

2

Political-legal cosmopolitanism

Unlike moral cosmopolitanism, which applies moral cosmopolitan standards to the evaluation of human agents and their behaviour or to social institutions, political-legal cosmopolitanism proposes the creation of a *cosmopolis*, a cosmopolitan institutional order under which all persons have equivalent rights and duties and are therefore citizens of a universal republic. From this point of view, it is the only form of cosmopolitanism that truly warrants the adjective '*cosmo-political*'. It shares with moral cosmopolitanism the idea that 'every person has global stature as the ultimate unit of moral concern' (Pogge 2008: 175) and that each person is entitled to equal consideration regardless of her citizenship or nationality. Such equality implies that duties and responsibilities pertain to each human being, which itself raises the problem of understanding the trade-off between duties we have towards the polis and those that we have towards the cosmopolis, between the duties we have towards our fellow citizens and those towards the citizens of the human community. Moral cosmopolitans consider that our obligations towards others (the safeguarding of human rights or the development of capacity at least up to a certain minimum threshold) can be honoured through different forms of global governance, and do not necessarily entail the creation of a political-legal cosmopolitical order. Advocates of political-legal cosmopolitanism are quite convinced however that profound institutional transformations are essential if the global system is to satisfactorily achieve the cosmopolitan ideal. For this reason they have addressed the problem of identifying the institutional arrangements capable of effectively and efficiently defending peace and human rights, of materializing the ever-increasing sense of cosmopolitan membership, of guaranteeing equal political participation to all world citizens.

Advocates of political-legal cosmopolitanism consider themselves the heirs to the philosophy of Immanuel Kant, although their starting point consists of different interpretations of his ideal of *Weltrepublik*. In the course of his reflection on the institution of a state of peace as the condition for the possible development of the *Bestimmung des Menschen* ('destination of mankind'), Kant appears to hover between two distinct positions: after he acknowledges

that this state of peace can be guaranteed only by the perfect civil unification of humankind, the latter is on some occasions presented as a confederation of peoples (*Völkerbund*) (Kant 1784: 165; 1795: 102; 1797: 171), on others as a state of peoples (*Völkerstaat*) (Kant 1795: 105; 1793: 92).

This ambiguity has given rise to the expression of at least three distinct interpretations. On one side there are those for whom the Kantian solution consists in a confederation of states defined as a permanent, voluntary, potentially universal but always revocable congress (Kant 1797: 171). On the other, we find the champions of the thesis according to which Kant is believed to have opted for a world federal state.¹ The latter interpretation is grounded on two textual indications. The first is found in 'Perpetual Peace' (1795) and, more exactly, in the passage in which the free confederation is defined as 'a negative substitute' of an international state (*civitas gentium*, *Weltrepublik*) (Kant 1795: 105); the second consists in the emergence, in both 'Perpetual Peace' and the 'Metaphysics of Morals' (1797), of the concept of cosmopolitan right (*Weltbürgerrecht*), which is interpreted as the right of each human being to possess the legal status of citizen of the world and therefore the right of persons not insofar as they are inhabitants of any given state but rather of a world state. Cosmopolitan law would thus boil down to the constitutional law of a World State – to which the states would have to transfer part or all of their own sovereignty – viewed as the ultimate goal towards which to proceed once the republican political law (the goal of the first definitive article for perpetual peace) and the confederative law of peoples (the goal of the second definitive article for perpetual peace) have been achieved. In this view, *Völkerbund*, the confederation, would simply be a step towards the cosmopolitical state, which would be permanent and fully implemented only after every state in the world had become republican. This idea was developed by Hans Kelsen (1944) in several highly innovative theoretical-legal theses such as the primacy of international law, the partial nature of national legal orders and the need to do away with the very idea of state sovereignty. According to Kelsen, the internal rules of any national legal system must comply with international rules: in the case of disagreement the latter have priority. In his view, in order to attain the objective of peace it is necessary to unite the national states into a federal World State capable of wielding a coercive power and attaining the legal unification of all peoples: the armed forces and the political apparatuses of states must be placed at the disposal of a world criminal court that exerts its authority through rules issued by a universal parliament. For Norberto Bobbio (1979), who was influenced by Kelsenian normativism, the institution of a global legal order and a World State that enjoys the monopoly of the use of force is the objective humankind must attain in order to avert the risk of self-destruction. In this theoretical outlook the philosopher deems that the United Nations is a forerunner and the

generating core, as it were, of the superstate, the power of which will be capable of limiting the use of international force, subjecting it to the rules of law and ensuring stable and universal conditions of peace. Since the United Nations does not envisage the subordinating of the member states to the authority of a global government and jurisdiction possessing the exclusive right to exert coercive power, it needs to be reformed. If the aim is to ensure that the fundamental rights benefit from *erga omnes* cogency specific to positive legal orders, it is not enough to set up international courts lacking any true compulsory jurisdiction, such as the International Court of Justice. It is necessary to create a compulsory universal jurisdiction such that the United Nations can intervene, even militarily if required, to put an end to breaches of human rights using armed forces acting under its command. For those who interpret Kant's *Weltrepublik* as a world state, the protection of rights cannot be left in the hands of the national states, but must be increasingly entrusted to supra-national bodies. The establishment of a compulsory universal jurisdiction and an actual international police force is considered as the sole possible alternative to war and international disorder. The authors that view with favour the expansion of international criminal jurisdiction² also hope for the establishment of a cosmopolitan law to replace the current international law, and tend to subscribe to the thesis of the universality of human rights. This conviction is grounded on the assumption of the *domestic analogy*: if the centralization of political and legal power has reduced violence inside national states, it may well be asserted that the concentration of power in the hands of a supreme supra-national authority will pose the condition for the construction of a fairer, orderly and peaceful world. This domestic analogy is partially shared also by the advocates of cosmopolitan democracy (Daniele Archibugi and David Held). They interpret Kant's *Weltrepublik* as a form of unification that is intermediate between a world confederation and a world federal state. Although they are against the creation of a world federal state, which would entrain the disappearance of the states, they are of the view that the political-legal structure should be reshaped so that states and the other political units are brought under the authority of supra-national agencies. Their interpretation of the Kantian idea could be expressed in the following formula: the transition from government to governance. Or rather, to a new form of governance, since what characterizes the champions of cosmopolitan democracy is the determination to make more democratic existing forms of governance and to construct a true cosmopolitan citizenship side by side with national citizenship.

The advocates of cosmopolitan democracy (codems) claim that cosmopolitanism is a utopia rooted in the present that requires the full realization of the idea contained in the 1948 Universal Declaration of Human Rights and in subsequent international accords on human rights adopted by

the 1966 UN General Assembly to the effect that all human beings are born free and have equal dignity and rights without distinction of race, colour, gender, language, religion, political or other opinion, national or social origin, wealth, birth or any other condition. The universal nature of these rights demands that they be applied to human beings as such and that national borders must therefore not limit the rights and duties of single individuals. This is therefore a utopia the values of which belong to a morality that is already acknowledged and deemed to be a shared heritage of different cultures and people. This is why, rather than seek to justify cosmopolitanism from the moral point of view, codems adopt the strategy of amplifying the existing contradiction between the political activities of national governments and the already partly cosmopolitan morality embodied in the various declarations and conventions. They are persuaded that cosmopolitan utopia finds in globalization a favourable historical condition for its realization. Globalization of the market, production and information has brought about an increasing integration and interdependence among countries and persons, the gradual emergence of a global society and the awareness of belonging to a human and not just a national community. A cosmopolitan sensitivity has developed that renders the citizens increasingly participatory and supportive towards what is happening to other individuals and communities, even those that are geographically and culturally distant from their own. Codems argue that global problems require a global governance. The globalized world is facing three main tiers of problems, the solution of which cannot and must not be left to the individual states: (1) management of the risks of the so-called *global commons*; (2) the defence of human rights; (3) management of new or worldwide phenomena that require common rules. According to them, it is neither possible nor sufficient to have state-centred global governance. The states hitherto at the focus of politics and international law have undergone a change in the form and nature of their power: (1) an individual state government does not possess the technical and administrative capacity to deal with problems that have taken on an increasingly global physiognomy; a number of issues transcend the sphere of the wielding of sovereignty by a single national state; (2) the fall-out of the effects of the decisions a national state takes can affect persons who do not live within its borders; (3) the decisions taken by regional or (quasi) supra-national organizations, such as the European Union, NATO and the International Monetary Fund, reduce the decision-making sphere available to national governments; (4) the global governance mechanisms already in place have transformed the international system into a polyarchy, into a system comprising various authorities such as states, subnational groups, transnational communities and interests, including private and public bodies. This growing network of political and legal rule production characterized by a low degree of democraticity is wearing away

the legitimacy of states and classic international law, causing a crisis in the traditional international UN-based system. Given these conditions, global governance, according to codems, must be achieved through a cosmo-political union: the cosmopolis. State and inter-state governance is not sufficient for tackling global problems and for guaranteeing the fundamental rights of all the world's inhabitants. It is necessary to set up (or reinforce) a supra-state governance level by means of the underwriting by all states of a pact establishing a cosmopolis. It must take the form of a voluntary and revocable *union* among states, governments and meta-government institutions, halfway between a confederation, where the states are the exclusive actors and individual rights and duties are limited by national membership, and a federal World State, characterized by a single global law and by the transfer of sovereignty from the state to the global level. Participants (at least in the preliminary phase) can also be states with different political constitutions as sovereignty and the principle of non-interference are constrained by the respect of human rights. In the cosmopolis, internal sovereignty is limited by the global constitutional norms while external sovereignty is replaced by a global constitutionalism.

