# Tasks of a Global Civil Society: Held, Habermas and Democratic Legitimacy beyond the Nation-State

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ABSTRACT *In order for processes of globalization to continue without resulting in a corresponding loss of the collective capacity to make legitimately binding decisions, new mechanisms of democratic politics need to be developed. This article addresses three forms of transnational politics that could serve to broaden democratic legitimacy beyond the nation-state: (i) cosmopolitan democracy, (ii) democratic regionalism, and (iii) democratic network governance. Part one begins by examining David Held's important contributions to the project of rethinking liberal and social democracy in the context of globalization. It argues that if cosmopolitan democracy is to meet the challenges of globalization and address the need for transnational forms of democratic politics, it must be able to illuminate the very serious political obstacles to the democratization of transnational power. It must be able to articulate the forms of politics necessary to chart the course from globalizing present to cosmopolitan future. Parts two and three examine forms of politics seeking to chart such a middle course: Part two examines democratic regionalism through Jürgen Habermas' 'postnational constellation', and part three examines democratic network governance through the concept of 'global civil society'. Each model, it is argued, encounters a tension between the particular contexts of democratic legitimacy and the universalism demanded of a transnational or even global political culture.*

## Introduction

On 15 February 2003 across North America, Europe, the Middle East, Asia and Australia as many as 30 million people took to city streets to express opposition to the planned invasion of Iraq (Koch, 2003). It seemed an extraordinary moment for global civil society, perhaps for the first time living up to its name. The anti-war movement appeared to accomplish in a day

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what four years of transnational activism against neo-liberal globalization could not. It brought together constituencies from East and West, North and South into a broad-based movement with a common clear objective: stop the US-led drive for war. The next weeks saw what was perhaps a Pyrrhic victory for global civil society. The protests no doubt contributed to the Bush Administration's defeat in the UN Security Council. But in the end they also contributed to the heightened sense that the United Nations and global civil society were impotent next to the hegemonic power of the United States. President Bush made clear the US would follow its own course no matter what global public opinion.

My concern here is not with the intricacies of the recent rounds of high-stakes diplomacy, nor with the hard realities of the continuing conflict in Iraq, but rather with what these events reveal about the state of politics in the international sphere. Global public opinion, as best it could be determined, was overwhelmingly opposed to the war, and yet by most accounts war seemed inevitable from the very start. For all the advances in international communications and the spread of international law in the twentieth century, there remains no institutional mechanism to effectively channel the transnational communicative power of an emerging global civil society.

The recent events highlight a question already raised by processes of neo-liberal globalization: In an increasingly globalized world, where political, military, social, financial and environmental policies have transnational effects, how do we address the need for an invigorated transnational capacity for democratically legitimate collective action? This paper addresses the potential of transnational politics in the context of an incomplete process of globalization, where politics is understood as the capacity to make collectively binding decisions to constitute, steer, and at times transform the governing social, economic and legal institutions that influence our lives.

Although its precise definition continues to be subject to debate, references to the phenomenon of 'globalization' remain prevalent, notwithstanding those who have foreseen its demise in the American return to realist geo-politics (see e.g. Touraine, 2003; Wallerstein, 2004). For could one imagine more global media events than the 'war on terror' and the occupation of Iraq? The world is literally watching and reacting almost daily.

For many, emerging processes of globalization signal a threat to the viability of democratic practice. Globalization 'describe[s] a process, not an end-state' (Habermas, 2001a, p. 66). It 'implies, first and foremost, a *stretching* of social, political and economic activities across frontiers such that events, decisions and activities in one region of the world can come to have significance for individuals and communities in distant regions of the globe' (Held et al., 1999, p. 15). Whether one understands 'globalization' exclusively through the lens of neoliberal capitalism, or through a broader view of grand historical and cultural processes spanning centuries, it has become increasingly clear that recent technological, economic, political and cultural developments challenge the capacity of the nation-state to function in relative autonomy. States do indeed still matter: they continue to wield powerful mechanisms capable of contributing to the shape of the social and economic contexts within their borders. Yet the model of the sovereign state independent from external authority is under increasing pressure; and the consistent capacity to draw clear distinctions between the domestic and the foreign is becoming increasingly difficult to maintain.

Clearly the nation-state shows no signs of disappearing completely.[1] And there is nothing about the expansion and acceleration of cultural, political and economic activities crisscrossing national and regional borders that is inherently incompatible with democratic practice. Yet, as the domain of governance transcends the reach of national institutions, the space for effective

popular political input narrows. Thus, in order for processes of globalization to continue without resulting in a corresponding loss of the collective capacity to make legitimately binding decisions, new mechanisms of democratic politics need to be developed.

This article addresses three forms of transnational politics that could serve to broaden democratic legitimacy beyond the nation-state: (i) *cosmopolitan democracy*, (ii) *democratic regionalism*, and (iii) *democratic network governance*. Part one begins by examining David Held's important contributions to the project of rethinking liberal and social democracy in the context of globalization. I argue if cosmopolitan democracy is to meet the challenges of globalization and address the need for transnational forms of democratic politics, it must be able to illuminate the substantial political obstacles to the democratization of transnational power. It must be able to articulate the forms of politics necessary to chart the course from globalizing present to cosmopolitan future. Parts two and three examine two forms of politics seeking to chart such a middle course: Part two examines democratic regionalism through Jürgen Habermas 'postnational constellation', and part three examines democratic network governance through the concept of 'global civil society'. I will argue that each model—cosmopolitan democracy, democratic regionalism, and democratic network governance—encounters a tension between the particular contexts of democratic legitimacy and the universalism demanded of a transnational or even global political culture.

