure status.

Properly understood, principle 6 should be taken to entail that decision-making should be decentralized as much as possible, maximizing each person's opportunity to influence the social conditions that shape his or her life. Concomitantly, centralization is favored if, and only if, it is the neces-

sary basis for avoiding the exclusion of persons who are significantly affected by a political decision or outcome (Pogge 1994a, 106–9). These considerations yield, as Pogge has written, "the result that the authority to make decisions of some particular kind should rest with the democratic political process of a unit that (1) is as small as possible but still (2) includes as equals all persons significantly . . . affected by decisions of this kind" (1994a, 109).

Elsewhere, I have proposed three tests to help filter policy issues to the different levels of democratic governance: the tests of extensity, intensity, and comparative efficiency (Held 1995, ch. 10). The test of extensity assesses the range of people within and across borders who are significantly affected by a collective problem and policy question. The test of intensity examines the degree to which the latter impinges on a group of people(s) and, therefore, the degree to which regional or global initiatives are warranted. The third test—the test of comparative efficiency—is concerned to provide a means of examining whether any proposed regional or global initiative is necessary insofar as the objectives it seeks to meet cannot be realized satisfactorily by those working at "lower" levels of local or national decision-making.[3] Accordingly, the principle of inclusiveness and subsidiarity may require diverse and multiple democratic public fora for its suitable enactment. It yields the possibility of multilevel democratic governance. The ideal number of appropriate democratic jurisdictions cannot be assumed to be embraced by just one level—as it is in the theory of the liberal democratic nation-state (Held 1996, pt. 2).

Finally, principle 7 needs to be explicated: the avoidance of harm and the amelioration of urgent need. This is a principle for allocating priority to the most vital cases of need and, where possible, trumping other, less urgent public priorities until such a time as all human beings, de facto and de jure, are covered by the first six principles; that it to say, until they enjoy the moral status of universal recognition and have the means to participate in their respective political communities and in the overlapping communities of fate that shape their needs and welfare. Put more abstractly, this "participative" definition of the active agent can be defined as the necessary level of intermediate need-satisfaction required to produce the optimum use of human capacities, where the optimum is conceived in terms of the actual ability of individuals and groups to best utilize their capacities within the context of the communities that determine their life chances. "Intermediate needs" are those things that have "universal satisfier characteristics"; that is, properties, whether of goods, services, or activities, that enhance autonomy in all cultures (Doyal and Gough 1991, 162, 157). Examples of the latter are drinking water, nutritional food, appropriate housing, health

3. The criteria that can be used to pursue an inquiry into comparative efficacy include the availability of alternative local and national legislative or administrative means, the cost of a proposed action, and the possible consequences of such action for the constituent parts of an area (*see* Neunreither 1993).

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care, adequate education, and economic security. If people's intermediate needs are unmet and they cannot fully participate in the sociopolitical processes that structure their opportunities, their potential for involvement in public and private life will remain unfulfilled. Their ability to make (or not make) choices and to form the course of their life projects will have been impaired, irrespective of the choices they would have made about the extent of their actual engagement.

A social provision which falls short of the potential for active agency can be referred to as a situation of manifest "harm" in that the participatory potential of individuals and groups will not have been achieved; that is to say, people would not have adequate access to effectively resourced capacities which they might make use of in particular circumstances (Sen 1999). This "participative" conception of agency denotes an "attainable" target—because the measure of optimum participation and the related conception of harm can be conceived directly in terms of the "best resource mix" or "highest standard" presently achieved in a political community (*see* Doyal and Gough 1991, 169). But attainable participative levels are not the same thing as the most pressing levels of vulnerability, defined by the most urgent need. It is abundantly clear that within many, if not all, communities and countries, certain needs, particularly concerning health, education, and welfare, are not universally met. The "harm" that follows from a failure to meet such needs can be denoted as "serious harm", marked as it often is by immediate, life-and-death consequences. This harm constitutes a domain of need and suffering that is both systematic and wholly unnecessary. As it is understood here, serious harm is directly avoidable harm. To maintain such a position is to take the view that capabilities and resources exist, even within the current frameworks of power and wealth, to mitigate and solve such problems. In the most basic sense, the challenges posed by avoidable suffering are "political and ethical, and possibly psychological, but do not arise from any absolute scarcity or from an absence of resources and technical capabilities" (Falk 1995, 56–7). Accordingly, if the requirements of principle 7 are to be met, law and public policies ought to be focused, in the first instance, on the prevention of serious harm; that is, the eradication of harm inflicted on people "against their will" and "without their consent" (Barry 1998, 231, 207). Such a stance would constrain the rightful range of public policy, directing the latter to those who are victims of harm, whether this be the intended or unintended outcome of social forces and relations.

