

# Cosmopolitanism ancient, modern, postmodern

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The advocates of the new world order cannot match its characteristics with any of the set blueprints of political theory. Empire and imperialism in particular have too many negative connotations and, despite clear similarities with the present dispensation, cannot be sufficiently purified for use in a nominally postcolonial world. Cosmopolitanism, an ancient philosophical tradition, has therefore been revived and turned into a shorthand for the (partly actual partly hoped for) institutional and constitutional design of the new order. Its post-modern promoters promise and prophesise the end of wars and the dawn of an age of perpetual peace, if the cosmopolitan constitution is fully implemented. A main difference between (emerging) cosmopolitanism and the post-Second World War order is the elevation of a strong moral component with a weak legal gloss – human rights – into the ruling ideology. At the same time, the last twenty years have witnessed continuous violence, war and conquest. As in most millenarianism, extensive destruction and pillage precedes the promised land of peace and plenty. This and the next chapter turn to the main ideological components of the emerging empire, first cosmopolitanism then human rights.

### **Ancient cosmopolitanism**

‘The important fact now is that the human condition has itself become cosmopolitan’.<sup>1</sup> As a statement of fact, Ulrich Beck’s assertion must count as audacious and counter-intuitive. Is cosmopolitanism the next step in the inexorable rise of globalisation and the decline of the nation-state? Is it the only alternative to developing Empire? The *cosmo-polites* is the citizen of the world; cosmopolitanism a world federation, a world state or a global

1 Ulrich Beck, *Cosmopolitan Vision* (Cambridge, Polity, 2006), 2.

‘cosmopolitical democracy’ that controls the use of force, polices the peace among its constituents members and guarantees human rights to all. Can cosmopolitan law and institutions lead a better, more just and humane arrangement for our globalised world? Let us have a look at the history of cosmopolitanism.

*Cosmos* and *polis* are the two key concepts in Greek political philosophy. The classical Greek cosmos was the arrangement of the *dike* (order) of the world. It included the *physis* (nature) of all beings, the *ethos* of social mores, the *nomos* of customs and laws and, most importantly, the *logos* or rational foundation of all that exists. The cosmos was a closed but harmonious and ordered universe. Entities were arranged in a hierarchical way, each holding its unique and differential place within the overall scheme according to its proper degree of perfection, ‘at the top the incorruptible imponderable luminous spheres, at the bottom, the heavy, opaque material bodies’.<sup>2</sup> The purpose of a being determined its nature and its place in the order of things. The aims, purposes and ends of the cosmos and of things and beings could be achieved politically, in the *polis*, the city-state, always in conjunction with others. The citizens acquired their natural (which was also moral) perfection only in the company of others, in the *agora* of Athens and Corinth. Conversely, a city was just if it created the conditions for its citizens to attain their full nature and achieve their purpose. *Cosmos* and *polis* or *physis* and *nomos* were intricately linked but variable. Cities became just and citizens virtuous by following their individual purpose and realising their unique nature. No common law linked the city-states and no common humanity their citizens.

The dramatic mutation introduced by the Stoics changed the variable nature of *physis* and *nomos*. *Nomos* (law) was expanded and became the bond bringing the universe together. Universal and even divine *logos* (reason) united the wise and virtuous; its sacred character communed to its followers a sublime pathos. The Stoics believed in a golden age, governed by unwritten laws whose content promoted the innate equality and unity of all in a rational empire of love. ‘An extremely anthropocentric, yet divinely sublime, nature governed by necessity was held over positive society and became the sole criterion of valid law.’<sup>3</sup> Admittedly, this early universalism was not predominantly political. The Stoics preached the superiority of a private life of

2 Blandine Barret-Kriegel, *Les Droits de l’homme et le droit naturel* (Paris, PUF, 1989), 46. It should be emphasised here that this cosmology is intrinsically linked with the inegalitarian nature of classical natural right and ancient societies. For Aristotle, slavery was natural and therefore not an affront to natural right.