### The *Cosmopolitics* of David Held

*Cosmopolitan Democracy*

Perhaps no theorist has taken up the project of rethinking the practice of popular sovereignty in the context of globalization as thoroughly as David Held. In addition to contributions in democratic theory he has also contributed to some of the most comprehensive empirical studies of globalization as a historical, political, economic and cultural phenomenon (Held et al., 1999). In his theory of cosmopolitan democracy David Held articulates a comprehensive global system of governance. He lays out the institutional and normative basis for a common structure of action that would in theory cover the entire globe in a decentralized but integrated political and legal system.

Held's concerns regarding globalization and the nation-state fall into three general categories. First, Held argues that the regulatory capacity of the state is being transformed—and in many cases reduced—by expanding political, economic, military and cultural connections across borders. Second, he argues such connections create chain reactions in political and economic institutions that transcend national borders. Decisions made at a distance have a profound effect on the political and economic development of nation-states; and as a result domestic constituencies experience a narrowing of the passage through which they may steer the course of government. And, third, processes of globalization transform political identities in myriad ways causing regional, sub-regional or local groups to reevaluate the representative capacity of their central governments (Held, 1995, pp. 99–136).

For Held, the solution lies in the gradual institution of a cosmopolitan polity that would one day cover the globe. Most recently he has described this as a 'global social democracy' (Held, 2004). Holding the system together would be a 'cosmopolitan democratic law' which would provide a 'common structure of action', protecting people's rights and securing the conditions for the possibility of democratic participation at a variety of levels. The political order conceived by Held is complex and burdensome. However, Held argues the seeds of cosmopolitan

democracy have already been planted in the post-war regime of international institutions and the Universal Declaration of Human Rights. The task is thus to develop them further, to follow them through to their logical fulfillment. And he argues this becomes necessary if we wish to maintain the practice of democratic governance in the context of globalization (Held, 1995, pp. 219–286; Held, 2004).

Starting with a reform of the UN system, Held envisions the establishment of a Global Parliament and a globally interconnected legal system. A 'Boundary Court' would have to be established when disputes of jurisdiction (local, national, regional, cosmopolitan) needed resolution; and an effective international military force would have to be organized, diminishing the reliance on a national hegemonic military power like the United States (Held, 1995, p. 279). While the nation-state in some form would remain, according to Held, in such a cosmopolitan order the *sovereign* nation-state 'would in due course, "wither away"' (Held, 1995, p. 233).

Assuming such a comprehensive and progressive order could be realized and not collapse under its own weight, it could potentially solve many of the problems concerning the lost capacities of the nation-state. One can only speculate. However, serious questions arise when considering the conceptual ramifications of Held's project, independent from the practicality of its institutional architecture. For example, how could such a comprehensive polity incorporate the many levels of solidarity and identity that necessarily remain within the cosmopolitan system? How does Held make room for a variety of processes of collective self-determination? After all, his project is not simply to reinvigorate the capacity of government, but to understand how processes of democratic legitimation may be extended beyond the nation-state. If, as Held says, 'the idea of democracy derives its power and significance ... from the idea of self-determination' (Held, 1995, p. 145), how are we to understand the maintenance of this idea in the context of globalization? Held's answer lies in the principle of democratic autonomy and its implicit commitment to cosmopolitan law.

## A Global Political Society?

At its core, democracy entails a commitment to the notion of self-determination. It implies the idea that people ought to have the freedom to choose the type of society in which they live; and they ought to be free to contribute to the steering of the political structures that govern their lives and work. The project of constituting a single legal structure to encompass the globe raises a variety of questions concerning the freedom of local or national self-determination. From a broadly communitarian or multiculturalist perspective, cosmopolitan democracy appears to lack the capacity to incorporate diverse political practices and traditions. It is charged with misunderstanding the importance of identity to the foundations of political obligation and solidarity; or with being too abstract or disconnected from the social structures of local contexts (Kymlicka, 2001; Calhoun, 2002; Thompson, 1998; Castiglione & Bellamy, 1998).

Yet, clearly cosmopolitan democracy could not seriously require homogeneity on a global scale. In fact, based on the principle of democratic autonomy, Held understands the individual in relation to community and, as such, he argues for a reinvigorated local politics as well as a comprehensive cosmopolitan law. In the liberal tradition, a commitment to self-determination presupposes the normativity of individual autonomy. Simply put, it states that individuals 'should be free and equal in the determination of the conditions of their own lives' (Held, 1995, p. 147). However, given that individuals always live in groups or among other individuals, the principle needs to be qualified: People ought to be free in so far as they do not violate the rights of others—liberty is not license. Thus for Held the principle of 'democratic autonomy'

is not the right of atomistic individuals to greedily pursue self-interest without constraint; but rather it is a 'structural principle of self-determination where "the self" is part of the collectivity or "the majority"'. It is 'autonomy within the constraints of community' (Held, 1995, p. 156).

Held is thus aware that there is no emerging 'common global pool of memories' to constitute a single global political community. We may depend, he insists, on the 'persistence of a plurality of frames of political meaning' (Held, 1995, p. 125). In fact he argues that cosmopolitan democracy opens up the possibility for a reinvigorated participatory politics in the local sphere (Held, 1995, pp. 235, 278). Held envisions cosmopolitan democracy to be a system of overlapping authorities and divided loyalties (Held, 1995, p. 137).