It befalls the union to settle disputes by negotiation and through multilateral agreements aimed at guaranteeing security, individual rights and self-government. The states retain their own armed forces but the ultimate coercive power is distributed among various actors and subjected to the legal control of supra-national institutions whose overarching compulsory jurisdiction the states accept. If a member does not accept the decisions, the international community is empowered to adopt a range of coercive measures, including economic, political and cultural sanctions. The use of military force is only the *extrema ratio*, and must be entrusted to the direct control of the union bodies and authorized by the institutions of the world's citizens. Humanitarian intervention implemented to prevent acts of genocide is managed by supra-national institutions. A criminal court is set up with compulsory jurisdiction, empowered to act against individuals in the case of crimes that are not sanctioned or prosecuted by national legislations. The cosmopolis thus represents a limitation of the sovereignty of states without themselves being a state. Against the background of a cosmopolitan community, the national state does not fade into the background but ceases to be the sole centre of legitimate power within its own borders; it situates itself within a broader global law and takes part in a network comprising subnational entities, regions, transnational communities, government and non-government bodies and agencies. According to codems the cosmopolis is a model of global governance that is efficient because it is legitimate. Precisely because the union does not have the form of a federal state with coercive powers, the institutions within it that promote and apply international and cosmopolitical law need to be

legitimated. Governance inside the cosmopolis must be exerted democratically. Only a more direct popular mandate can increase its legitimacy and at the same time reinforce the willingness of the states, which wield the power, to comply with the norms. In the cosmopolis, democratic rules and procedures must be applied to each of the following dimensions: local, statal, inter-statal, regional, global. The starting point for Held and Archibugi is the assumption that the crisis of the western democracies is not in itself the defeat of democracy as a system of government but rather of the *form* in which it has developed historically, that is, linked to a geographically determined territory and a specific form of sovereignty. They endeavour to de-nationalize democracy and to split nationality from citizenship. They propose to raise the process of democratization also to the regional and international level, bridging the so-called 'democracy gap' between the internal and the external sphere by means of a double-sided or dual democratization process (Held 1995), which involves both individual communities on the inside (state-civil society) and the international sphere.

The cosmopolitical democracy model is aimed at forming legislative and executive bodies at different governance levels which can operate in accordance with the basic principles of democratic law to which they are bound. To this end codems propose the establishment of regional parliaments and a world assembly of the United Nations that can represent individuals, peoples and movements of the whole world; they also favour the widespread use of general referenda and the creation of electoral constituencies defined on the basis of the stakeholding principle. According to this principle, all those involved or having a stakeholding in the decisions taken by the public authorities concerning a given matter are entitled to participate in the decision-making processes by means of public assemblies and the exercise of the vote in transnational, transregional or global referenda. Codems point out, however, that global governance must be based on the equilibrium between democracy and the rule of law. According to Archibugi, political institutions and decisions must be grounded on three principles: cosmopolitan inclusion (all individuals must participate in the decision-making process concerning them); cosmopolitan responsibility (political action must be implemented taking due account of the interests of those that are directly or indirectly involved); and impartiality (no one can be judge of their own affairs; in the case of dispute, the parties must appeal to an external judgement). Participation and rule of law must be guaranteed at all levels of governance by means of the legal coding of the interactions among individuals, states and institutions in a regulatory reference framework tending towards a form of global constitutionalism. Cosmopolitical citizenship is conceived of by codems as a guarantee both of the defence of human rights and of political participation. The cosmopolitical system not only presupposes the existence of universal human rights

protected by the states but also a core of rights that individuals may lay claim to. The task of safeguarding these rights is entrusted to bodies that are the direct expression of the citizens regardless of the institutions in their respective states and in parallel with them.

Cosmopolitical citizenship provides a guarantee that refugees and stateless persons, through these supra-statal institutions, can enjoy the 'right to have rights' denied them in their home country and together with this, also civil, political, economic and cultural rights. These institutions must 'interfere' inside states whenever serious violations of human rights are suffered by those who live in them, also demanding that these states should embody in their legal system the extension to foreigners of the rights reserved to native inhabitants. Equal political participation is guaranteed by the creation of permanent new institutions in which civil society participates in political decision-making in accordance with the stakeholding principle. Cosmopolitan citizenship therefore means proceeding beyond citizenship linked exclusively to membership of a nation-state, towards a multilevel, multidimensional citizenship anchored to common principles and rules. An important target of cosmopolitical democracy is to give voice to world citizens, to ensure that all inhabitants of the Earth 'have a voice and a political franchise in parallel to and independently of those they have inside the state' (Archibugi 2008: 96). The United Nations is the pivot of the world legal and political system which it would be unrealistic to ignore in setting up a new world order. In order to become more democratic, the United Nations must undergo a reform of its executive and legal power, and must also offer world citizens an autonomous representative institutional channel, through the creation of a world parliamentary assembly. The latter would act as a grandstand from which to debate the principal world problems, such as economic and social development, the defence of human rights, the promotion of political participation and protection of the environment. An advisory body of the General Assembly and of the Security Council with policy-making competence and lacking any effective powers, it would be the visible, tangible symbol of the institutionalization of the citizens of the world. While membership of the cosmopolitical union would be defined by the principle of effectiveness, that of the world assembly would have to give priority to the criterion of legitimacy, demanding that its members be freely-elected delegates. At a second stage it could be invested with more concrete powers in well-defined areas, such as the protection of fundamental human rights and humanitarian interventions; the redefinition of the limits and the jurisdiction of the various political communities; the identification of the most appropriate level of governance in the case of problems regarding transversal political communities.

Cosmopolitan universalism is compatible with ethical pluralism and cultural difference: the acknowledgement of the equal moral status of each individual on which cosmopolitanism is based is precisely what makes it possible to

construct a global common structure that is impartial vis-à-vis the different conceptions of good, the aims, the hopes and the life prospects of individuals, as well as being respectful of their capacity for self-determination and to implement independent decisions.

Held and Archibugi differ from Mary Kaldor in that they assign to the states and the political-legal institutions, rather than to the global civil society, the role of driving force behind the cosmopolitical-democratic transformation of national and international society. They distance themselves from the projects of transnational democracy in the version developed, for instance, by John Dryzek, which is based essentially on the belief that the mainspring of democratic legitimacy lies not in voting or representation but in deliberation. Instead of proposing to set up a new constitutional configuration of global politics, or creating alternative global governance structures liable to duplicate at the international level the problems that challenge the liberal democracies, Dryzek suggests that it is preferable to endeavour to identify currently existing opportunities in the international system in order to democratize governance. He claims that international civil society, in particular in its network form, can play a key role in establishing 'deliberative democratic control over the terms of political discourse and so the operation of governance in the international system' (2000: 138).

An authentic transnational public sphere of democratic deliberation must be informed by the principles of non-dominance, participation, public deliberation, responsible government and the right of all those involved to voice their opinions in the public decision making affecting their welfare or their interests (stakeholding principle). Membership of a deliberative community must include the stakeholders involved, namely those whose interests or material conditions are directly or indirectly impacted by the specific exercise of public power. Deliberative democracy – more than the rigid constitutional system proposed by the champions of cosmopolitan democracy – is better suited, according to Dryzek, to coping with the problems and needs of a world of 'overlapping communities of fate' in which the organization and wielding of power no longer coincides with territorially delimited political communities.

Held and Archibugi favour the proposal to boost the stakeholders' role and functions and to develop new forms of deliberative democracy in order to address transnational issues so as to make good the global democratic deficit. An enhanced role played by informed groups and non-territorial associations could increase the degree of popular control over decisions, the effects of which are felt beyond borders. In some cases these subjects are efficient and manage to influence the intergovernmental political agenda. Nevertheless, even if these associations were to grow in number, legitimacy and power, they would always be less representative than subjects that have received

their legitimacy and power through the conventional forms of representation. A global community based on voluntary participation would perhaps bridge a few gaps in the democratic deficit but would not solve the problems of greater inclusion and legitimacy and would give rise to fresh problems. Using what Archibugi deems the three constituent criteria of democracy – non-violence, public control, political fairness – this would amount to saying that the boosting of a global civil society would increase public control without guaranteeing political fairness.

Codems champion the development of a *global and democratic civil society*. Bottom-up commitment can be successful only when a reform is implemented to make democratic, or more democratic, national and international organizations and movements. This is because social movements and NGOs, which are essential elements of global democracy, in the absence of institutionalized decision-making and control procedures, run the risk of becoming shut in and hierarchized. National and/or transnational groups, associations and movements must incorporate into their own *modus operandi* a structure of rules, principles and practices that are compatible with democracy. The cosmopolitan democracy project entails the transformation of movements into institutions which draw their political legitimization from democratic procedures and not simply from the objectives they pursue. Both Archibugi and Held, as will be seen later, attempt to resolve the tension between the rule of law and the rule of the people by making use of global constitutionalism.

Seyla Benhabib also appeals to the Kantian tradition when she defends a specific version of political cosmopolitanism which it is hoped will give rise to a new membership policy, namely a policy that is capable of renegotiating the complex relationship between universal rights, democratic self-determination and territorial residence. She starts from the twofold tension characterizing the liberal democracies: firstly, between the cosmopolitan rules of human rights aimed at expressing a concept of universal and unconditioned rights and acts of self-legislation which amount to acts of self-definition and self-delimitation; secondly, between the universality of human rights and the partiality of the positive law. This twofold tension appears in a particularly dramatic form in the case of legal or illegal aliens, namely persons who live in a state of which they are not citizens. In the liberal democracies it is the *demos*, represented by citizens and voters, that is authorized to determine the content of democratic legislation and the self-definition required for self-legislation follows an inclusion-exclusion logic. To tone down this logic which, for Benhabib, is a constitutive part of democracies, the philosopher proposes to put in place democratic iterations, that is to say, practices by means of which to amend the laws in accordance with cosmopolitan principles and to broaden the definition of *demos* so that it also includes foreigners (whether

legal or not) who are subject to the jurisdiction of the rule of law without being included in the *demos*. By virtue of democratic iterations mediating between universal norms and the will of democratic majorities, a community is able to make a critical appraisal and modify the exclusion practices it puts in place, thus making the distinctions between citizens and foreigners more fluid and negotiable.

These practices are viewed as a premise for the creation of 'a postmetaphysical and postnational conception of cosmopolitan solidarity which increasingly brings all human beings, by virtue of their humanity alone, under the net of universal rights, while chipping away at the exclusionary privileges of membership' (2004: 21). Benhabib's proposal thus differs from the recent theories regarding global justice because, unlike the latter, which are focused on the proper distribution of resources and rights, she incorporates in cosmopolitan justice theory a conception of just membership. Furthermore, in her proposal of Kantian inspiration regarding a cosmopolitan federalism, she champions a conception of global justice in which attention is focused on the democratic legitimation of distribution policies. This conception is therefore more sensitive to the interdependence of democracy and distribution, a position which in a sense brings her closer to the positions of the proponents of cosmopolitan democracy.