3 Ernst Bloch, *Natural Law and Human Dignity* (Dennis Schmidt, trans.) (Cambridge, MA, MIT Press, 1988), 13.

tranquillity and reflection and practised *ataraxia* (imperturbability), the supreme duty of self-control over passions and irrationality. Their passion against passions even transgressed class divides. One major early Stoic philosopher was a slave (Epictetus), another an emperor (Marcus Aurelius).

While the Stoics were not particularly interested in state constitutions, they made a lasting contribution to political thought. Zeno, the founder of the *Stoa* (a brightly coloured arcade where he taught), a Cypriot who taught in Athens in the first half of the third century, is considered as the inventor of cosmopolitanism. His *Republic* is the only sustained work of Stoic political philosophy. It has survived in fragments quoted by later writers intent in either revising or attacking the master. The main concern of later philosophers, when referring to Zeno's *Republic*, was the apparent affinity between Zeno's theories and those of the Cynics, as expressed in particular by the natural philosophy of Diogenes. The *Republic* is the most complete discussion of the Stoic theory of the *polis*. Zeno, following Plato, presented a quasi-constitution for his ideal city. He suggested, among other radical ideas, the abolition of formal education, marriage, temples, court houses and gymnasia, the rejection of money and other conventional institutions, the holding of property in common and the adoption of a simple common dress for men and women. Eros was the republic's God; citizens were encouraged to form strong erotic relationships and sexual attraction was accorded a moral element.<sup>4</sup> As Malcolm Schofield has shown persuasively, Zeno's *Republic* was seriously censored by the later Stoics Cassius and Athenodorus, through whose writings we have partial knowledge of the book. They intensely disliked and tried to remove any 'trace of Cynicism' from the key text of a major Stoic because it was regarded as 'antinomian'.<sup>5</sup> The worry of the latecomers is understandable. Zeno attacked the key institutions and conventions of the city, including religion, law and money, but made no detailed positive suggestions.<sup>6</sup> He argued that customs, conventions and institutions should be replaced by eros and the exercise of virtue. Poverty, frugality and 'incivility to kings and their ambassadors in particular' was Zeno's way.<sup>7</sup> Only the wise and virtuous are real men, free citizens, good friends and passionate lovers. They transcend 'the tawdry demi-monde of the many parochial cities with their ethnic divisions and prejudices, wars, slavery, traditional families and conventional private property'.<sup>8</sup>

4 Malcolm Schofield, 'The City of Love', in *The Stoic Idea of the City* (Cambridge, Cambridge University Press, 1999), Chapter 2.

5 Ibid. 10.

6 M.I. Finley, 'Utopianism Ancient and Modern' in *The Use and Abuse of History* (London, Chatto & Windus, 1975), 188.

7 Schofield, op. cit., 149.

8 Finley, 241–2.

Zeno's *Republic*, while not explicitly cosmopolitan, was the first extensive discussion of the *polis* in the context of *cosmopolis*. The influence of Diogenes of Sinopi, the infamous Cynic, is evident. Diogenes was reputedly the first to describe himself as a *cosmopolites*, when he famously stated that he does not feel at home anywhere except in the cosmos itself. Stoic beliefs about the city developed as an interpretation of Diogenes' phrase.<sup>9</sup> For Diogenes, no actually existing city or law is real; the only correct Republic is that of the cosmos. Following these ideas, Diogenes described himself as 'cityless, homeless, without a country, poor, a wanderer, living life from day to day'.<sup>10</sup> As Moses Hadas put it, Diogenes' cosmopolitanism was 'the proud assertion of a ragged exile's consciousness of his own worth in the face of a bourgeois society which scorned him'.<sup>11</sup> Crates, his disciple and successor with the staff and ragged cloak, gave a clearer description of the cosmopolis: '[Crates] said that ignominy and poverty were his country, which Fortune could not take captive, and Diogenes was his city, which envy could not plot against.'<sup>12</sup>