There is nothing inherent to a community-based interpretation of political authority that is necessarily antithetical to the recognition of the normative and practical benefits of extending the rule of law to the transnational domain. Possessing a primary political attachment to one's own community does not signify an *ipso facto* rejection of general normative commitments to human rights and representative democracy. Rather it signifies that such commitments must be understood as rooted and substantiated in specific social contexts that inform and motivate people's various levels of commitment to the pursuit of transnational democratic politics. In fact, a consideration of globalization stemming from this insight could encourage the project of cosmopolitanism, as more and more communities come into regular contact, intertwine, and learn from one another, expanding the awareness of diverse ways of life.

According to Held, in a cosmopolitan democracy individuals would remain rooted in their local communities, but political participation would also be structured along national, regional and even global lines. Admittedly, this would likely result in boundary conflicts regarding what issue is to be settled where. At the very least, it would demand a rigorous system for determining the jurisdiction of particular issues. For example, distinguishing a national issue from a regional one would be an important and often difficult task.[2] According to Held, the key to keeping this system from descending into a chaotic medievalism would be a general commitment to a 'cosmopolitan model of democratic autonomy' (Held, 1995, p. 140). In order to avoid the predominance of centrifugal forces, each level of the system would have to remain compatible with the overall cosmopolitan model.

In this sense, it does in fact remain unclear how much latitude each local collectivity would in fact possess for distinguishing itself from the general political structure of the cosmopolitan whole. Yet, according to Held, this should not restrict local self-determination. In fact, he argues, in relation to the current context it would liberate self-determination. Held claims that a commitment to democratic autonomy embedded in a cosmopolitan legal structure is a *necessary* condition of collective self-determination in the context of globalization. The claim being if we choose democracy in the context of globalization we must choose some form of 'cosmopolitan democracy'. If we could assume that a form of liberal democracy indeed would be the world's choice, I would be inclined to accept a version of this claim. Yet Held does not adequately address the problem of articulating the proper *constitutive authority* for such an order. He does not adequately theorize what it would mean to legitimately constitute such an order, given the fact many would not freely choose it.

Held's cosmopolitan democracy is designed to maximize self-determination; but in the absence of a pre-existing consensus, the institutional reform necessary to constitute such a system would tend to require coercive means. And a top-down systemic reform executed on an unwilling base could have volatile consequences. While Held clearly recognizes the persistence of pluralism, his model requires convergence upon a global overlapping consensus: the development of a common political culture.

The normative core of a cosmopolitan democratic order is firmly rooted in the liberal tradition. Those who find this tradition distasteful will tend to oppose Held's cosmopolitan democracy. Those who resist the language of autonomy and self-determination may resist the cosmopolitan democratic project altogether. This is true not simply for some non-Western traditions, but for tendencies within the West as well. Indeed, Held suggests that at their core the Rousseauian and Marxist traditions—not to mention conservative Judeo-Christian traditions—do not entail commitments to the principle of autonomy (Held, 1995, p. 149).

To what extent does Held presuppose convergence into a global political society? He makes clear that he does not see globalization inevitably leading toward a 'world society', a single integrated global community (Held et al., 1999, p. 28). However, he remains dependent on a thinner notion of political society. Cosmopolitan governance depends upon a fundamental agreement over the need to regulate association by democratically legitimate law on a global scale. Currently, none of the principal actors in the international arena—not states, peoples, or capital—would participate in such an agreement. None have an immediate interest in the transnational democratization of power (Wendt, 1999).

For example, a new level of regulation and oversight is antithetical to the libertarian instincts of capital, the driving force behind neo-liberal ideology. While capital benefits from international legal agreements guaranteeing property relations and processes of exchange, it opposes regulatory procedures that might restrict labor or trade policies in the name of social interests. States, as the major actors in the international arena, have a strong interest in maintaining their *de jure* sovereignty; sovereign status remains the foundation of state identity and agency in the international arena. This is never to be given up lightly. And perhaps most troublesome for the cosmopolitan vision, while individuals are set to benefit the most from cosmopolitan democratic law, *peoples* are often the most reactionary forces regarding notions of world community and transnational solidarity. Popular opinion is often more nationalistic and parochial than that of political, social and economic elites.

Recently, Held has argued that a coalition of European social democrats, liberal Americans, and developing countries seeking fair trade and debt relief, allied with powerful NGOs, could provide the impulse to push the international agenda toward a 'global social democracy' (Held, 2004). In this spirit he has striven to provide detailed policy recommendations for the project of reforming global governance in the direction of a more social democratic future. Doing so in accessible terms, he has provided an invaluable service for the practitioners of global policy; and we can only hope they give him the attention he is due. Nevertheless, while the formation of such a powerful coalition for cosmopolitan social democracy is certainly within the realm of possibility, after even the most cursory survey of the contemporary scene, one would be hard-pressed to call it likely. Held is admittedly an optimist.

The conditions for the establishment of a common political culture on a global scale do not yet exist. While this must not spell doom for the project of cosmopolitan democracy as a normative ideal, it does raise tough questions concerning the constitution of the global political culture necessary to legitimately institute a system of cosmopolitan democratic law. How does the system incorporate groups that reject its normative appeal? This is more than a practical or institutional question. The acceleration of globalization and the spread of cosmopolitan ideals have witnessed a concomitant rise in reactionary and extremist activism. To institute cosmopolitan law without a broad-based supportive politics is to invite violent, energetic counter-action.[3] Held is at his best when he theorizes either the global reality of contemporary affairs or the ideal of a cosmopolitan future. But it is the road between that is the most challenging and vital. For Held, the short-term project is to reform the international system according to

its inherent principles, which, he argues, logically lead toward cosmopolitan social democracy. However, he does not provide an adequate explanation of the politics entailed in achieving this end in the context of vigorous dissent and extreme asymmetries of power.