The seven principles can best be thought of as falling into three clusters. The first cluster, comprising what can be called "constituting principles" (principles 1–3), sets down the fundamental organizational features of the cosmopolitan moral universe. Its crux is that each person is a subject of equal moral concern; that each person is capable of acting autonomously with respect to the range of choices before him or her; and that, in deciding how to act or which institutions to create, the claims of each person affected

should be taken equally into account. Personal responsibility means in this context that actors and agents have to be aware of, and accountable for, the consequences of their actions, direct or indirect, intended or unintended, that may restrict and delimit the choices of others. The second cluster, "legitimating principles" (principles 4–6), forms the basis of translating individually initiated activity, or privately determined activities more broadly, into collectively agreed or collectively sanctioned frameworks of action or regulatory regimes. Legitimating principles are self-binding principles that make voluntariness and self-determination possible for each and all (*cf.* Holmes 1988). Public power can be conceived as legitimate to the degree to which principles 4, 5, and 6 are upheld. The final principle (7) lays down a framework for prioritizing need; in distinguishing vital from nonvital needs, it creates an unambiguous starting point and guiding orientation for public decisions. While this "prioritizing commitment" does not, of course, create a decision procedure to resolve all clashes of priority in politics, it clearly creates a moral framework for focusing public policy on those who are most vulnerable (*see* Held, forthcoming, for an elaboration of these themes).

I take cosmopolitanism ultimately to denote the ethical and political space occupied by the seven principles: It lays down the universal or organizing principles that delimit and govern the range of diversity and difference that ought to be found in public life. It discloses the proper basis or framework for the pursuit of argument, discussion, and negotiation about particular spheres of value, spheres in which local, national, and regional affiliations will inevitably be weighed.[4] However, it should not be concluded from this that the meaning of the seven principles can simply be specified once and for all. For while cosmopolitanism affirms principles that are universal in their scope, it recognizes, in addition, that the precise meaning of these is always fleshed out in situated discussions; in other words, that there is an inescapable hermeneutic complexity in moral and political affairs that will affect how the seven principles are actually interpreted, and the weight granted to special ties and other practical-political issues. I call this mix of regulative principles and interpretative activity "framed pluralism" or a "layered" cosmopolitan position (*cf.* Tully 1995). This cosmopolitan point of view builds on principles that all could reasonably assent to, while recog-

4. Contemporary cosmopolitans, it should be acknowledged, are divided about the demands that cosmopolitanism lays upon the individual and, accordingly, upon the appropriate framing of the necessary background conditions for a "common" or "basic" structure of individual action and social activity. Among them there is agreement that in deciding how to act or which rules or regulations ought to be established, the claims of each person affected should be weighed equally—"no matter where they live, which society they belong to, or how they are connected to us" (Miller 1998, 165). The principle of egalitarian individualism is regarded as axiomatic. But the moral weight granted to this principle depends heavily upon the precise modes of interpretation of other principles (*see* Nussbaum 1996; Barry 1998; Miller 1998; Scheffler 1999).

nizing the irreducible plurality of forms of life (Habermas 1996). Thus, on the one hand, the position upholds certain basic egalitarian ideas—those that emphasize equal worth, equal respect, equal consideration, and so on—and, on the other, it acknowledges that the elucidation of their meaning cannot be pursued independently of an ongoing dialogue in public life. Hence there can be no adequate institutionalization of equal rights and duties without a corresponding institutionalization of national and transnational forms of public debate, democratic participation, and accountability (McCarthy 1999; and see below). The institutionalization of cosmopolitan principles requires the entrenchment of democratic public realms.