Plutarch, writing some four centuries after Zeno at the height of the Roman Empire, is full of praise for the cosmopolitan outlook. According to Plutarch, Zeno preached:

that all inhabitants of this world of ours should not live differentiated by their respective rules of justice in separate cities and communities, but that we should consider all men to be of one community and one polity, and that we should have a common life and an order common to us all, even as a herd that feeds together and shares the pasturage of a common field. This Zeno wrote, giving shape to a dream or, as it were, a shadowy picture of a well-ordered and philanthropic commonwealth.<sup>13</sup>

Plutarch's enthusiasm for Zeno, despite his dislike of Stoicism, appears in a chapter of *Moralia* praising Alexander the Great, presented as the man who brought together all men everywhere into one body and made them consider the whole earth as their fatherland. Most contemporary commentators, however, consider these passages unreliable. 'The League of Nations Alexander'

9 Schofield, *op. cit.*, 64.

10 Diogenes Laertius, *Lives of Eminent Philosophers* (2 vols, H.S. Long, ed.) (Oxford, Oxford University Press, 1961), VI, 38.

11 Moses Hadas, 'From Nationalism to Cosmopolitanism in the Greco-Roman World' 4/1 *Journal of the History of Ideas* 105 (1943), 108.

12 Diogenes Laertius, *Lives*, VI, 93.

13 Plutarch, 'On the Fortune or Virtue of Alexander' in *Moralia*, vol. IV (A de Selincourt trans.) (London, Heinemann, 1957), 329 (6).

is a figment of Plutarch and of contemporary scholars' imagination serving political agendas of their respective periods.<sup>14</sup> The Macedonian empire was the first however to bring together imperial designs and cosmopolitan ideals, even if the latter could be seen as post facto rationalisations of conquest and imperialism.

The late Stoics repeated and modified Diogenes' and Zeno's ideas and, as a result, the cosmopolitan outlook started taking philosophical root. In various fragments, the earthly cities are described as not real because they are not ruled by justice and law. Only the *cosmopolis* will allow its citizens to develop the necessary sophistication of wisdom and virtue. Zeno's emphasis on virtue and love, his attack on laws, customs and institutions led Clemes to state that the only real city is the cosmos:

The Stoics say that the universe (*ouranos* or *oikoumene* in Greek) is in the proper sense a *polis*, but that those here on earth are not – they are called cities, but they are not really. For a city or a *demos* (people) is something morally good, an organisation or group of men administered by law and of great refinement (or urban sophistication – *asteion*).<sup>15</sup>

Cosmopolitanism was critical and even antinomian precisely because the *nomoi* and institutions of the age were falling far short of the ideals of justice and law. The Stoics taught that 'just and virtuous conduct cannot be defined by the laws and mores of the state of which one happens to be a citizen'.<sup>16</sup> In this sense, they are the first legal critics but also the first utopian thinkers of the Western world. As Schofield remarks, 'Zeno's *Republic* was already regarded as incorrigibly utopian in classical antiquity'.<sup>17</sup> The alternative to the polis is the cosmos, not as a better arrangement of institutions but as the place where gods and men gather together and laws express the natural integrity of the relationship between human and divine. There is a city of Cecrops (the founder of Athens) and a city of Zeus. The polis of Zeus, the city in the sky, is not situated in any particular place; it can be everywhere and nowhere. Logos and

14 Peter Green, *Alexander of Macedon* (Oxford, University of California Press, 1991), 484. Green attacks Sir William Tarn, who declared that Alexander was 'the first man known who contemplated the brotherhood of man or the unity of mankind' ('Alexander the Great and the Unity of Mankind' in G.T. Griffith, ed., *Alexander the Great: The Main Problems* (Cambridge, Heffer, 1966), 266. Green argues that Tarn tried to present Alexander as a benign cosmopolitan because he disliked his homosexuality and imperialism.