Jürgen Habermas' recent work on the 'postnational constellation' in some ways provides such a bridge between globalizing present and cosmopolitan future. Similar to Held, Habermas perceives the nation-state under siege in the context of globalization. However, unlike Held, Habermas stops short of articulating the design for a consolidated cosmopolitan system. And yet, I argue, he encounters similar problems regarding the particular context of democratic politics and the legitimate constitution of cosmopolitan governance.

## The Politics of Regionalism: Habermas[4]

### Post-national Citizenship

One way to imagine the middle course between a retreat to national isolationism and the rush to global integration is the pursuit of regional structures of governance. The accelerated integration of separate nation-states into new political and economic units on a regional scale may be read as a particular response to the exigencies of globalization. Habermas offers a theory of a democratized European Union in these terms. His version of the post-national constellation presents a form of *regionalism* as an attempt to demonstrate how democratic politics might be reconfigured to regain power lost to transnational economic and political actors. *Regionalism* is thus understood as a political project that is more than the gradual integration of a large, previously divided territory. It is a response to political and economic developments that threaten to spin out of control, by attempting to provide for the first time an effective infrastructure for the governance of the transnational sphere. And in this sense *regionalism* can be generalized to represent a normative project for the articulation of a new global order.

Habermas invites us to understand European regional politics as *post*-national; it clearly seeks to transcend long-standing ethnic or linguistic divisions: the French and Germans, the Spanish and British, the Czechs and Poles all to share a common citizenship. Yet the cultivation of a post-national or transnational common citizenship must entail more than the democratic reform of regional institutions. As Habermas has previously indicated, the relationship between nationalism and modern democratic practice has long been intertwined (Habermas, 1998, Chap. 4). Thus history would suggest achieving post-national citizenship could not entail simply substituting democratic identity for national identity.

The history of the liberal democratic nation-state is characterized by a tension between republicanism and nationalism—between the ideals of universal citizenship and the historical, cultural context in which such ideals take root. And, according to Habermas, the fate of democracy depends upon which tendency predominates (Habermas, 1998, Chap. 4). Democratic citizenship articulates more than a legal status for Habermas; it provides the foundation of a shared political culture that can serve the purpose of social integration often provided for by ethnocentric nationalism. In order for the democratic integration of a regional polity to be successful it must be able to cultivate a common political culture among an extremely diverse array of peoples. Habermas argues that in a liberal democratic nation-state political culture may arise from a rational consensus over the general principles of legitimate democratic practice. Basic constitutional rights and principles can serve as a 'fixed point of reference' around which a '"constitutional patriotism" may develop, politically integrating people from a variety of world-views' (Habermas, 1998, p. 225; see also Habermas, 1989). To the extent that the legal definition of

citizenship is based upon the notion of universal equality before the law, these basic rights and principles remain independent from the identity of any particular group. Conceptually speaking, there is no reason why this could not function similarly at the regional or continental level.

However, while the principles of *universal* legal equality may transcend national divisions in a regional polity, to become operational they must be situated within a *particular* historical context. According to Habermas, in a complex, multicultural, value-pluralist world, basic political rights and principles pertain to those that 'citizens must confer on one another if they want to legitimately regulate their interactions and life contexts by means of positive law' (Habermas, 1996, p. 122). However, the basic categories of positive and negative rights are in Habermas' terms, 'unsaturated'; they lack the substance of particular historical, political or social concerns. And, as a result, they cannot become the 'driving force' behind the project of democratic political integration 'until they are situated in the historical context of the history of a nation of citizens' (Habermas, 1996, p. 499). And for Habermas this is equally true for democratic integration on the regional scale.

Arguing in favor of a European constitution, Habermas suggests the prerequisites for success go beyond the abstract allegiance to broad principles to the 'interest in and affective attachment to a particular ethos: in other words, the attraction of a specific way of life' (Habermas, 2001b, p. 8). Regional political integration thus depends not only on a shared commitment to the values of liberal democratic practice but on a shared historical experience which may provide a common backdrop for the interpretation of basic constitutional principles and to a specific shared way of life. Sharing the values of liberal democratic practice is not the same as sharing a 'specific way of life'. While both are committed to liberal democracy, for example, there are notoriously sharp distinctions between the broadly speaking American and the broadly speaking European ethos.

According to Habermas, the nations of Europe already share a certain historical horizon based in the shared experiences of modernization and violent upheaval. After centuries of conflict—between religions and between nations—culminating in two disastrous international wars, Europe has come to share a common tendency toward toleration, 'the overcoming of particularisms . . . and the institutionalization of disputes' (Habermas, 2001a, p. 103). Thus it is not only that the European nations share a geographic and therefore historical contiguity, but that, according to Habermas, they have lived a shared history that particularly prepares them for regional political integration.

While Habermas is thus optimistic about the solidarity producing effects of a common European history, there are many reasons to be less sanguine. For many, it is precisely the variety of the European experience that calls into question the viability of political integration on the regional scale. This is becoming all the more apparent with the most recent round of EU expansion to include former Communist bloc countries. How will the different state traditions and historical experiences of the North and the South, or the East and West affect the cultivation of a common regional political culture in Europe? And ultimately where does the European border lie? Why is Turkey potentially in while Russia is out? As the debates surrounding 'the Draft Treaty establishing a Constitution for Europe' would suggest, such questions are not easily answered.