Cosmopolitan Law and Authority

Against this background, the nature and form of cosmopolitan law can begin to be addressed. In the first instance, cosmopolitan law can be understood as a form of law that entrenches the seven principles. If these principles were to be systematically entrenched as the foundation of law, the conditions for the possibility of the cosmopolitan regulation of public life could initially be set down. For the principles specify the organizational basis of legitimate public power. Political power becomes legitimate power in the cosmopolitan doctrine when, and only when, it is entrenched and constituted by these cosmopolitan elements.

Within the framework of cosmopolitan law, the idea of rightful authority, which has been so often connected to the state and particular geographical domains, has to be reconceived and recast. Sovereignty can be stripped away from the idea of fixed borders and territories and thought of as, in principle, an attribute of basic cosmopolitan democratic law which can be drawn upon and enacted in diverse realms, from local associations and cities to states and wider global networks. Cosmopolitan law demands the subordination of regional, national, and local "sovereignties" to an overarching legal framework, but within this framework associations may be self-governing at diverse levels (Held 1995, 234).

Clear contrasts with the classic and liberal regimes of sovereignty follow. Within the terms of classic sovereignty, the idea of the modern polity is associated directly with the idea of the state—the supreme power operating in a delimited geographic realm. The state has preeminent jurisdiction over a unified territorial area—a jurisdiction supervised and implemented by territorially anchored institutions. While the notion of the state within the frame of classic sovereignty is associated with an unchecked and overarching supreme power, in the liberal conception a legitimate political power is one marked by an impersonal, legally circumscribed structure of power, delimited nationally and (increasingly) internationally. The geopolitics and geo-economics of the liberal international sovereign order are fierce, but they are locked, at least in principle, into the universal human rights regime and the growing standards of democratic governance. Within the cosmopolitan framework, by contrast, the political authority of states is

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but one moment in a complex, overlapping regime of political authority; legitimate political power in this framework embeds states in a complex network of authority relations, where networks are regularized or patterned interactions between independent but interconnected political agents, nodes of activity, or sites of political power (Modelski 1972; Mann 1986; Castells 1996). Cosmopolitan sovereignty comprises networked realms of public authority shaped and delimited by cosmopolitan law. Cosmopolitan sovereignty is sovereignty stripped away from the idea of fixed borders and territories governed by states alone, and is instead thought of as frameworks of political regulatory relations and activities, shaped and formed by an overarching cosmopolitan legal framework.

In this conception, the nation-state "withers away." But this is *not* to suggest that states and national democratic polities become redundant. Rather, states would no longer be regarded as the sole centers of legitimate power within their borders, as is already the case in diverse settings (*see* Held et al. 1999, "Conclusion"). States need to be articulated with and relocated within an overarching cosmopolitan framework. Within this framework, the laws and rules of the nation-state would become but one focus for legal development, political reflection, and mobilization.

Under these conditions, people would in principle come to enjoy multiple citizenships—political membership, that is, in the diverse political communities that significantly affect them. In a world of overlapping communities of fate, individuals would be citizens of their immediate political communities and of the wider regional and global networks that impact upon their lives. This overlapping cosmopolitan polity would be one that in form and substance reflects and embraces the diverse forms of power and authority that operate within and across borders.

B. Institutional Requirements

The institutional requirements of a cosmopolitan polity are many and various. In thinking about the pertinence and efficacy of cosmopolitanism to international legal and political arrangements, it is helpful to break down these requirements into a number of different dimensions. All relate to the idea of cosmopolitanism but function analytically and substantively at different levels, ranging from the legal and the political to the economic and the sociocultural. Four institutional dimensions of cosmopolitanism will be set out below and related to the key recurring problems embedded in the liberal international order (see pp. 20–22). Each of the different dimensions can contribute to an expansion of the resources necessary to move beyond these problems and, eventually, to produce a satisfactory elucidation of cosmopolitan sovereignty.

Legal cosmopolitanism. Legal cosmopolitanism explores the tension between legal claims made on behalf of the states systems and those made on

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behalf of an alternative organizing principle of world order in which all persons have equivalent rights and duties (Pogge 1994a, 90ff.). It posits an ideal of a global legal order in which people can enjoy an equality of status with respect to the fundamental institutions of the legal system. At the center of legal cosmopolitanism is *legalis homo*, someone free to act by law, free to ask for and expect the law's protection, free to sue and be sued in certain courts, but who does not directly make or determine the law (Pocock 1995, 36ff). The focus of *legalis homo* is equal legal standing and personal rights.