15 Clement of Alexandria, *Opera* (4 vols, W. Dindorf, ed.) (Oxford, 1869), IV 26, SVF III 327.

16 Derek Heater, *World Citizenship and Government* (London, Palgrave, 1996), 26.

17 Schofield, op. cit., 147.

eros are its foundation against the artifice of customs, corrupt laws and institutions. Its citizens are errant, nomadic, today they would be refugees, outsiders, migrants. They dislike power, distrust the powerful and suspect institutions not based on justice and virtue. Diogenes, the dog-philosopher, famously told Alexander the Great, who came to visit him at his barrel of a home in Athens, to move aside because he was blocking the sun.

But there was a second institutional route along which Stoic universal humanity developed further. The rational unity of the human race became the foundation of ideas of equality. This was a dramatic departure from the Greek world of free and slaves, of Hellenes and barbarians and put them in touch with a different tradition:

The contact with the ancient prophets of Israel, who were the first to lay claim to an analogous position, was a singular event full of consequence. The unity of the human race, the natural right to peace, formal democracy, mutual aid . . . came to be the beginnings of a more or less definite concept.<sup>18</sup>

These revolutionary ideas were initially confined to the austere gaze of the philosopher or promised the idealised perfection of the Hellenistic world. The synthesis of the two great traditions of Athens and Jerusalem, and the concrete application of ideas of political equality would have to wait the political declarations of early modernity.

As the Greek city-states started dissolving, first in the Macedonian and later in the Roman Empire, the idea of a law common to all imperial subjects, of a *jus gentium*, started to take hold. The Stoics had avoided direct political involvement, but the universal morality they espoused and deduced from rational human nature was of great use to the builders of the Roman Empire as a restraint on ethnic and local nationalisms and individual passions. The late Stoic Chryssipus, for example, described universal humanity as a nation, while for Posidonius, the world was ‘the commonwealth of gods and men’.<sup>19</sup> But the Greek Stoics kept their distance from power in the main and imagined the cosmopolis as an ontological and ethical correction of the polis. As a commentator on Chrysippos put it, the Stoic cosmic polis was ‘not comparable to the empire Alexander extended to the ends of the earth; it is a question for them of human relationships, free of political form’.<sup>20</sup>

18 Bloch, op. cit., 16.

19 Ibid. 14.

20 E. Brehier quoted in Heater, op. cit., 15.

This changed with the Romans. The Stoic influence was greatest among people of power, office and affairs. Cicero was a populist orator, pragmatic lawyer and politician, Seneca, Nero's closest confidant, while Marcus Aurelius, an emperor and general. Cosmopolitanism turned, accordingly, from Cynic philosophy and Stoic ontology into an instrument of rule, no longer the philosophy of an ideal world but a strategy for world power. Cicero started the process. He mis-digested and eclectically revised the main tenets of Stoic thought, turning its rational universality into the ideology of Rome.<sup>21</sup> He rationalised Roman law and claimed that many of its central tenets could be traced back to universal rational norms. The Stoics were the first pagans to believe that natural law is the expression of a divine reason, which pervades the world and makes human law one of its aspects. Cicero popularised this idea:

The true law, is the law of reason, in accordance with nature known to all, unchangeable and imperishable should call men to their duties by its precepts and deter them from wrongdoing with its prohibitions . . . nor will it be one law in Rome and a different one in Athens, nor otherwise tomorrow than it is today; but one and the same law, eternal and unchangeable will bind all people and all ages; and God, its designer, expounder and enacter, will be the sole and universal ruler and governor of all things.<sup>22</sup>