Yet, in spite of the variety of political traditions across the continent, according to Habermas, the course of European history reflects a general process of modernization that forms a common value horizon, providing the shared context for the interpretation and application of basic constitutional rights and principles, making possible the development of a common political culture across the diverse peoples of Europe. He argues, the experiences of European history 'have

shaped the normative self-understanding of European modernity into an egalitarian universalism that can ease the transition to postnational democracy's demanding contexts of mutual recognition' (Habermas, 2001a, p. 103).

Regional political integration requires an expansion of civil solidarity beyond the nation-state; and the basis of this solidarity is a shared political culture that can only succeed within the common horizon of a shared course of history and a sense of common fate. While regional political integration does not require homogenization, it does require the cultivation of a regional political identity that 'goes beyond mere legal classification' (Calhoun, 2002a). According to Habermas' own terms, European political integration depends upon a territorially based political identity situated in a shared history. In the sense that the shared history occurs on the regional level, and entails solidarity among a variety of ethnic groups, it is understood as *post*-national. Yet one could equally discuss this in terms of an 'extended nationalism', or a regional civic-nationalism.[5]

Habermas tends to equate nationalism with ethnonationalism (Calhoun, 2002a, note 17; see also, Calhoun, 2002b, p. 279). Yet 'constitutional patriotism' in another manner of speaking is the civic-nationalism inspired by the principles of liberal-democracy at work in a multicultural polity. While ethnonationalism places the basis for political membership in a collective identity existentially prior to state institutions, civic-nationalism understands the origins of political membership as inseparable from legal rights and institutions. Membership in the nation is defined by equal status before the law without necessary reference to ethnic, cultural, or religious identity of any kind.

A democratized European Union would be animated by a spirit of 'extended nationalism' in that its integration would depend upon a territorially based political identity, situated in a shared history, and cultivated by the constitution of a political process that enabled a continental collective capacity to make legitimately binding decisions. As should be clear, situated in a particular history, the regional polity does not transcend the relationship between universal citizenship and political particularity: the tension between the two remains.

## Cosmopolitan Governance

For Habermas, the democratized regional polity is concerned with reinvigorating the democratic capacity to govern in the context of globalization. Integral to the project of democratic regionalism is the potential for transnational coordination between regional polities, civil society actors, and international organizations. The consolidation of regional polities, for Habermas, represents the possibility of providing an effective, democratically legitimate infrastructure to the international system for the first time. However, the extent to which a regional democratic polity could be integrated into a comprehensive cosmopolitan system in Habermas terms remains open to question.

Like many before him,[6] Habermas is skeptical about the normative justifiability and practical feasibility of a comprehensive World State. He argues that an international system composed of regional polities, global civil society actors, and international organizations such as the UN would be preferable and more likely to succeed than a more comprehensive and integrated cosmopolitan democracy like the one proposed by David Held (1995). Habermas proposes a system of cosmopolitan *harmonization* rather than administrative institutional *consolidation* (Habermas, 2002, p. 232).

However, Habermas clearly seeks an international system regulated by more than the inconsistencies of transnational power politics and generalized commitments to human rights.

In reflecting on Kant's *Perpetual Peace* with 'the benefit of two hundred years' hindsight', Habermas argues that cosmopolitan law must carry the threat of sanction. It must have the coercive power to bind state governments in the interest of protecting the legal rights of individuals as free and equal world citizens without reference to particular national belonging (Habermas, 1998, pp. 179–181). At its best, for Habermas, the present is a transition period between the Westphalian system of nation-states and a future de-centered cosmopolitan legal order characterized by the broad acceptance of human rights and a transnational commitment to social justice (Habermas, 1998, p. 183). Democratic regional polities offer the best practical stepping-stones to this cosmopolitan future.

Yet a serious problem arises in Habermas's is model: achieving cosmopolitan legal harmony necessitates convergence upon a political identity he suggests lacks the ethical-political foundations necessary to produce democratic legitimacy. For, '[e]ven a world-wide consensus on human rights could not serve as the basis for a strong equivalent to the *civic* solidarity that emerged in the framework of the nation-state' (Habermas, 2001a, p.108).

Habermas envisions a system where processes of democratic political identity-formation remain tied to national and regional historical experience. Yet it is unclear, in Habermas's own terms, how cosmopolitan law would be able to gain democratic legitimacy, given that world citizenship cannot constitute the requisite sense of civic solidarity, something he recognizes is necessary even in the discourse model of the regional polity. For Habermas, 'constitutional patriotism' may serve to reconcile the universality of cosmopolitan right and the particularity of popular sovereignty. Yet 'constitutional patriotism' proves to be either too strong or too weak to succeed at the global level. Either it strongly binds a political community together around vigorous particular interpretations of abstract constitutional rights at the cost of cosmopolitan identification, or its content remains at such a level of generality that it allows for cosmopolitan identification but fails to produce the 'ethic of solidarity' on the domestic level necessary for the production of democratic legitimacy (see Fine & Smith, 2003).