Legal cosmopolitanism is universalizing and potentially inclusive. It is not, as one commentator usefully put it, "tied to a particular collective identity, or membership of a demos" (Cohen 1999, 249). It can be deployed to create the basis for the equal treatment of all, the entrenchment of a universal set of rights and obligations, and the impartial delimitation of individual and collective action within the organizations and associations of state, economy, and civil society (Held 1995, ch. 12). As such, it is a resource to help resolve the challenges posed by asymmetries of power, national policy spillovers, and overlapping communities of fate.

The institutional requirements of legal cosmopolitanism include:

The entrenchment of cosmopolitan democratic law; a new "thick" charter of rights and obligations embracing political, social, and economic power.

An interconnected global legal system, embracing elements of criminal, commercial, and civil law.

Submission to ICJ and ICC jurisdiction; creation of a new, international human rights court, and further development of regional human rights institutions.

Political cosmopolitanism. Without complementary forms of law-making and enforcement, however, there is no reason to think that the agenda of *legalis homo* will automatically mesh with that of the protection of equal membership in the public realm and the requirements of active citizenship. For this, legal cosmopolitanism needs to be related to political cosmopolitanism. Political cosmopolitanism involves advocacy of regional and global governance and the creation of political organizations and mechanisms that would provide a framework of regulation and law enforcement across the globe. Although cosmopolitan positions often differ on the precise nature and form of such a framework, they are generally committed to the view that political cosmopolitanism entails that states should have a somewhat, and in some areas a markedly, diminished role in comparison with institutions and organizations of regional and global governance.

From this perspective, the rights and duties of individuals can be nurtured adequately only if, in addition to their proper articulation in national constitutions, they are underwritten by regional and global regimes, laws, and institutions. The promotion of the political good and of principles of egalitarian political participation and justice are rightly pursued at regional

and global levels. Their conditions of possibility are inextricably linked to the establishment and development of transnational organizations and institutions of regional and global governance. The latter are a necessary basis of cooperative relations and just conduct.

Political cosmopolitanism, accordingly, takes as its starting point a world of "overlapping communities of fate." In the classic and liberal regimes of sovereignty, nation-states largely dealt with issues that spilled over boundaries by pursuing "reasons of state," backed ultimately by coercive means. But this power logic is singularly inappropriate to resolve the many complex issues, from economic regulation to resource depletion and environmental degradation, that engender an intermeshing of national fortunes. Recognizing the complex structures of an interconnected world, political cosmopolitanism views certain issues as appropriate for delimited (spatially demarcated) political spheres (the city, state, or region), while it sees others—such as the environment, world health, and economic regulation—as needing new, more extensive institutions to address them. Deliberative and decision-making centers beyond national territories are appropriately situated (see principle 6, p. 28) when the cosmopolitan principles of equal worth, impartial treatment, and so on can be properly redeemed only in a transnational context; when those significantly affected by a public matter constitute a cross-border or transnational grouping; and when "lower" levels of decision-making cannot manage and discharge satisfactorily transnational or international policy questions. Only a cosmopolitan political outlook can ultimately accommodate itself to the political challenges of a more global era, marked by policy spillovers, overlapping communities of fate, and growing global inequalities.

The institutional requirements of political cosmopolitanism include:

Multilayered governance, diffused authority.
A network of democratic fora from the local to global.
Enhanced political regionalization.
Establishment of an effective, accountable, international military force for last-resort use of coercive power in defence of cosmopolitan law.

Economic cosmopolitanism. Economic cosmopolitanism enters an important proviso about the prospects of political cosmopolitanism, for unless the disjuncture between economic and political power is addressed, resources will remain too skewed to ensure that formally proclaimed liberties and rights can be enjoyed in practice by many; in short, "nautonomy" will prevail—the asymmetrical production and distribution of life-chances, eroding the possibilities of equal participative opportunities and placing artificial limits on the creation of a common structure of political action (Held 1995, ch. 8). At issue is what was earlier referred to as the tangential impact of the liberal international order on the regulation of economic power and market mechanisms and on the flourishing socioeconomic in-

equalities that exist side by side with the spread of liberal democracy. A bridge has to be built between human rights law and international economic law, between a formal commitment to the impartial treatment of all and a geopolitics driven too often by sectional economic interests, and between cosmopolitan principles and cosmopolitan practices.