The theme of the progressive fluidification of borders of the *demos* is also taken up in *Another Cosmopolitanism* (2006) in which Benhabib supplies examples of iterative processes that are apparently already ongoing in Europe and in which universal rules are embodied in the legal systems of local communities, giving voice to aliens and making the *demos* more fairly representative of the universal rules guiding cosmopolitanism. These are examples – such as the decision made by Germany to separate the right to vote from the status of citizenship – in which the rights linked to citizenship are challenged, negotiated and modified in response to the universal ambitions of cosmopolitanism. In this way the legal rights of citizenship are rendered more universal and the traditional link – now deemed to be illegitimate – between *demos* and *ethnos* is broken. Modern nation-states are based on the solidarity of the *ethnos* which is 'a community bound together by the power of shared fate, memories, solidarity and belonging'. Unlike *demos*, the confines of which can be stipulated and manipulated by positive law, an *ethnos* 'does not permit free entry and exit' (2006: 65). This is why Benhabib considers the national solidarity of *ethnos* as contradictory to the universalist principles to which in another sense it is bound and for this reason proposes to maximize the uncoupling between 'nationhood and democratic peoplehood'. The aim behind this would be to arrive at a future in which entitlement to 'civil, social, and some political rights' is unbundled from 'national belonging' (171), in which the *demos* is separated from the *ethnos*.³ This 'disaggregation of

citizenship' is a process already taking place in Europe and one of the clearest indicators of the evolution of cosmopolitan norms. This forms the basis of her proposed cosmopolitan federalism. A renegotiation of the boundaries between *demos* and *ethnos* would imply the introduction of new forms of democratic authority which 'can be exercised at local and regional as well as supra- and transnational levels' (172).

As already pointed out, this proposal is based on the belief that the barriers to cosmopolitan universalism are essentially two in number: (1) the determinacy of democratic authority, considered to be intrinsic and always insuperable within liberal democracies; and (2) national solidarity, which is deemed to be contingent and superable. It is not apparent to what extent the proper functioning of the state requires the solidarity of an *ethnos*. Some authors are sceptical about the possibility that 'the demos could be conceived only as a frictionless agglomeration, arbitrarily composed and recomposed, filling whatever form is required by the functional needs of distinct units of democratic decision making' (2006: 9). In any case, Benhabib is convinced that a multilayered governance in the global community could tone down the strong opposition between universalist aspirations and local self-determination. To this end she proposes the extension of the democratic principles of transparency and accountability to international organizations, as well as the reform of the UN Security Council so as to include a larger number of representatives of the nations in addition to the five permanent members. In the economic field the same strategy is followed. To reduce global economic inequality as well as to democratize these institutions, forms of economic cooperation must be sought that can mediate between transnational standards and local conditions. In other words, it is necessary to mediate between the different levels of governance, cooperation and coordination 'so as to create more convergence on some commonly agreed-upon standards for the eradication of poverty, but through locally, nationally, or regionally interpreted, instituted, and organized initiatives' (Benhabib 2004: 113).

Mary Kaldor and cosmopolitan civil society

Mary Kaldor is one of the main figures in the cosmopolitan democracy project and, unlike Held and Archibugi, situates the activities of civil society at the heart of cosmopolitan policy. In *New and Old Wars: Organized Violence in a Global Era* (2006) she claims that the changes taking place in the nature of violent conflicts justify reappraising them in terms of 'new wars'; compared with conventional wars, the latter are indeed characterized by a different pattern of actors, objectives, spatial context (domestic/external), human

impact and political and social economy. These new forms of war no longer respect the classic rules of war and represent serious violations of human rights. Human rights, together with new rules of war, needs must define the form, the ambit and the use of coercive power. It is therefore necessary to come up with a new response to the new wars, tackling them within a framework defined by cosmopolitan principles which alone can guarantee peace, and the respect of human and humanitarian rights. The doctrine of legitimate power as effective control over a territory must be rejected and replaced with international rules embodying fundamental humanitarian values as criteria on which to base legitimate government. It is therefore necessary to reconstruct the legitimate monopoly of organized violence on a transnational basis and rethink traditional peacekeeping in terms of cosmopolitan law enforcement, as an international police action guaranteed by highly professional forces subjected to a rigorous law of war and a common code of conduct. In *Global Civil Society. An Answer to War* (2003) Kaldor asserts that only an active policy of cooperation among actors operating at the local level and actors operating at the transnational level, and that go to make up a global civil society, can facilitate the downsizing of localism and ethnicism, ensure a management of global problems based on inclusive values and thus prevent the outbreak of new wars.

Kaldor defines global civil society as 'the sphere of ideas, values, institutions, organizations, networks, and individuals located *between* the family, the state, and the market and operating *beyond* the confines of national societies, polities, and economies' (Anheier *et al.* 2001: 17). She is critical of the customary prevailing association between the notion of global civil society and international NGOs. From a normative point of view it would be necessary to exclude from the notion of global civil society NGOs that offer services, especially those funded by states, as they act in the absence of any public debate and are not independent of the state; also to be excluded are identity or cultural communities within which compulsory membership is imposed since in the concept of civil society the emancipation of the individual must remain central. Kaldor knows full well that, in practice, global civil society is structured as a political subject that is not always reliable and democratic: no internal elective processes are contemplated (they would be if a world state existed which however could only be an authoritarian state); it is dominated principally by the northern areas of the world and is heterogeneous, seeing that a single global civil society does not appear to exist but rather multiple societies that differ from one another. Kaldor identifies a first limit in the composite nature of global civil society: activists committed to the new global civil society who meet in the various world, regional and local social fora belong to different social movements ranging from anti-capitalist movements to those that concern themselves with the environment, public services and

migration. The author divides these subjects into 'rejectionists' and 'reformers' (Kaldor *et al.* 2004, Introduction): the former, unlike the latter, are opposed to all forms of state-based humanitarian commitment, which they consider to be a legitimization of imperialism, and are opposed to the free market and the free movement of capital; conversely, the latter are committed to boosting the capacity of the multilateral institutions to cope with humanitarian emergencies and to contributing to global social justice. In Kaldor's view, a second limit consists of the essentially negative nature of the activity carried out inside the social fora and their peculiar form of organization. They often consist of protest movements that are incapable of developing projects or organic and alternative policies. The social fora are defined as a space for reflection, for democratic debate, the formulation of proposals, the free exchange of experiences; debates are appreciated not so much as tools but as such, and even if the debate hinges on proposals and strategies, generally speaking they do not produce any unified final statement. The social fora are organized as informal workshops for the purpose of promoting transnational networks involving specific issues; but it is precisely the emphasis laid on self-organization and the absence of structures that means that certain individuals end up speaking on behalf of others without having the necessary full democratic legitimization to do so.

Despite these limits, global civil society retains a strong emancipatory potential concerning all individuals at the normative level. By opening up closed societies, permitting public discussion of issues of global scope as well as fresh opportunities for coping with international conflicts, global civil society is both a subject capable of civilizing and democratizing globalization and a bottom-up process of administering international relations. Through it, groups, movements and individuals can call for a consensual political governance of globalization, a global rule of law, a social justice and a global empowerment (Kaldor 2003: 12). Global civil society is a fundamental resource for combating contemporary forms of global warfare and for demanding the application and extension of international humanitarian law and the duty/right of intervention. Taking humanitarian law seriously means enlisting global civil society in a concerted international action capable of reducing war and genocide and extending the application of law by means of international law enforcement, guaranteed by the establishment of an international police force and an international criminal court. It is far from being reducible to a set of western NGOs acting as non-political groups and having the sole purpose of offering services at the transnational level. Consequently, for Kaldor, global civil society is an intrinsically political project aimed at resisting the dominant structures of power, at extending popular participation and at reshaping the rights of the poor and the more disadvantaged at local and global level.

David Held: the cosmopolitan social democracy

Cosmopolitan sovereignty and cosmopolitan principles

Globalization processes have led to a transition from purely state-centric politics to a new and more complex form of multilevel global politics. Held's theory of cosmopolitan social democracy is an attempt to offer a model of multilevel global politics based on a new conception of sovereignty, political legitimacy and democracy. Its objectives are the promotion of an unbiased administration at the international level; enhanced transparency, accountability and democracy in global governance; a firmer commitment to pursuing a fairer distribution of human resources and security; the protection and reconstruction of a community at different levels (from local to global); and regulation of the global economy through the public administration of global finance and trade.

Held identifies two models of sovereignty that may be equated to two models of political power and international legal regulation: classic sovereignty (or law of states) and liberal international sovereignty. In its classic conception, sovereignty is considered a *summa potestas*, an indivisible and unlimited power to enforce the law which *superiorem non recognoscens*. It has both an internal and an external dimension: the former refers to the claim that a person (or a social body) can legitimately exercise command and be the ultimate and absolute authority in a given territory;⁴ the latter refers to the claim that there is no ultimate authority superior to a sovereign state. The modern nation-state has given rise to a system of international relations that was formalized in a new conception of international law, the so-called Westphalia model. This model, which spans the historical period from 1648 to 1945, is characterized by the principles of territorial sovereignty and of formal equality among states, by the principle of non-intervention in the internal affairs of other recognized states and by the principle of the state's consensus as the basis of international legal obligation. Adapting points from Antonio Cassese (1986: 386–389), Held summarizes the Westphalia model as follows (1995: 78):

- 1 The world consists of, and is divided by, sovereign states which recognize no superior authority.
- 2 The processes of law-making, the settlement of disputes and law enforcement are largely in the hands of individuals.
- 3 International law is orientated to the establishment of minimal rules of coexistence; the creation of enduring relationships among states and peoples is an aim, but only to the extent that it allows national political objectives to be met.

- 4 Responsibility for cross-border wrongful acts is a 'private matter' concerning only those affected.
- 5 All states are regarded as equal before the law: legal rules do not take account of asymmetries of power.
- 6 Differences among states are ultimately settled by force; the principle of effective power holds sway. Virtually no legal fetters exist to curb the resort to force; international legal standards afford minimal protection.
- 7 The minimization of impediments to state freedom is the 'collective' priority.