Thus the development of an enforceable cosmopolitan legal order out of an emerging post-Westphalian system of nation-states, regional polities, international institutions, and global civil society actors, entails a more radical leap than Habermas is willing to concede. The project of cosmopolitan democracy is subject to a serious conceptual problem: democratic legitimacy depends upon the cultivation of a common political culture and the solidarity that arises from it. Yet the conditions for the constitution of such a culture are incompatible with a global domain of cosmopolitan governance. The historic tension between the ideal of universal citizenship and the necessarily particular contexts in which it becomes situated is only exacerbated when extended to the transnational sphere.

## Networks and the Tasks of Global Civil Society

### The Ambivalence of Networks

David Held diagnoses the threat to traditional forms of democratic politics posed by processes of globalization, and he articulates a normative and institutional vision of cosmopolitan democracy as a response to that threat. However, he does not adequately theorize a form of politics that may legitimately constitute such a system. We are left with the impression that cosmopolitan democracy is an elite project constituted from the top down (Cochran, 2002). Habermas, on the other hand, offers a form of democratic regional politics as the best practical stepping-stone between globalizing present and cosmopolitan future. Yet the stone path falls one step short: the ethical

foundations of popular sovereignty and democratic legitimacy remain unable to extend the final distance to a globalized system of law. Might then a form of de-centered global civil society and democratic network governance provide the tools to bridge the gap?

Cosmopolitan democracy and democratic regionalism are strategies to regain lost capacities for collective self-government by establishing new levels of political integration, either on the regional or global scale. Theories of global *network governance* on the other hand attempt to elude the tensions inherent to projects of integration by operating under the assumption that social and political institutions must adapt to an environment of increasingly de-centered authority (Held & McGrew, 2002). Theorists of global governance reject the traditional state-centered view of international relations and global politics. They argue that in the last quarter of the twentieth century the world witnessed a proliferation of centers of authority whose sources are neither the individual nation-state nor the state-based treaties of international law. Instead they develop out of interest-based functional networks that either bypass or establish equal partnerships with government in the international sphere. For example, the International Accounting Standards Committee since 1973 has set international accountancy standards independent from state regulation. And since 1998 the G7, the IMF and the World Bank have officially recognized the Committee's authority (Woods, 2002, p. 31).

In contrast to the hierarchical model of state authority, the model of global governance is based on the horizontal form of the 'network'. While the contributing factors to the decline of state capacities are many, as James Rosenau argues, 'one of the most important of these has been the shifting balance between hierarchical and network forms of organization' (Rosenau, 2002, p. 77). Manual Castells pioneering work in this field is instructive: simply put, 'a network is a set of interconnected nodes' (Castells, 2000, p. 501). The character of the individual node depends upon the specific network: a currency trader's office in London is a node in the global financial market; a local gathering of A.N.S.W.E.R. coalition, a node in the international anti-war movement; an Al-Qaeda cell in Spain, a node in the global terrorism network.

This manner of de-centering transnational practice away from the nation-state has clearly been amplified and accelerated by the recent revolution in information and communication technology. Most importantly the development of the world-wide-web has vastly improved the capacity of networks to coordinate action, disseminate information, and recruit new members. In the information age of the Internet and satellite communications, networks have the capacity to all but transcend distance completely. For the academic in the course of organizing a conference or editing a book, a colleague overseas that checks his email regularly is ironically 'closer' than the Emeritus Professor down the hall who still refuses to 'get connected'. Distance in the information age, Castells argues, ranges from zero, between any two nodes on the same network, to the infinite distance to a point outside of a given network. In this way, political action and authority based in the network form is *deterritorialized*. Distance or proximity becomes detached from territorial space, thus undermining the paradigm of the state, categorically organized around the geographic limits of 'national territory'.

The network form clearly raises the ability of non-state actors to accumulate political power. But does this signify a redistribution of power to the historically powerless? Is it a form of transnational democratization? Can we speak of it as a form of transnational popular sovereignty in the same way we discussed cosmopolitan politics or democratic regionalism? The movement against the war in Iraq indeed established 'chains of equivalence'[7] across a broad swath of humanity, creating a potent political solidarity where there was none previously. And yet, while network-based governance does perhaps carry such a potential for inclusion, it does not

necessarily do so. For example, one can observe an emerging pattern in which the governance of technical issues is given over to networks of experts. Ngaire Woods argues that an emerging form of 'Technocratic Network Governance' devolves regulatory procedures away from traditionally representative institutions and processes of transparency into the inaccessible, jargon-filled boardrooms of technical elite rule. In such cases, legitimacy becomes detached from democratic procedure. The technical quality of results comes to matter more than the status of 'democratic inputs' (Woods, 2002, p. 34). Thus, network forms while non-hierarchical are not necessarily inclusive; they may serve as tools of exclusion as easily as they can provide avenues for the proliferation of political participation; they are in effect normatively ambivalent.

*Global Civil Society*

Recent years have witnessed the accelerated evolution of a complex system of de-centered transnational regulation and rule making on a near global scale. This system includes states, international organizations, treaty regimes, security relationships, transnational networks, private agencies, public–private partnerships, financial institutions and more. Serving an important function in an increasingly interconnected world, however, this complex of mechanisms and organizations lacks a coherent structure for the consideration of democratic will-formation. That is to say, global governance suffers from a clear democratic deficit. As David Held and Anthony McGrew have argued, 'global governance is said to be distorted in so far as it promotes the interests of the most powerful states and global social forces, and restricts the realization of greater global social justice and human security' (Held & McGrew, 2002, p. 13).