This understanding provides a rationale for a politics of intervention in economic life—not to control and regulate markets per se, but to provide the basis for self-determination and active agency. Economic cosmopolitanism connotes the enhancement of people's economic capacities to pursue their own projects—individual and collective—within the constraints of community and overlapping communities of fate, that is, within the constraints created by taking each human being's interest in declared liberties equally seriously. It thus specifies good reasons for being committed to reforming and regulating all those forms of economic power that compromise the possibility of equal worth and active agency. It aims to establish fair conditions for economic competition and cooperation as the background context of the particular choices of human agents (*see* Pogge 1994b).

It follows from this that political intervention in the economy is warranted when it is driven by the objective of ensuring that the basic requirements of individual autonomy are met within and outside economic organizations. Moreover, it is warranted when it is driven by the need to overcome those consequences of economic interaction, whether intended or unintended, that generate damaging externalities such as environmental pollution threatening to health. The roots of such intervention lie in the indeterminacy of the market system itself (*see* Sen 1985, 19). Market economies can function in a manner commensurate with self-determination and equal freedom only if this indeterminacy is addressed systematically and if the conditions of the possibility of self-governance are met.

In addition, a transfer system has to be established within and across communities to allow resources to be generated to alleviate the most pressing cases of avoidable economic suffering and harm. If such measures involved the creation of new forms of regional and global taxation—for instance, a consumption tax on energy use, or a tax on carbon omissions, or a global tax on the extraction of resources within national territories, or a tax on the GNP of countries above a certain level of development, or a transaction tax on the volume of financial turnover in foreign exchange markets—independent (nonnational) funds could be established to meet the most extreme cases of need. Sustained social framework investments in the conditions of autonomy (sanitation, health, housing, education, and so on) could then follow. Moreover, the raising of such funds could also be the basis for a critical step in the realization of political cosmopolitanism: the creation of an independent flow of economic resources to fund regional and global governance, a vital move in removing the latter's dependency on leading democratic princes and the most powerful countries.

The institutional requirements of economic cosmopolitanism embrace:

Reframing market mechanisms and leading sites of economic power.
Global taxation mechanisms.
Transfer of resources to the most economically vulnerable in order to protect and enhance their agency.

Cultural cosmopolitanism. Cultural cosmopolitanism is the capacity to mediate between national traditions, communities of fate, and alternative styles of life. It encompasses the possibility of dialogue with the traditions and discourses of others with the aim of expanding the horizons of one's own framework of meaning and prejudice. Political agents who can "reason from the point of view of others" are likely to be better equipped to resolve, and resolve fairly, the new and challenging transboundary issues and processes that create overlapping communities of fate. The development of this kind of cultural cosmopolitanism depends on the recognition by growing numbers of peoples of the increasing interconnectedness of political communities in diverse domains, including the economic, cultural, and environmental; and on the development of an understanding of overlapping "collective fortunes" that require collective solutions—locally, nationally, regionally, and globally.

The formation of cultural cosmopolitanism has been given an enormous impetus by the sheer scale, intensity, speed, and volume of global cultural communication, which today has reached unsurpassed levels (*see* Held et al. 1999, ch. 7). Global communication systems are transforming relations between physical locales and social circumstances, altering the "situational geography" of political and social life (Meyrowitz 1985). In these circumstances, the traditional link between "physical setting" and "social situation" is broken. Geographical boundaries can be overcome as individual and groups experience events and developments far afield. Moreover, new understandings, commonalties, and frames of meaning can be elaborated without direct contact between people. As such, they can serve to detach, or disembed, identities from particular times, places, and traditions, and can have a "pluralizing impact" on identity formation, producing a variety of options that are "less fixed or unified" (Hall 1992). While everyone has a local life, the ways people make sense of the world are now increasingly interpenetrated by developments and processes from diverse settings. Hybrid cultures and transnational media organizations have made significant inroads into national cultures and national identities. The cultural context of national traditions is transformed as a result.