In this model, each state is deemed to be equally legitimate in view of the effective power wielded by the sovereign and regardless of how this power was acquired or is used. The model gives rise to a disjuncture among the principles that organize internal affairs and those organizing foreign affairs, which Held interprets as the acceptance of a double standard. On the strength of this double standard, it is accepted that democracy may exist within the nations and non-democracy in relations between states; that there may be accountability and democratic legitimacy inside states and only the pursuit of national interest outside national boundaries; democracy and citizenship rights for those deemed to be 'insiders' and their denial for those living outside these boundaries. The political, legal, economic and cultural changes that occurred during the twentieth century regarding the subject, the scope and the sources of international law may be considered a transition from classic sovereignty to liberal sovereignty. The six monopolies characterizing the modern state have been modified or done away with as a result of the disjunctures in sovereignty having taken place at the national and international level, in turn as a result of the rules governing war, the fight against crime, human rights and democratic participation, and the environment.⁵

As a result of these transformations, Held writes, '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). A new conception of sovereignty emerges according to which the effective exercise of power is no longer considered in itself a guarantee of international legitimacy; the respect of human rights and democratic standards becomes binding for the power of states and their representatives who are requested to submit to a new and more intense control and monitoring by an ever-increasing number of international regimes, international courts and supranational authorities. The practice of applying sanctions and of humanitarian intervention questions the principle and practice of non-interference in the internal affairs of a sovereign state and the idea that the way citizens are

treated is to be considered exclusively as an internal affair of the state. The boundaries between states are gradually losing their legal and moral significance; shared belonging or spatial proximity are no longer considered a sufficient source of moral privilege; states are no longer considered as discrete political worlds; situated inside different and overlapping political and legal domains, they have merely become just one of the sites where political power and authority is wielded. We are thus living in a world in which sovereignty can no longer be conceived of in terms of the conventional categories. Furthermore, globalization processes have led to structural changes and fresh problems have arisen that liberal sovereignty no longer seems capable of addressing. The globalization of the market, production and information has resulted in a growing integration and interdependence among countries and persons, the gradual emergence of a global society and the awareness of belonging to a human community that extends beyond national boundaries.

The globalized world has to cope with three main problems, the solution of which cannot and must not be left to individual states: (1) the management of the risks involved in the so-called global commons (global warming; loss of biodiversity and ecosystem destruction; overfishing; deforestation; scarcity of water; pollution of the sea; degradation or destruction of environmental, cultural and artistic heritage); (2) defence of human rights (fight against poverty; peacekeeping and peace-building, prevention of conflicts, anti-terrorism, universal education, female emancipation, demographic policies, prevention of infectious diseases, breaking down the digital divide, prevention of natural disasters); (3) management of new or worldwide phenomena (taxation; biotechnologies; finance; illegal drugs; trade, investment and competition; intellectual property rights; e-commerce; international labour; migration).

Hitherto at the centre of politics and international law, the states have undergone a change in their form and the nature of their power: (1) an individual state government lacks the technical-administrative capacity to cope with problems that have taken on an increasingly global physiognomy; several questions such as arms traffic, or the fight against aids or environmental pollution, transcending the area of the exercise of sovereignty by a single national state; (2) the effects of the decisions it takes can be felt by persons who do not live within its boundaries; (3) the decisions taken by regional or (quasi)-supranational organizations, for instance the European Union, NATO, the International Monetary Fund, reduce the scope of the possible decisions available to national governments; (4) the ongoing mechanisms of global governance have turned the international system into a polyarchy composed of different authorities such as states, subnational groups, communities and transnational interests, including private and public bodies. The growing network of political and legal rule production characterized by a low level of

democraticity is wearing down the legitimacy of states and classic international law, threatening the traditional UN-based international system.

Furthermore, the regime of liberal international sovereignty seems incapable of avoiding the creation of enormous inequalities of power and economic resources which has widened the gap between poor countries and rich countries in the global economy and maintains a significant part of the world population in a state of marginality or exclusion vis-à-vis the networks of political and economic power. As far as the latter problem is concerned, Held claims that incapacity to address world poverty stems from what he calls 'the tangential impact of the liberal international order on the regulation of economic power and market mechanisms' (Held 2005: 175). The international liberal order is actually aimed at reducing the abuse of political, and not economic, power, and consequently has only a limited number of systematic instruments to address sources of power other than political sources. This explains why liberal democracy and economic inequality can flourish side by side. It thus seems that the conditions and premises exist for the shaping and establishment of a regime of sovereignty and cosmopolitan law. Cosmopolitanism is considered by Held as the moral and political outlook that offers the best hope of solving the problems and overcoming the limits of classic liberal sovereignty. It is defined as 'the ethical and political space which sets out the terms of reference for the recognition of people's equal moral worth, their active agency and what is required for their autonomy and development' (Held 2010: 49). It is viewed as a set of values that no state or government is allowed to sidestep, based on the principle of the moral equality of all human beings, which implies for Held that all individuals deserve equal political treatment, and equal attention and consideration for their agency, regardless of the community in which they were born or grew up in. These principles are:

- 1 Equal worth and dignity.
- 2 Active agency; or people's right to self-determination.
- 3 Personal responsibility and accountability.
- 4 Consent; or a non-coercive political process in which all can take part.
- 5 Collective decision making about public matters through voting procedures.
- 6 Inclusiveness and subsidiarity; or equal opportunities for those affected by public issues to shape them.
- 7 Avoidance of serious harm.
- 8 Sustainable development.

The first three are the constituent principles of cosmopolitanism and determine its moral universe focused on the idea that every person is an object of equal moral concern; the principles from 4 to 6 are the legitimating principles forming the basis for the passage from individual or private action to a collectively agreed upon broader action context (public power can be considered legitimate only if it complies with them). Principles 7 and 8 establish the moral framework and prudential orientation for public decisions.⁶

The institutionalization of these principles requires them to be coded into a cosmopolitan law and a form of cosmopolitan democracy – national, transnational and supranational forms of democratic participation and accountability. From a legal standpoint, cosmopolitanism is situated in the space lying between statal law, which regulates relations between a state and its citizens, and conventional international law which applies to states and the relations between states; from a political standpoint it is a form of political regulation of law-making that creates powers, rights and constraints that transcend the claims of national states in decision making, and promotes democratic political participation and accountability at the global level. Cosmopolitan law and cosmopolitan democracy have the aim of conferring on each individual the status of subject of international law and citizen of the world.

From cosmopolitan principles to cosmopolitan law and the institutional dimensions of cosmopolitanism

Cosmopolitan law institutionalizes the cosmopolitan principles. In the liberal conception, legitimate power is represented by an impersonal power structure that is legally circumscribed and restricted to a national territory. The geopolitics and geoeconomy of international liberal sovereignty are constrained at least in principle by the regime of universal human rights and by the standards of democratic governance. Cosmopolitan sovereignty is conceived of as involving ‘frameworks of political relations and regulatory activities, shaped and formed by an overarching cosmopolitan legal framework’ (Held 2010: 100). In this conception, national states lose power but do not disappear; 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’ (Held 1999: Conclusion). States need to be restructured and resituated within an overarching cosmopolitan legal framework. In such a context, the laws and rules of the nation-state will become just one of the several centres of legal development, reflection and political mobilization. In conditions like these, persons will enjoy multiple citizenship, that is, a political membership of the various political communities, and having a significant influence on them. In a world of overlapping communities of fate, individuals will be citizens of both their

immediate political communities and of broader global and regional networks that have a significant influence on their lives.

The cosmopolitan polity must be developed in four institutional dimensions – legal, political, economic, cultural. *Legal cosmopolitanism* proposes the ideal of a global legal order in which persons may enjoy equal legal standing and personal rights. It requires: (1) the entrenchment of cosmopolitan democratic law; (2) a new charter of rights and duties embodying political, social and economic power; (3) an interconnected global legal system embodying elements of criminal, commercial and civil law; (4) subjection to the jurisdiction of an international court of justice and an international criminal court; (5) the creation of a new international court of rights. Without the complementary forms of law-making and law enforcement it would not seem possible for the agenda of the *homo legalis* to be harmonized with that of the protection of equality in the public space and that of active citizenship. For this reason, legal cosmopolitanism must be linked to political cosmopolitanism. Implicit in political cosmopolitanism is the defence of regional and global governance and the creation of organizations and mechanisms that can offer a context of regulation and application of the law at a global level. Only a cosmopolitan political outlook can be harmonized with the political changes occurring in the global era which is characterized by policy spill-overs, overlapping communities of fate and increasing economic inequality. The institutional requirements include: (1) multilevel governance, diffuse authority; (2) a network of democratic fora ranging from the local to the global; (3) boosting of political regionalization; (4) establishment of an effective, responsible military force which can be used as a last resort in the defence of cosmopolitan rights. Economic cosmopolitanism introduces an important element in political cosmopolitanism because it is only on condition that the rupture between economic power and political power is addressed that the necessary resources can be found to ensure that liberty and rights continue not to be only formal. It is thus necessary to bridge the gap between human rights and international economic law, between the formal equality among all individuals and geopolitics driven by sectoral socioeconomic interests, between cosmopolitan principles and cosmopolitan practices. This necessity provides justification for a policy of intervention in economic life, not to control and govern the market, but to provide a basis for self-determination and active agency. Held therefore justifies political intervention in the economy based on the idea of autonomy. Equality is significant to the extent to which it affects the possibility of individuals participating in political life, either allowing or limiting their autonomy. The institutional demands of economic cosmopolitanism imply: (1) restructuring of market mechanisms and the dominant sites of economic power; (2) global taxation mechanisms; (3) transfer of resources to the more vulnerable in order to protect and strengthen their agency. Cultural

cosmopolitanism entails the recognition of increasing interconnection, development of mutual comprehension and respect of cultural differences.

Commitment to the principle of autonomy implies the duty to set up a cosmopolitan democratic community, namely, an international community of democratic societies and states having the objective of supporting democratic cosmopolitan law within its own boundaries and beyond: 'For democratic law to be effective it must be internationalized. Thus the implementation of a cosmopolitan democratic law and the establishment of a cosmopolitan community – a community of all democratic communities – must become an obligation for democrats, an obligation to build a transnational, common structure of political action which alone, ultimately, can support the politics of self-determination' (Held 1995: 232). The establishment of a cosmopolitan community must come about through a gradual process that has its starting point in an association of states and societies at the outset, consisting solely of democratic nations. When an ever-increasing number of states and organizations have become members of the new democratic order, that is, when the principles of society and democratic states ultimately coincide with those of democratic cosmopolitan law, democratic citizenship can then as a matter of principle take on a truly universal status and it may be said that 'the individuals who composed the states and societies whose constitutions were formed in accordance with cosmopolitan law might be regarded as citizens, not just of their national communities or regions, but of a universal system of "cosmo-political" governance' (Held 1995: 233).