If network governance is only potentially a democratic form of transnational politics, how do we distinguish its democratic form from its exclusionary cousin? May we specify 'global civil society' as the democratic form of network-based global governance? While the meaning of the term 'civil society' has shifted over time, in the post-cold war world it has come largely to signify the sphere of 'social interaction', independent from the state and the market, encompassing formal and informal associations, non-governmental organizations (NGOs), social movements, and other processes of public communication (Cohen & Arato, 1992; Kaldor, 2003).

Concomitant with processes of globalization and the spread of information technology, civil society in this sense has transcended national and regional borders. The 1990s witnessed the vast growth in the number of transnational social movements, NGOs and international citizen networks, for the first time contributing to the sense that a truly global civil society was in the making. Such movements and organizations contributed to the growing emphasis on human rights and social justice in the international agenda in the late 1990s. At times they have proven to be genuinely effective in changing international policy, for example, in the case of the campaign against landmines (Glasius & Kaldor, 2002). The strong presence of civil society organizations at the large global forums of the 1990s such as the Rio Earth Summit or the Beijing conference on Women and Development, and the subsequent advent of the annual World Social Forum, have also elevated the presence and influence of such actors on the global stage.

However, does this then mean that the continued spread of civil society organizations represents the democratization of global governance? Some have argued that the central role played by civil society organizations in the Ottawa Convention Banning Landmines served for the first time to democratize the process of international legislation (Anderson, 2000). Could perhaps a vibrant global civil society provide the necessary democratic legitimacy to a

de-centered form of global governance? Could it extend the conditions for the constitution of democratic governance all the way out to the global domain?

A strong version of the civil society argument suggests that a vibrant, diverse global civil society could democratize global governance, independent of reform at the level of states or international law. James Rosenau has argued that the more global civil society becomes populated with a variety of social movements, NGOs and international institutions the more global governance will in fact exhibit 'democratic tendencies'. Empowered by the information and communication revolution, such grassroots networks and social movements can provide a counterbalance to transnational 'technical networks' that support or reproduce the agenda of entrenched interests. As global civil society becomes more populated with a diversity of movements and organizations making specific demands on specific institutions and articulating previously excluded political perspectives, the more receptive to popular concerns and the more transparent the mechanisms of global governance will become (Rosenau, 1998). Similarly, John Dryzek argues that in the absence of global government, transnational democratization is achievable at the discursive level through the capacity of global civil society to control the terms of debate. He argues that the 'network form can play a key part in establishing deliberative democratic control over the terms of political discourse and so the operation of governance in the international system' (Dryzek, 1999, p. 48).

However, this represents a very ideal view of the position and potential of global civil society. In many respects, global civil society is extremely limited and often does not live up to its normative expectations. Global civil society organizations are often Eurocentric, frequently co-opted by powerful interests, and of questionable representative status. The claim that in international affairs the mere presence of global civil society organizations represents a democratization of the international domain must be treated with extreme caution. Global civil society must itself be on object of critique.

For one thing, global civil society institutions arise out of the same political economy as other international institutions. Thus you find the same inequalities reproduced in civil society institutions as elsewhere (Chandhoke, 2002). For example, civil society resources are much higher in the OECD countries, thus tipping the scale of influence heavily in their favor. In fact, predictably, the only city outside of Europe or America in the top ten centers for international NGOs is Tokyo (*Global Civil Society*, 2002, p. 6, Table 1.1). Furthermore, clearly not every civil society organization directly or indirectly promotes values consistent with liberal or social democracy. What about associations promoting extreme sectarian or fundamentalist causes? Consideration certainly must be given to what Simone Chambers and Jeff Kopstein have called 'bad civil society' (Chambers & Kopstein, 2001).

A more moderate form of the global civil society argument understands its role within the context of domestic reform and international agreement. It argues that civil society has an important role in bringing issues of global concern to the top of the international agenda. For example, civil society played a vital role in providing the momentum for the creation of the International Criminal Court (Kaldor, 2003, pp. 131–132) and, as previously mentioned, it was integral to the Ottawa Convention Banning Landmines. Furthermore, Margaret Keck and Kathryn Sikkink have described what they call the 'boomerang pattern', when a social movement or NGO finds its own government unresponsive to its demands, and thus turns to the international community for help. Usually this takes the form of stimulating what Keck and Sikkink call 'transnational advocacy networks' which petition foreign states and third-party intergovernmental organizations to pressure the violating government to change. This has proven highly effective in the past, for example in the case of the anti-apartheid movement (Keck &

Sikkink, 1998, pp. 12–28). In this sense, the participation of civil society organizations in the process of international legislation, previously restricted to states, is understood as a major factor in democratizing the constitution of global governance.

Yet, again, if taken as a general rule, this position entails considerable idealization. For one, as indicated, civil society institutions can be gradually co-opted by powerful interests. The international environmental movement is a case in point. After the Rio Earth Summit in 1992 the environmental movement gained tremendous influence. Green parties joined coalition governments in Europe and corporations hired environmental advisors. Yet in July of 2001 when the parties to the UN Framework Convention on Climate Change met in Bonn they systematically rolled back the commitments made in Rio in 1992. And global civil society organizations such as Greenpeace and Friends of the Earth International were left to applaud as historic an agreement they would have found completely unacceptable only ten years earlier (Kaldor, 2003, pp. 7–9).

There are also questions concerning the representative status of civil society institutions. Who do they in fact speak for? And how do they set their agendas? NGOs at the global level can be very large complex organizations highly removed from any basic social or political community. Their only true constituency, so to speak, is their member base, people who send in a check from time to time—a financial contribution being the only form of participation expected from the general public—their policies often the product of specialized professionals and not public deliberation. Furthermore, often those people most in need of articulating their requirements outside of state institutions live in hostile political environments that restrict peaceful protest and free association, making the functioning of civil society associations all but impossible.