Cultural cosmopolitanism emphasizes "the fluidity of individual identity, people's remarkable capacity to forge new identities using materials from diverse cultural sources, and to flourish while so doing" (Scheffler 1999, 257). It celebrates, as Rushdie put it, "hybridity, impurity, intermingling, the transformation that comes of new and unexpected combinations of human beings, cultures, ideas, politics, movies, songs" (quoted in Waldron 1992, 751). But it is the ability to stand outside a singular cultural location (the

location of birth, land, upbringing, conversion) and to mediate traditions that lies at its core. However, there are no guarantees about the extent to which such an outlook will prevail. For it has to survive and jostle for recognition alongside often deeply held national, ethnic, and religious traditions (*see* Held and McGrew 2000, 13–18 and pt. 3). It is a cultural and cognitive orientation, not an inevitability of history.

The institutional requirements of cultural cosmopolitanism include:

Recognition of increasing interconnectedness of political communities in diverse domains, including the social, economic, and environmental.
Development of an understanding of overlapping "collective fortunes" that require collective solutions—locally, nationally, regionally, and globally.
The celebration of difference, diversity, and hybridity while learning how to "reason from the point of view of others" and mediate traditions.

CONCLUDING REFLECTIONS

The core of the cosmopolitan project involves reconceiving legitimate political authority in a manner that disconnects it from its traditional anchor in fixed territories and instead articulates it as an attribute of basic cosmopolitan democratic arrangements or basic cosmopolitan law which can, in principle, be entrenched and drawn upon in diverse associations. Significantly, this process of disconnection has already begun, as political authority and forms of governance are diffused "below," "above," and "alongside" the nation-state.

Recent history embraces many different forms of globalization. There is the rise of neoliberal deregulation so much emphasized from the mid-1970s. But there is also the growth of major global and regional institutions, from the UN to the EU. The latter are remarkable political innovations in the context of state history. The UN remains a creature of the interstate system; however, it has, despite all its limitations, developed an innovative system of global governance which delivers significant international public goods—from air-traffic control and the management of telecommunications to the control of contagious diseases, humanitarian relief for refugees, and some protection of the environmental commons. The EU, in remarkably little time, has taken Europe from the disarray of the post–Second World War era to a world in which sovereignty is pooled across a growing number of areas of common concern. Again, despite its many limitations, the EU represents a highly innovative form of governance that creates a framework of collaboration for addressing transborder issues.

In addition, it is important to reflect upon the growth in recent times of the scope and content of international law. Twentieth-century forms of international law have, as this essay has shown, taken the first steps toward a framework of universal law, law that circumscribes and delimits the politi-

cal power of individual states. In principle, states are no longer able to treat their citizens as they think fit. Moreover, the twentieth century saw the beginnings of significant efforts to reframe markets—to use legislation to alter the background conditions and operations of firms in the marketplace. While efforts in this direction failed in respect of the North Atlantic Free Trade Agreement, the "Social Chapter" of the Maastricht Agreement, for instance, embodies principles and rules that are compatible with the idea of restructuring aspects of markets. While the provisions of this agreement fall far short of what is ultimately necessary if judged by the standards of a cosmopolitan conception of law and regulation, they set down new forms of regulation that can be built upon.

Furthermore, there are, of course, new regional and global transnational actors contesting the terms of globalization—not just corporations but new social movements. These are the "new" voices of an emergent "transnational civil society," heard, for instance, at the Rio Conference on the Environment, the Cairo Conference on Population Control, the Beijing Conference on Women, and at the "battles" of Seattle, Washington, Genoa, and elsewhere. In short, there are tendencies at work seeking to create new forms of public life and new ways of debating regional and global issues.

These changes are all in early stages of development, and there are no guarantees that the balance of political interests will allow them to develop. Nor are there any guarantees that those who push for change will accept the necessity of deliberation with all key stakeholders and will recognize the time it takes to develop or create institutions. But the changes under way point in the direction of establishing new modes of holding transnational power systems to account—that is, they help open up the possibility of a cosmopolitan order. Together, they form an anchor on which a more accountable form of globalization can be established.

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