Daniele Archibugi and the global commonwealth of citizens

Democracy, globalization and cosmopolitan democracy

The most comprehensive version of Daniele Archibugi's cosmopolitan democracy project is to be found in *The Global Commonwealth of Citizens. Toward Cosmopolitan Democracy* (2008). In this project, global governance must be subjected to constituent democratic principles; the international organizations must act as an instrument of democratization inside states and, at the same time, apply to themselves the rules and values of democracy. In order for global governance to be subjected to the values of democracy, these international organizations must absorb 'more functions and greater legitimacy, embracing the principles of accountability, participation and equality'. Furthermore, the conventional scheme of international relations, based on the principle of non-interference and sovereignty, must be replaced by a world political system in

which 'self-determination establishes internal democracy, impartial institutions intervene to the people's advantage, and global constitutionalism replaces sovereignty' (279).

For Archibugi, the three constituent criteria of democracy are: non violence, or 'the willingness to accept shared rules and to adhere to an implicit preemptive non aggression pact' (2008: 27); popular control, by means of which 'government action is constantly under public scrutiny'; and lastly, political equality, which 'demands that all members of the community have the same rights, in the first place the right to participate in political life' (28). Cosmopolitan democracy, as a possible form of global governance based on the democratic management of the global commons, is deemed to be the best institutional form capable of accepting the challenge launched to the democracies of national states by the processes of globalization. Convinced as he is of the existence of a close link between the democratization of the international community and internal democratization, he claims that the democratic progress achieved inside individual states can be frustrated or seriously jeopardized if democracy is not extended to the global sphere. The international system, organized in accordance with the principles of cosmopolitan democracy, represents a fundamental condition for promoting democracy in non-democratic countries and, for democratic countries, an opportunity to preserve democracy, develop it in a more inclusive direction, and eliminate any inconsistency between domestic and foreign policy. Compared with Held, Archibugi has a less normative conception of democracy as a political system. He sees it as an interactive process taking place between civil society and political institutions, which is dependent on the historical context in which it takes place and that can be achieved in various forms. Unlike those who claim that an incompatibility exists between certain cultures or civilizations and democracy, he considers that all political communities can embrace the values and rules of democracy, provided the endogenous political environment is capable of being the subject of institutional change, that a multilateral dialogue strategy is put in place and that connections among the various civil societies are allowed and encouraged.

Archibugi identifies a minimum list of substantial objects that are to be pursued by a cosmopolitan democracy that sets out to govern the contemporary world, entrusting the competence to do so, albeit not exclusively, to global institutions. His proposal, unlike Held's, is deliberately minimalist. It is limited to identifying the following areas of priority action: control of the use of force; acceptance of cultural diversity; strengthening of the self-determination of peoples; monitoring of internal affairs; participative management of global problems. Cosmopolitan democracy must be established in these priority action areas, at different governance levels that are autonomous and complementary to each other, linked functionally but not hierarchically: the

local, state, inter-state, regional and global levels.⁷ To prevent such a system of global governance can generate jurisdictional conflicts among the various levels of political authority⁸ due to the tensions possibly created between sovereignty and democracy, and limit the number of situations in which political or institutional subjects are not called upon to answer for their actions in the face of other domestic or external powers – a situation that would be incompatible with the very idea of democracy – he takes a resolute stance in favour of a specific form of global governance based on the legal coding of the interactions among institutions. Following the indications given by Hans Kelsen, he stresses the need ‘to redirect the conflicts of competence among the various levels of governance toward a global constitutionalism and to bring conflicts before jurisdictional bodies . . . which would act in accordance with an explicit constitutional mandate’ (Archibugi 2008: 99). Unlike Held, he believes that from a normative point of view the very idea of sovereignty is incompatible both with the idea of democracy and with a level of legitimacy superior to that of a nation-state. He thus resolves the clash between the concept of sovereignty and that of democracy by replacing sovereignty both within states and between states with constitutionalism, thereby subjecting every institution to rules and to a system of checks and balances (2008: 98). Following on from Kant, he believes that the law within a state and the law between states (international law) should be supplemented by a cosmopolitan law relating more directly to individuals and the problems of global status. This does not mean however that cosmopolitan law must ultimately absorb international law. Indeed, if international law were to evolve into cosmopolitan law, the legal corpus for international relations would be diminished and a new dichotomy would thus be introduced between domestic law and cosmopolitan law. The result would be a federal system rather than a cosmopolitan democracy, as the absence of a legal corpus regulating relations among states would imply the dissolution of individual states into a world state. On the contrary, the aim of the cosmopolitan democracy project is to add cosmopolitan law to statal law and to international law, and thus to set up a cosmopolitan legal system divided into three branches.

Cosmopolis and cosmopolitan citizenship

Having defined the concept of democracy, the minimum objectives of a democratic theory in the global age, and having justified the substitution of the concept of sovereignty with that of global constitutionalism, Archibugi strives at greater length and more extensively than Held to identify a model of union among states that is compatible with the objectives of cosmopolitan democracy.

Moving from the assumption that internal democracy cannot attain full maturity in a conflictual world order, he interacts with Norberto Bobbio⁹ and the champions of democratic peace (Doyle 1983, 1986). Bobbio subscribes to the thesis that if all states were to become democratic, the international system would also necessarily be orientated towards greater democraticity. Greater democraticity would mean, according to the claims of the champions of democratic peace, also less conflictuality. It follows that international politics should pursue the objective of transforming all autocratic states into democratic ones. Archibugi deems that there is not necessarily any congruency between internal systems and the inter-state system and that it would by no means be sufficient to transform all states into democratic states in order to guarantee international peace. He points out in the first instance that a highly hierarchized international system like the one characterizing the Cold War also represents a hindrance to the development of the internal democracy of states; this means that the internal order of states, but also the order regulating relations between states, must be democratic. In brief, a world made up of democratic states would not itself be democratic. The existence of a large number of democratic states would favour the democratization of the international system, although a democratization of this kind would not come about automatically as the democratic countries are often reluctant to apply the democratic principles and values informing their domestic systems to foreign policy. They suffer from what Archibugi terms 'the schizophrenia of the democratic countries' (2008: 276), namely the gap between the domestic behaviour of democracies, based on correct principles and valid intentions, and their conduct in the international field, based on aggressive and violent logics justified hitherto by the need to survive in a 'gladiators' arena'.¹⁰ If that is how matters stand, it will be necessary to work towards the construction of a world order capable of promoting democracy in three distinct but complementary directions: democracy inside nations; democracy among states; global democracy. This leads Archibugi to make a thorough and detailed analysis of two models of association among states – the confederal model and the federal one – as a function of their respective merits and demerits versus the degree of democraticity they guarantee in the three levels of democracy, within states, between states and at the global level, which must be pursued simultaneously following different procedures.

A confederation is an association between sovereign states that have hammered out an agreement regarding certain issues, but which does not envisage any form of participation of individuals in international politics. It would not measure up to the requirements of global democracy even if all the member states were democratic, because the subjects of international politics would still be the states while the civil societies of individual states would remain separated. The proposals based on the federalist tradition have as their foundation the concept that the problem of peace can be solved by

strongly limiting the sovereignty of states, giving rise to a process of power concentration aimed at the establishment of a federal World State. The federalist model places the emphasis on the fact that universal human rights can be safeguarded only by setting up a corresponding political institution (that is, the World State) having the authority and means of enforcement to impose the respect of democratic principles existing in the individual states. In this model, democracy *among* states would be abolished as the sovereign states would be abolished. The imposition of unitary norms envisaged in the model would be incompatible with the existence of cultural differences. Consequently a government of this kind would have the authority and the competence to tackle global problems, although perhaps to the detriment of the rights of the individual communities. However democratic it was, the government would also be the expression of heterogeneous majorities, and this could lead to the temptation to address global problems by adopting solutions of a technocratic kind. As an alternative, Archibugi proposes a further model of union of states, halfway between the confederal model and the federalist one, taking its inspiration for example from the European Union, which is more centralized than the confederal model but less so than the federal one.

The project of cosmopolitan democracy, far from calling for the creation of a World State, is presented as a project 'for a voluntary and revocable union of government and meta-government institutions, where the final coercive power is distributed among suitably reformed international institutions' (2008: 129). Underlying the choice of such a model of union is the conviction that an undue centralization of power and means of coercion on a large scale is not desirable; therefore once it has been applied to the entire planet it must not be regarded as a temporary step towards federalism, but as an actual permanent form of organization. As far as democracy inside states is concerned, unlike the federalist model, the cosmopolitan democracy model accepts within itself states having different, even autocratic, political constitutions, although it does not blindly accept the principle of non-interference (which is instead valid in the confederal model). In order to avoid the instrumental use of possible interventions in the internal affairs of a state, it leaves to the citizens the task of intervening through the participation in supranational institutions. As far as democracy among states is concerned, this model envisages that relations between states are governed by intergovernmental institutions (IGOs), and that multilateralism is the instrument used to ensure non-interference and to settle any disputes between states. Should the arbitration of the IGOs not be successful, the settlement of conflicts between states would be delegated to the international legal institutions to the jurisdiction of which the states had subscribed. Lastly, as far as global democracy is concerned, since a number of problems have a global dimension, it is necessary to envisage the creation of transnational agencies as well as participation in political decision making regarding these issues of global civil

society through the agency of permanent new institutions. The cosmopolitan model actually aims at combining and limiting the functions of existing states through new institutions founded on the citizens of the world. If democracy is based on the principle of participation of those governed to the choice of those who govern them, as long as peoples are not consulted in the decisions, there will always be a deficit of legitimacy. In the confederal model the citizens participate indirectly in the decision-making process; in the federative model they must contribute to legislative and executive power. The cosmopolitan model has a more limited objective aimed at providing citizens with 'a channel of autonomous representation that is characterized by a vast jurisdiction but limited powers' (172).