Thus in order for the sum effect of global civil society to be the democratization of global governance, it must exist within a framework of normative rules and egalitarian institutions that ensures equal access to all and compensates for broad differentials of power. Organizations and movements from around the world must have the capacity and freedom to articulate their diverse interests, as they simultaneously cultivate the sense of global interdependence necessary to address issues of common concern for the entire planet. However, then we must ask, how would this framework be constituted? And, in such case, have we not thus come full circle? In the interest of democratic legitimacy, the constitution of global governance must incorporate the input of civil society. And yet civil society, in order to live up to its normative expectations, requires an already existing framework of governance to provide the relatively level and inclusive playing field necessary to establish its conditions of possibility.

Democratic legitimacy remains tied to particular contexts of interest and historical perspective. Transnational democratic legitimacy even for a de-centered global civil society depends upon the cultivation of a minimal common frame of action, necessary to avoid the perception that transnational politics benefit only powerful states at the expense of the weak—a charge at times leveled against environmental or human rights accords. Global civil society is perhaps caught in an infinite regress: it must play a constitutive role in cultivating the recognition of a common planetary project for the democratization of global governance; but this awareness must in some sense already be present in order to produce the 'democratic tendencies' necessary for it to gain legitimacy. Global civil society must construct its own conditions of possibility. It is the ship at sea, still under construction.

## Conclusion

New forms of global governance and transnational legal structures are now emerging in a de-centered 'evolutionary process'.[8] The question is how to instill this process with democratic

legitimacy. Is it possible for a form of democratic practice to take part in the constitution of the emerging forms of global governance? Can the collective capacity to steer the social, political and economic institutions that affect our lives be reinvigorated on a transnational scale? Cosmopolitan democracy, democratic regionalism, and democratic network governance represent three forms of politics that attempt just that.

In the context of globalization no form of politics may be thought of in isolation: Regionalism must be thought of in the context of the broader world order; cosmopolitanism implies transformations at the local, national, and regional levels. And global networks are enabled or hindered depending upon the character of national and international politics as they traverse national and regional boundaries. I have argued that each model of transnational politics encounters a tension between the particular contexts of democratic legitimacy and the universalism demanded of a political culture that can address the myriad issues in need of transnational governance revealed by our increasingly global interdependence.

While interdependence is on the rise, the universal recognition of a planetary common good remains an elusive goal, to say the very least. More than expressing the unity of humanity, the rise of global civil society highlights the complexity and asymmetry of the world. Global civil society does not constitute a single *proto*-world-community; it is complex, stratified, and endlessly diverse. Yet this need not present an impassable obstacle to the democratization of global governance. For *pace* Rousseau, popular sovereignty has seldom concerned the governance of unified societies but rather struggles for power in divided societies (Morgan, 1988).

Habermas has suggested the unity between the particular context-embedded democratic will and the abstract, universal rule of law 'can only develop in the dimension of time' (Habermas, 2001c, p. 768). If we can understand the constitution of transnational democracy as an ongoing, tradition-building process based in local, national and regional democratic projects, perhaps over time the tension between the particularity of democratic legitimacy and the universality of cosmopolitanism could be reconciled. Yet again this depends upon a growing awareness of global interdependence, the cultivation of the perception that we are in effect all 'in the same boat'.

This is not simply a matter of determining which comes first: transnational solidarity or cosmopolitan institutions, but rather of the long-term politics and open-ended processes of democratizing international institutions and political culture simultaneously. It is a matter of the interrelation between institutional innovation and the cultivation of democratic norms. The world is now indeed a community of shared risks—environmental disaster, international terror and crime, nuclear proliferation, the interrelation of financial markets, all have transnational effects. A transnational politics must build bridges across borders to address these problems. Such a transnational politics must achieve real results for a wide range of humanity; a globalization of heightened inequality is doomed to disaster. Raising awareness to that effect is perhaps the most important role for global civil society today. Only such a politics could establish the conditions for the legitimate constitution of a democratic global governance.

## Notes

1 In fact as many have argued the post-cold war era has witnessed a reinvigoration of nationalism rather than its transcendence (see e.g. Brubaker, 1996).
2 In fact some have argued that this would gravitate extraordinary power in the hands of cosmopolitan judges. Risking a form of global 'judicial imperialism', see Scheuerman, 2002; Zolo, 2000, pp. 79–80.

3    In addition, without broad support, the shift away from a system of sovereign states toward a system of global law carries the risk of domination by a single power: 'empire'. Thus Jean L. Cohen (2004), for example, argues the key is to pursue cosmopolitan justice while simultaneously maintaining the historical commitment to the 'sovereign equality' of states.

4    An extended version of this discussion appears in Lupel (2004).

5    Dudley Seers in discussing the political economy of the European Union describes the future of Europe in these terms (Seers, 1983; see also Hettne, 2000).

6    Most notably Kant, in his famous essay 'To Perpetual Peace', argued for a federation of nations or a 'league of peace (foedus pacificum)' rather than a 'World republic' (Kant, 1983 [1795], p. 117).

7    This is the terminology of Ernesto Laclau (see Laclau & Mouffe, 1985; Laclau, 1996).

8    On the 'evolutionary process' of constitution-making see Arato (2000, p. 235).

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