For Cicero, gods and men share the same *logos* or *ratio* (reason), which finds its best expression in the *nomos* (*lex*) of nature and city. But if gods and men share reason and law they also share a *civitas*. The common *logos*, an abstract almost mystical idea for the Greek Stoics, now becomes the law of the city. Cicero still clings to some of the earlier notions and sees the city as the place that brings together the divine and secular. But soon, law and the city became fully secularised. Marcus Aurelius became an emperor in AD 161 and spent a large part of his office successfully defending the northern and eastern frontiers and expanding the Empire. In his late *Meditations*, Marcus argues for a close, almost logical link between reason and cosmopolitanism and, at the same time, makes the gods disappear:

21 Pangle, *op. cit.*, gives a detailed description of Cicero's criticisms and revisions of Greek stoicism. More generally, see Michel Villey, *Histoire de la Philosophie du Droit* (Paris, PUF, 4th edn, 1975), 428–80.

22 Cicero, *Republic* (N. Rudd, trans.) (Oxford, Oxford University Press, 1998), III, 22.

If the intellectual capacity is common to all, common too is the reason, which makes us rational beings. If so, we share reason which tells us what ought and ought not to happen in common. If so, the law is common. If so, we are citizens. If so, we are fellow-members of a republic. If so, the cosmos is like a city – for in what other single polity can the whole human race belong in common?<sup>23</sup>

The antinomian positions of the Cynics and Zeno have been finally reversed, the *logos spermatikos* turned from a critique into an apology of the law of the city. The *cosmopolis*, which had started its career as an ideal polis, ended as the servant and extension of a very earthly and imperial city.

In a parallel development, the Stoic ‘common notions’, through which men partook of universal reason and became aware of its dictates, were psychologised. The *orthos logos* (right reason) of the Greeks, which united natural necessity with the laws of reason, was turned into the *recta ratio* of ‘a common sense that has become the supreme source of law’.<sup>24</sup> The pragmatic Roman jurists identified *jus naturale* with the Roman law: ‘For “natural” was to them . . . the normal and reasonable order of human interests and, for this reason, not in need of further evidence’.<sup>25</sup> *Natura initium juris*:<sup>26</sup> nature turned from a variable and dynamic purposeful order into the source of a legal code. Nature commands and its moral prescriptions can be found in the soul. Gradually natural right became a matter of introspection and legislation rather than of rational contemplation and dialectical confrontation. The philosophical universalism of the Stoics became a global law applying to the territory demarcated and controlled by the Roman garrisons. The Romans perceived their empire as natural, eternal and limitless. ‘To establish an empire is an essay in world creation’ writes Eric Voegelin and this task was facilitated by the mutation of cosmopolis from a state of mind into a limitless territorial space and of natural law from a moral and ontological order into a set of precepts emanating from a legislating centre.<sup>27</sup> As Alex Colas notes, ‘imperial self-representation from the very beginning sought to emphasise Rome’s all

23 Marcus Aurelius Antoninus, *Meditations* (C.R. Haines, trans.) (London, Heinemann, 1959), IV, 4.

24 Cicero, *op. cit.*, III, 20.

25 Erns Levy, ‘Natural Law in Roman Thought’, 15 *Studia et Documenta Historiae et Juris* (1949), 7.

26 Cicero, *De inventione* (H.M. Hubbell, trans.) (London, Heinemann, 1949), II, 22, 65

27 Eric Voegelin, ‘World-Empire and the Unity of Mankind’, 38/2 *International Affairs* 171 (April 1966), 179.



encompassing, all-embracing nature'.<sup>28</sup> Rome was created out of 'successive incorporations, of new arrivals and additions to the Roman people'.<sup>29</sup> Empires aspire to absorb the known world into their own rule and turn the law of the imperial centre into universal law.