This channel would be the World Parliament Assembly. If it had the powers that are conventionally associated with the national parliaments it would be closer to the federalist model, which would be unachievable and not desirable. This assembly would have to take the form of a forum in which to discuss global problems and having the function of a consultative body of the General Assembly and the Security Council and of other specialized UN agencies with policy-making tasks. Although not having any actual powers it 'would be the visible and tangible demonstration of the institutionalization of a global commonwealth of citizens' (173). The World Parliament Assembly should set out to gradually increase its powers in well-defined areas such as the protection of fundamental human rights (humanitarian interventions); the definition of borders and the jurisdiction of the various political communities; and the identification of the most appropriate level of governance in the case of problems involving more than one political community. It would be open to the participation exclusively of freely-elected deputies or else those that the World Parliament Assembly decides to invite as representatives of autocratic countries. In the cosmopolitan democracy project, the UN is viewed as the pivot of the world political and legal system, as well as an indispensable starting point for the establishment of a new world order. If suitably reformed in a more democratic direction, the UN could become the backbone of the cosmopolitan model. The cosmopolitan democracy project aims at guaranteeing both the protection of human rights and a greater political participation. Cosmopolitan citizenship entails the superseding of citizenship bound exclusively to membership of a national state in favour of a multilevel and multidimensional citizenship anchored to shared principles and rules. The cosmopolitan system not only assumes the existence of universal human rights protected by the states but also a core of rights that individuals can demand from supra-statal institutions. The task of protecting these rights is entrusted to bodies that are the direct expression of the citizens, regardless of the institutions of their respective state and in parallel with them. Cosmopolitan citizenship guarantees that, through supra-statal institutions, refugees and stateless persons are

entitled to the 'right to have rights' that is denied them in their countries of origin and thus also to civil, political, economic and cultural rights.¹¹

These institutions must 'interfere' inside states in cases of serious breaches of human rights regarding the inhabitants of these states to embody in their legislation the extension to foreigners of the rights reserved to natives. Equal political participation is guaranteed by setting up new permanent institutions in which civil society participates in political decision-making in compliance with the stakeholding principle: all those involved or having an interest in the decisions made by the public authorities regarding specific matters have the right to participate in the relevant decision-making processes by means of public assemblies and of exercising the right to vote in transnational, transregional or global referendums. The inhabitants of the world become the sole depositaries of democratic legitimacy provided they satisfy three principles of political action, namely cosmopolitan inclusion (all individuals must participate in the decision-making process concerning them); cosmopolitan responsibility (political action must be implemented in the interests of all those who are directly or indirectly involved); and lastly, impartiality (no one may be judge in his own cause; in the case of disputes an outside opinion is necessary). The application of these principles represents the decisive quantum leap that would allow the transition 'from the politics of the *polis*, founded on borders, to that of the *cosmopolis*, founded on sharing' (287): from the fragmented condition of subjects of globalization to true citizens of the world.

***Moral cosmopolitanism and political-legal cosmopolitanism: a shared project?*¹²**

Archibugi has provided a wide range of answers to the various critiques of the cosmopolitan democracy project (2008: Chs IV, VI, IX). One problem that remains unanswered however is that of understanding whether cosmopolitan democracy is essential for the correct application of cosmopolitan distributive justice or whether the latter is essential for the generation of cosmopolitan democracy. Archibugi puts forward several arguments to demonstrate that the latter is the condition that makes the former possible. While it is important for the behaviour of states to comply with an ethical standard, they must also be subjected to the constraints of the law: it would be difficult to justify them having to honour certain moral obligations if it were not clear which institutions laid down these obligations and before which courts they must be interpreted. Reviewing the history of rights, Archibugi points out that the working classes obtained economic and social rights only after gaining political clout. In any case, democratic governments are more motivated to promote the economic

interests of their citizens than authoritarian governments. It is thus legitimate to expect that global economic justice will emerge only after global political justice has come to light. As we have seen, other cosmopolitans share with the champions of cosmopolitan democracy the critique of the concept of sovereignty and propose an alternative notion, as Pogge does. Pogge hypothesizes a sovereignty that is extensively dispersed in the vertical dimension or concentric territorial units in a multilevel scheme. However, he does not limit the application of a global distributive principle to a well-defined political-legal configuration as he believes that it is possible to conceive of a range of institutional systems that could do so just as well. This does not mean, as we have seen, that the problem of global political justice is not at stake. He agrees with the critique of cosmopolitan democracy theoreticians of the current regional and global decision-making processes made up of international networks of states that perform functions of global governance because of the clear-cut deficit of rule making and accountability from which they suffer. Charles Beitz acknowledges that the strength of political-legal cosmopolitanism lies precisely in the fact that it has raised the burning question of whether institutions and transnational regimes must comply with standards of political justice comparable to those applied to statal institutions. From his point of view, the democratic institutions of liberal societies have three justifications: they recognize equality among citizens; they provide equal opportunities for protecting their interests against negligence or the state's invasiveness; they set up a political environment that allows them to participate in the decision-making process (Beitz 2004: 26). On the strength of the domestic analogy argument, Beitz asks whether it is possible and/or desirable to guarantee these conditions also at the global level and what consequences this would have for institutional structures. Beitz follows a different path from that of the champions of cosmopolitan democracy who, as we have seen, do not arrive at international and global democracy via the domestic analogy argument, that is, in a movement from the interior to the exterior, but in a movement in the opposite direction, fully convinced that the creation of global democratic governance is the condition for the maintenance, development and full realization of democracy within states. In his treatment, Beitz admits that some attempts, albeit only a few, have been made to seriously address these problems. However, there are only a few reciprocal references between these 'twin brothers'. This is perhaps, writes Archibugi, because 'relatives often tend to ignore each other when they are too close' (2008: 124). While the proponents of moral and institutional cosmopolitanism do not claim that it is a condition for political-legal cosmopolitanism, the reciprocal position is not valid. Archibugi is indeed persuaded that cosmopolitan democracy is instrumental for the application of the principles of global distributive justice. This appears plausible, in view of the fact that supranational political institutions are necessary to

identify those who have the duty of global distributive justice and to assign this role in order to arbitrate between conflicting jurisdictions, to provide the cooperation required to pursue the cosmopolitan principles of distributive justice, and ultimately to prevent the violation of rights. According to Archibugi, therefore, in order to apply the principles of distributive justice, it is necessary to set up dedicated supranational institutions and ensure they comply with the ideal of cosmopolitan democracy. In opposition to this position, Caney (2007)¹³ points out that by adopting the model he denoted as 'revisited statism', it would be possible also to ensure the accountability of international institutions in the absence of cosmopolitan democracy. From this point of view, cosmopolitan democracy would not be superior to the other institutional systems in the production of global distributive justice. The debate between these different schools of thought is still open.

Seyla Benhabib: cosmopolitanism and just membership

Migration in contemporary political theories

Seyla Benhabib, a distinguished champion of the theory of discourse ethics, begins her reflection on cosmopolitanism with the realization that the 1948 Universal Declaration of Human Rights announced a post-Westphalian phase characterized by the transition of international justice norms to cosmopolitan justice norms. There seem to be at least three areas in which the international protection of human rights is laying down binding and superordinate guidelines with respect to sovereign states, those referring respectively to crimes against humanity, to humanitarian intervention and to transnational migrations. Benhabib focuses in particular on international migrations with reference to three interconnected issues: (1) control and protection of national borders; (2) enjoyment of rights by foreigners resident in a national state; (3) their possible access to citizenship.

The Universal Declaration proclaims a universal right to cross borders, although without positing any universal obligation to accord hospitality imposed on the states. In the Geneva Convention the rights accorded to foreigners are recognized only by the signatory countries and are often ignored also by them. While on one hand the rules governing international human rights represent a challenge to territorially-bounded nations, on the other they reassert an international interstate order: as the main signatories and supporters of the many treaties on human rights and of the conventions through which international and cosmopolitan norms are spread, states

continue to be recognized as the sole legitimate units of negotiation and representation. In this process they thus find they have both been superseded and reinforced in their authority.

The massive level of transnational migration which characterizes our age highlights the tension between the progressive establishment of an international system of human rights and the persistence of a world order consisting of more or less democratic states claiming the authority to establish their own policy of admissions, to control and sometimes restrain the flow of migrants, and to establish membership. Faced with this tension and potential conflict, a cosmopolitan theory of justice cannot be restricted to schemes of *just distribution* or *just participation* on a global scale, but must also incorporate a vision of *just membership*. For Seyla Benhabib this just membership entails:

recognizing the moral claim of refugees and asylees to *first admittance*; a regime of *porous* borders for immigrants; an injunction against denationalization and the loss of citizenship rights; and the vindication of the right of every human being 'to have rights', that is, to be a *legal person*, entitled to certain inalienable rights, regardless of the status of their political membership.

2004: 3

The principle of just membership must also entail the *right to citizenship* for the alien who has fulfilled certain conditions, as permanent alienage should be incompatible with a liberal-democratic understanding of the human community. According to Benhabib, the right to citizenship, or political membership, must be accommodated 'by practices that are non-discriminatory in scope, transparent in formulation and execution, and justiciable when violated by states and other state-like organs' (2004: 3). Today, transnational migration is proving to be a challenge, especially for liberal democracies, as they are founded on the necessary negotiation between universalist constitutionalism and territorial sovereignty, between adherence to universal principles of human rights on the one hand and the claims of the sovereign right to self-determination on the other. This tension or conflict, which can perhaps never be resolved, gives rise to the need to ask ourselves what practices and principles of civil and political inclusion are most compatible with self-understanding and the constitutional values of liberal democracies.