Classical political philosophy revolved around the confrontation between *physis* or *cosmos* and *nomos* or *polis*. Its Roman simplification opened two possible lines, which have since dominated political history and philosophy. According to the original Cynic philosophy, nature and cosmos, with their principles of dignity and equality deduced by reason or given by God, are tools of resistance against the injustices of the city. In this version, the spirit of the cosmos is mobilised against the order of the polis. Both utopianism and radical movements for social justice belong to this tradition. The second eventually dominant version elevates the law of the polis to the status of the law of the cosmos, extending its writ to the globe and giving it metaphysical *gravitas*. This is the cosmopolitanism of empire. It sanctions institutions, social hierarchies and inequalities with the imprimatur of reason and nature (nowadays universalism and human rights). Cosmopolitanism starts as a moral universalism but often degenerates into imperial globalism. The transformation of pagan Rome into the Christian Roman Empire repeated the same dialectic. Augustine's *City of God*, a relentless critique of the sins and failings of secular power, became a justification of imperial aspirations once they were subjected to the demands of the Church. The continuous slide of cosmopolitan ideas towards empire is one of the dominant motifs of modernity.

## Modern cosmopolitanism

Modern cosmopolitanism returns to these tensions. It is the offspring of that great philosophical nation, Germany. A combination of metaphysics and *nomophilia*,<sup>30</sup> cosmopolitanism is a kind of constitutional patriotism and the child of three generations defeated in war. Its patriarchs are Kant, Kelsen, Habermas as well as Goethe, Herder, Humboldt, Nietzsche, Marx and Simmel. They all 'construed the modern period as a transition from early conditions of

28 Alex Colas, *Open Doors and Closed Frontiers: the Limits of American Empire* (forthcoming, copy with author).

29 Greg Woolf, 'Inventing Empire in Ancient Rome' in S.A. Alcock *et al.*, eds, *Empires. Perspectives from Archaeology and History* (Cambridge, Cambridge University Press, 1999), 317.

30 *Nomophilia* is the intellectual and sexual condition of experiencing extreme pleasure from contact with the law.

relatively closed societies to “universal eras” [*univeresellen Epochen*] (Goethe) of interdependent societies’.<sup>31</sup> The modern idea of cosmopolitanism originated in a series of essays written by Kant over a twelve-year period before and after the French Revolution.<sup>32</sup> Kant’s utopia included two legal elements: binding international law and cosmopolitan law. The creation of a consensual and fully binding international law and institutions would lead to lawful external relations and turn states into legal subjects with reciprocal rights and duties. The cosmopolitan law of universal civic society, on the other hand, would guarantee the rights of all irrespective of the state of their domestic law. People have entered, argued Kant ‘into a universal community, and it has developed to the point where a violations of rights in *one* part of the world is felt *everywhere*’.<sup>33</sup> The task was to formalise and generalise this feeling. The cosmopolitan order would come about through a contract among states creating a league or ‘*pacific federation*’ of nations. It would be a voluntary coalition without a constitution. The people have no role to play in Kant’s republic. The ‘majesty of the people [popular sovereignty] is an absurd expression’ wrote Kant.<sup>34</sup> Kant’s cosmopolitanism was a league of states and definitely not a world republic of the people. A combination of reason and self-interest, Kant believed, would make states keep to their agreements. The collective power of the league would guarantee the independent existence and security of states and individuals but also ensure that states exist in a power equilibrium. A state would have no legal obligation to remain in the league, if it acted against its interests. Its duty to remain within the federation would be self-imposed and moral.

For Kantian metaphysics, cosmopolitan right was a pure idea deriving from the requirements of practical reason, from right and duty. Everyone must hold it sacred, however great the sacrifice the ruling powers would have to make for its achievement. Kant insisted that we must act according to the principle of perpetual peace even if there is no possibility of realising it. All politics, declared Kant, must bend the knee before right. Kant’s utopianism was underpinned by his belief that the cunning of reason was working beneath the great battles of history and was leading to its universal end, the perfect civil union of humankind. The league was the first step for the abolition of war and the emergence of a state of perpetual peace. This hope was metaphysically

31 Beck, *op. cit.*, 9.

32 ‘Idea for a Universal History from a Cosmopolitan Point of View’ and ‘Towards Perpetual Peace: A Philosophical Sketch’ in *Kant’s Political Writings* (H. Reiss, ed.) (Cambridge, Cambridge University Press, 1986).