In addressing the problem of political membership, Benhabib challenges the contemporary theories of global justice. While she reproaches John Rawls for having relegated migration to the level of a non-ideal theory and of having retained a view of international law which is too state-centric, she recognizes the merit of the champions of cosmopolitan justice (Beitz and Pogge) of having

shifted attention from peoples to individuals. She nevertheless criticizes them for having neglected, in concerning themselves with the primary principles of just distribution, the distribution of human beings insofar as they are members of the various different communities. Furthermore, in approaching the problem of migration they gave priority to the distribution of resources and rights over that of membership, subsuming the problem of proper membership beneath the problem of the just distribution of resources and rights. Like the champions of the 'decline of citizenship' – as she defines communitarians, civic republicans, liberal-nationalists and social democrats – she believes that membership of cultural and political communities is not a matter of pure distributive justice but a crucial aspect of the self-understanding and self-determination of a community. She nevertheless distances herself from them in challenging the view on migration and citizenship of Michael Walzer, one of the main representatives of this approach. In his *Spheres of Justice* (1983) Walzer asserts that political communities must be free, in the case of immigrants, refugees and asylum seekers, to define the conditions governing first entry as they see fit, in full respect of the constraints imposed by international obligations. According to Benhabib, Walzer commits the error of making no distinction between cultural community and institutional political system and consequently fails to grasp the difference between ethical integration and political integration. Political integration is related to those practices and norms, cultural traditions and institutional habits that unite individuals in the formation of a functioning political community. In liberal democracies the conceptions of human rights and citizenship, the constitutional traditions and the democratic practices of election and representation form the normative core of political integration: it is to them that citizens and foreigners, natives and foreign residents must show respect and loyalty, not to a specific cultural tradition. Contemporary institutional developments in the rights of citizenship in any case are already leading to the 'disaggregation of citizenship'; that is to say, to institutional developments that split off the three constituent dimensions of citizenship, namely collective identity, the privileges of political membership and the ownership of the enjoyment of social rights. In Europe, the conflict between sovereignty and hospitality is weakening, although it has not been completely eliminated. The fragmentation of citizenship revealed by the European model, precisely in view of the embryonic theoretical phase it is passing through, suggests a condition of greater fluidity which, even though it cannot lead to the overcoming of the other paradox of democracy, namely the paradox according to which those that are excluded cannot participate in decision making concerning the rules of exclusion and inclusion, can create the conditions in which these rules can be re-discussed through democratic iteration practices and undergo processes of reflexive re-foundation.¹⁴

The paradox of democratic legitimacy and democratic iterations

International migrations have revealed what Benhabib has called the *paradox of democratic legitimacy*. Democratic sovereignty actually 'draws its legitimacy not merely from its act of constitution but, equally significantly, from the conformity of this act to universal principles of human rights that are in some sense said to precede and antedate the will of the sovereign and in accordance with which the sovereign undertakes to bind itself' (2004: 44). 'We, the people' refers to a particular human community determined from a territorial and temporal viewpoint that shares culture, history and tradition but which, however, establishes itself as a democratic body acting in the name of the universal. Democracies act in the name of universal principles that are then embodied in a specific civil community. This means that the self-legislation act is not just an act of self-government but 'is also an act of self-constitution' (2004: 45); popular and democratic sovereignty must constitute a limited *demos* working to govern itself. Benhabib is critical of those authors who deny or minimize this paradox by partly ignoring the tension it causes. In her view, there is an unavoidable contradiction and a fateful tension between the principles of expansion and inclusion in moral and political universalism, in which universal human rights are rooted, and democratic closure.¹⁵ This does not mean that democratic closure must be accepted. It is necessary to ascertain what practices and principles of civil and political inclusion are more compatible with the philosophic self-comprehension and the constitutional values of liberal democracies. The Habermasian theory of discourse ethics provides the theoretical basis on which Benhabib constructs her own analyses, in particular the claims that 'only those norms and normative institutional arrangements are valid which can be agreed to by all concerned under special argumentation situations named discourses'. This logically presupposes that the actors are capable of taking actions that can modify the normative extension of laws. Conversely, the conceptions regarding political membership that are closely linked to the principle of territoriality presuppose that subjects excluded from citizenship cannot participate as actors involved in the decisions regarding the rules governing exclusion and inclusion. From the universalistic and cosmopolitan perspective implicit in discourse ethics boundaries, as well as the practices of inclusion and exclusion, require a justification. The question is therefore about finding ways and means of respecting 'the claims of diverse democratic communities, including their distinctive cultural, legal, and constitutional self-understandings, while strengthening their commitments to emerging norms of cosmopolitical justice' (2004: 3). While democratic closure can never be completely superseded but must always be justified, it follows that the presence of cosmopolitical norms has the function of raising the

threshold of justification to which the practices of exclusion must be subjected: 'Exclusions take place, but the threshold for justifying them is now higher' (2006: 71). This higher threshold, by bringing out greater democratic reflectiveness, makes it increasingly difficult to justify practices of exclusion by democratic legislatures due to the simple fact that they express the people's will. Benhabib also believes that the impact of democratic closure can be reduced through processes of 'democratic iteration',¹⁶ that is, practices by means of which it is possible to mediate the process of forming the will and opinion of democratic majorities by means of cosmopolitan norms. Some processes of democratic iteration are instances of jurisgenerative politics, that is, 'cases of legal and political contestation in which the meaning of rights and other fundamental principles are repositied, resignified, and reappropriated by new and excluded groups, or by the citizenry in the face of new and unprecedented hermeneutic challenges and meaning constellations' (2006: 70). These processes change the *sensus communis* and transform a new outlook into an authoritative precedent. In this way, on the one hand, growth is achieved 'of the political authorship by ordinary individuals, who thereby make these rights their own by democratically deploying them' (49); on the other, the democratic people can reconstitute themselves and permit the extension of the democratic voice: 'Aliens can become residents, and residents can become citizens' (68). Benhabib does not however recommend open borders but *porous* ones. Although defending the right of first entry for refugees and asylum seekers, as we have seen, she accepts the right of democracies to regulate the transition from the first admission to full membership. She supports the hypothesis of subjecting the rules governing naturalization to the principles of human rights, rejecting the claim of the democratic people to be able to deny naturalization and to banish foreign residents, although she believes that to make access contingent upon the possession of certain requirements is not detrimental to the self-understanding of liberal democracies as associations that respect the communicative freedom of human beings as such.

Boaventura de Sousa Santos: subaltern cosmopolitanism

The Italian communist intellectual Antonio Gramsci (1891–1937) used the term 'subaltern' to refer to the proletariat. The term was borrowed by the sociologist Boaventura de Sousa Santos who, in *Toward a New Legal Common Sense* (2002), uses the expression *subaltern cosmopolitanism* to describe the counter-hegemonic practices used by subaltern social groups, namely, by those who are socially, politically and geographically excluded from the

hegemonic power structure of neoliberal globalization. He identifies two forms of globalization, the neoliberal form and the one he defines as 'counter-hegemonic globalization'. The latter consists in a 'vast set of networks, initiatives, organizations, and movements that fight against the economic, social, and political outcomes of hegemonic globalization, challenge the conceptions of world development underlying the latter, and propose alternative conceptions' (Santos 2005: 29).

The main objective of counter-hegemonic globalization is the fight against social exclusion. As exclusion is often the result of iniquitous power relations, counter-hegemonic globalization is driven by a redistributive ethos which implies the redistribution not only of moral, social and political resources but also of cultural and symbolic ones. Since exchanges and iniquitous power relations have crystallized in politics and law, counter-hegemonic globalization engages in political and legal battles guided by the idea that principles of politics and law alternative to hegemonic structures and practices may exist. These alternative principles and the battle to assert them are gathered together by Santos under the name 'subaltern cosmopolitan politics and legality' (2002) and take in a wide social field of political and legal confrontation.¹⁷

Instead of writing off cosmopolitanism as a form of global hegemony, Santos sets out to reappraise the concept, starting from the following question: 'Who needs cosmopolitanism?' In need of cosmopolitanism but of a different nature are all those who have been excluded from cosmopolitanism as a top-down project:

whoever is a victim of local intolerance and discrimination needs cross-border tolerance and support; whoever lives in misery in a world of wealth needs cosmopolitan solidarity; whoever is a non- or second-class citizen of a country or the world needs an alternative conception of national and global citizenship. In short, the large majority of the world's populace, excluded from top-down cosmopolitan projects, needs a different type of cosmopolitanism

SANTOS 2002: 460

It is necessary to move on to a cosmopolitanism from below, from the perspective of the North to that of the South, where 'south' is not only the expression of a geographic position 'but all forms of subordination (economic exploitation; gender, racial, and ethnic oppression; and so on) associated with neoliberal globalization' (2005: 14). 'South' denotes all the forms of suffering caused by global capitalism and is unevenly spread throughout the world, also in the North, and also in the West. Cosmopolitanism from below, or subaltern cosmopolitanism, thus adopts the perspective of the community of victims, victims that are not however passive. The forms of resistance and the legal

alternatives, which are still at the embryonic stage but spread all over the world and represent an alternative to the hegemonic legal and political system, go to make up 'subaltern cosmopolitan legality'.

Santos' approach – cosmopolitan legality – follows in the wake of the political and legal counter-hegemonic struggles that aim at eroding the coercive ideology and institutions that support and naturalize the hegemony of dominant classes and groups. Proceeding beyond this deconstructive phase, Santos endeavours also to offer new conceptions and practices capable of replacing the dominant one in order to produce a new common sense.¹⁸ This necessarily implies a reappraisal of law and the politics of law, and that its conceptual boundaries should be enlarged along the following four lines: (1) extension of the concept of legal action or battles; (2) expansion of the scale – cosmopolitan legality envisages that the forms of political mobilization and their concrete objectives determine which scale is to be given priority (local, national, global); it tends to mobilize different legality scales, aiming at the global in the local and at the local in the global: 'it is a transcalar legality' (2002: 468); (3) expansion of legal knowledge and legal expertise; (4) expansion of the temporal dimension – it is necessary to switch from a linear conception of time which underlies the logic of progress and development in which different pasts converge towards a single past, to a pluralist concept of time that allows pathways of alternative development and therefore different pasts and different presents that can lead to different futures.

Neoliberal legal globalization is replacing the politicized tension between social regulation and social emancipation with a depoliticized conception of social change in which the only criterion is 'the rule of law and judicial adjudication by an honest, independent, predictable and efficient judiciary' (2002: 445). This is a conservative law that sets up the framework within which a market-based civil society must operate and flourish, while judicial power guarantees that the rule of law is widely accepted and effectively enforced. The spread and creation of a single system of dominance and exclusion have established the conditions in which counter-hegemonic forces – organization and movement located in a wide range of regions on the planet – become aware of their common interests over and above the differences separating them and converge towards counter-hegemonic battles connected by emancipatory social projects. Law retains an emancipatory potential that may be perceived by viewing the legal dimension of the counter-hegemonic battles being fought in the world. But in order to exploit this potential, new theoretical instruments must be devised. In the first place it is necessary to de-westernize the conception of law, and then reinvent law so that it can be adapted to the normative demands of subaltern social groups, their movements and organizations. This reinvention of law calls for an investigation of subaltern conceptions and practices. Santos identifies three

different types: (1) conceptions and practices that, although part of western tradition, have been suppressed or marginalized by liberal conceptions that have become dominant; (2) conceptions that have been developed outside the West, in the colonies and postcolonial states; (3) conceptions and practices proposed by organizations and movements actively developing forms of counter-hegemonic globalization. The latter can be grasped only by observing the 'contact zones', namely those 'social fields in which different normative life worlds meet and clash'. Cosmopolitan battles often ignite precisely in these zones. The contact zones of greatest interest are those in which 'different legal cultures clash in highly asymmetrical ways, that is, in clashes that mobilize very unequal power exchanges' (2002: 472), as happens, for instance, when indigenous populations engage in asymmetric encounters with national dominant cultures, or illegal immigrants or refugees engage with the norms governing their entry and status in the various nation-states. These are zones

in which rival normative ideas, knowledge, power forms, symbolic universes and agencies meet in unequal conditions and resist, reject, assimilate, imitate, subvert each other, giving rise to hybrid legal and political constellations in which the inequality of exchanges are traceable. Legal hybrids are legal and political phenomena that mix heterogeneous entities operating through disintegration of forms and retrieval of fragments, giving rise to new constellations of legal and political meaning. As a result of the interactions that take place in the contact zone both the nature of the different powers involved and the power differences among them are affected. The latter may indeed intensify or attenuate as a result of the encounter.

2002: 471–472

Currently, counter-hegemonic cosmopolitan legal strategies occur in four main contact zones: (1) multicultural human rights;¹⁹ (2) definition of what is meant by tradition and modernity; (3) intellectual property, biodiversity, human health; (4) citizenship.²⁰ Each legal paradigm tends to establish its own form of sociality: violence, coexistence, reconciliation and conviviality. A legal constellation dominated by cosmopolitanism tends to be favourable to conviviality, that is, a reconciliation looking to the future, based on fair exchanges and shared authority. Sousa's objective is ultimately to remove social fascism, that is, the practices of exclusion, and to create a more inclusive and convivial world society.

Objections to cosmopolitan democracy

Cosmopolitan democracy has been criticized by numerous theorists belonging to different schools of thought. The realists consider the cosmopolitan

democracy project not only to be unfeasible but indeed undesirable (Zolo 1997: 153); they view a global legal order as a tool for the 'criminalization of the enemy' or the 'moralization of war', serving the interests of self-declared 'peace-lords' (Zolo 2000). Harsh criticism comes also from those who deem humanitarian interventionism a way of promoting the interests of the multinationals of the global capitalist economy. NATO bombing of the Federal Republic of Yugoslavia in spring 1999, greeted by the codems as a triumph of international justice over the traditional claims of national sovereignty, signified *de facto* the decline of sovereign equality, that is, of the recognition of the equal legal status of nation-states: while the sovereignty of several states (Yugoslavia, Iraq) was restricted, that of others (NATO member states) was enhanced by the recognition of their right to intervene (Chandler 2000).

Some do not criticize so much the global governance project as the request to democratize power sites beyond the nation-state. They blame codems for a degree of disagreement in defining democracy (self-determination for Held; non violence, rule of the people, political equality for Archibugi), question the feasibility of applying democracy to too vast a territory and highlight the difficulties caused by the lack of any shared culture, language or ethos (Dahl 1999: 32–34; Kymlicka 2001: 238–239; Miller 2000: 89–96). Beyond national borders there might not be sufficient cultural or historical resources with which to construct a common identity and the bonds of solidarity needed to enable democracy to work. Kymlicka believes that the extension of democracy to the global sphere could jeopardize the sense of identity of individual political communities; he is also of the opinion that it would be better to remind individual states of their responsibilities regarding immigration policies and the protection of minorities, rather than to delegate the solution of these problems to institutions of world citizens. In view of the fact that 'democratic politics is politics in the vernacular' (Kymlicka 2001: 214), the lack of any common language would make it difficult for him, if not impossible, to create a democratic political community or any real participation in the political debate.²¹ In championing a republican-like kind of citizenship, David Miller (2000: 92) asserts that the cosmopolitan view is too thin a version of citizenship:

the citizen is not a law-maker except perhaps in the very indirect sense . . . her role as citizen consists in asserting her rights against the state, and appealing to a higher court to make good her claim that her state has violated those rights. This involves no reciprocal recognition of obligations and no public activity: it is essentially the action of a private person.

A few critics point out that what have become global are the problems, not the citizens, and doubt the possibility of creating a global *demos* (Thaa 2001;

Urbinati 2003). Others assert that global governance requires democracy within and between states but not 'a supranational government' and that codems have a reductive conception of democracy (Urbinati 2003: 80). Others again claim that instead of introducing citizen participation at a global level it would be better to empower democracies to function more effectively inside states and to boost internal active citizenship (Axtmann 2002). For some, a contribution may be made to global governance through political commitment within one's own political communities, through what Parekh (2003) terms 'globally oriented national citizenship', a pathway along which, politically speaking, we may find citizens pursuing 'global agendas' inside their own states via the foreign policies of their own governments.

One further reservation is put forward regarding the possibility of rendering international organizations democratic. The proliferation of powers *de facto* reduces the possibility of effective control and coordination and, ultimately, of democratic participation (Dahl 1999). Even if participation were ensured, the problem would always remain of how to determine the relevant democratic constituencies, whose interest should count in making particular decisions. A multilevel system of global governance can also lead to an aggravation of the problem of the 'many majorities' (Thompson 1999), seeing as each level could express different majorities, none of which would be capable of claiming greater democratic legitimacy than the others. Then it is necessary to add another group of authors (Scheuerman 2002; Slaughter 2005; Urbinati 2003) for whom it would be more realistic to pursue the strategy of globalizing the *rule of law* rather than the *rule of the people*, democracy, assigning greater clout and jurisdiction to institutions that are less likely to be influenced by the *demos*, such as those in which membership is permanent and more top-down than bottom-up.²²

Nor is there any lack of criticism from the Marxists (Görg and Hirsch 1998), who object that codems place more emphasis on reforming the supra-structural (political-institutional) dimension than the structural dimension (global economy) that exerts a priority effect on the national and international power system. They consider that cosmopolitan democracy is unfeasible in that only a new economic system could lead to world political relations being transformed. Some accuse cosmopolitan democracy of elitarianism: 'They – we – imagine the world from the vantage point of frequent travellers, easily entering and exiting polities and social relations around the world, armed with visa-friendly passports and credit-cards. For such frequent travellers cosmopolitanism has considerable rhetorical advantage. It seems hard not to want to be a "citizen of the world"' (Calhoun 2002: 89). Codems are accused of offering, like many liberals of the past, a vision of political reform that is attractive to elites partly because 'it promises to find virtue without a radical redistribution of wealth or power'. To purge itself of this elitarianism, the

cosmopolitan project would have to become radical in the direction of a greater 'discursive engagement across lines of difference, more commitment to the reduction of material inequality, and more openness to radical change' (Calhoun 2002: 108). For some authors cosmopolitan democracy, as well as being elitarian, is also potentially intolerant vis-à-vis global plurality in that it advocates ideals and values that are too 'comprehensive' (Benhabib 2006: 43). Others raise the issue of praxeology: that is to say, by what agency can cosmopolitanism be promoted and achieved in practice? Held, for example, seems to be 'concerned with detailed prescriptions about how global governance should be organized but has very little to say about who could (or would like to) realize his vision, under what circumstances, and with what consequences' (Patomäki 2003: 357). An even more fundamental question is that cosmopolitan democracy does not seem to have the means to oppose the power of states and international institutions which 'actively support the prevailing form of neo-liberal globalization with its systematic privileging of market actors and with its deregulated and liberalized economic dynamics' (Slaughter 2010: 189).

Some mention must also be made of authors whose criticism is based on approaches that lie outside the western liberal tradition. They complain that the cosmopolitan democracy consists of the universalization of the western interpretation of democratic value and the implementation of the western version of human rights at the global level; and furthermore that the establishment of a world republic with a homogeneous body of cosmopolitan citizens having the same rights and duties would be a denial of 'the political' in its antagonistic dimension, which is inherent in all human societies (Mouffe 2008: 465). The theorists of the new legal pluralism such as Boaventura de Sousa Santos subscribe to the multiple nature of the normative traditions and legal systems that are current today at the world level and emphasize their mainly 'transnational' and 'transstatal' nature (Santos 2002). Legal pluralism is a consequence of sociological pluralism and no society – much less world civil society – is homogeneous. Legal monism is contradicted by the very facts: not only do ethnic minorities apply increasingly their particular law but there is an ongoing process of 'internal heterogeneization of state regulation' (199). In this framework Santos also stresses the interaction between strong (western) normative models and autochthonous normative tradition. After studying several areas that have been subjected to a colonial presence, such as Argentina, Brazil, Mexico and Peru, he remarks that state law of western origin conflicts with both the normative claims of the more radical political movements and the legal traditions of the native minorities, such as the Sem Terra movement in Brazil, the Zapatist movement in Mexico and the Andean Indios in Peru. In Central Asia, in countries like Pakistan and India in particular, state law inherited from the colonial experience is challenged by pressure to recover precolonial normative traditions. The phenomenon of legal plurality or,

as Santos terms it, of *interlegality*, cannot be sidestepped: parallel 'legality networks' exist which entrain constant transactions and transgressions and are not ascribable to a unitary normative paradigm that pre-exists the controversies. Santos also exposes the weakness of a doctrine that, despite its cosmopolitan ambitions remains bogged down in European culture, namely in classic-Christian natural law theory. The idea of international law proposed by the latter cannot be separated from a theological-metaphysical framework that places at the foundation of the international legal community a belief in the moral nature of man and the moral unity of humankind. This philosophy of law is dominated by the Kantian idea that mankind can progress only if certain ethical principles are shared by all men and are enforced by supranational powers even at the cost of sacrificing different existing ethical convictions and normative systems. With respect to the universality of human rights, western opponents of 'legal globalism' do not deny the importance of the doctrine of subjective rights in western political and legal history. However, they are careful to point the finger at the tension between the individualistic philosophy underlying this doctrine and the wide range of civilizations and cultures whose values differ, and are often very distant, from European ones.