33 *Ibid.* 107–8.

34 *Ibid.* 16.

guaranteed ‘by no less authority than the great artist Nature herself which would lead to a community of nations from which there would be no return’. The ‘purpose of nature’ would eventually lead to the coincidence of politics and morality. Admittedly, before the achievement of this state of grace justified wars would still take place but they would be strictly limited. The spread of democracy and the consequent need to have popular assent for a declaration of war would provide an important constraint as would the introduction of strict legal rules for the initiation and conduct of war.<sup>35</sup> Wars of annihilation and enslavement would be outlawed, although colonisation could be justified for bringing culture to uncivilised people and cleansing the colonising nation of its depraved characters.

Kant’s dream started taking shape in the great revolutions and constitutions of the eighteenth century. The relationship between the universal (cosmos) and the national (polis) became the political horizon of modernity. The American and French revolutions pronounced natural rights inalienable because they were independent of governments, temporal and local factors, and expressed in legal form the natural rights of man. Rights were declared to belong to all humanity. Yet, the legislator of this universalism was the French or American assembly, and the beneficiaries of these universal rights were the citizens of the two nations. From that point, sovereignty follows a national principle and belongs to a dual time. The constitutions introduced a historical teleology, which promised the future unification of nation and humanity. The variations opened at the time of the Roman Empire were again evident: imperialism in the Napoleonic wars, in which the French nation claimed to be the expression of humanity and to spread through conquest and occupation its civilising influence to the world; and the beginnings of a modern cosmopolitanism, in which slavery was abolished and colonial people were given political rights for a limited time after the French Revolution. The cosmopolitan aspiration is that humanity will overcome national differences and conflicts in a global civil society.

Kant’s pious position was adjudged extremely dangerous by Carl Schmitt, for whom its initiator was a judge of heresy and a theologian rather than a lawyer. According to Schmitt, Kant’s cosmopolitan teachings anticipated the (feeble) attempts in the twentieth century (and one could add the much more

35 Recent research has given the lie to the other cliché that democracies do not commit atrocities. Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge, Cambridge University Press, 2005) argues persuasively that ethnic cleansing and genocide happen when the *demos* and the *ethnos* coincide or when the nation legitimises its claim to power through democratic means.

successful in the twenty-first) to impose morality on international relations.<sup>36</sup> But for many important commentators and social theorists, we are now well on the way to a new type of cosmopolitanism. For Jürgen Habermas, our choice is between a Kantian pacific cosmopolitanism and a regressive and aggressive loyalty to one's tribe.<sup>37</sup> Similarly for Anthony Giddens, globalisation is defined as the clash between a cosmopolitan outlook and fundamentalism. The battleground of the twenty-first century will pit fundamentalism against cosmopolitan tolerance. Indeed, for David Held<sup>38</sup> and Mary Kaldor,<sup>39</sup> the emergence of a cosmopolitan order is a historical inevitability.

Are we moving to such an order? I think the answer is yes and this is what brings modernity to its end. But its nature is very different from the Kantian ideal. Let us have a quick look at the most influential and compelling versions of the cosmopolitan project, those of Hans Kelsen and Jürgen Habermas. Hans Kelsen, the great Austrian jurist, borrowed and developed Kant's cosmopolitan ideals of perpetual peace, federalism and world citizenship. The world state of the future, Kelsen believed, will unite all states under a federal constitution. As a philosophical positivist and a lawyer, Kelsen placed greater emphasis than his inspirer on the legal components of the world state. He had already developed in the 1920s a unified concept of law, according to which the legal system constitutes a single normative hierarchy with international law at its apex and domestic law beneath it, the whole arranged in a pyramidal shape.<sup>40</sup> In this grand scheme, the validity of norms is a logical or transcendental phenomenon. Rules are derived coherently and seamlessly from those above them in the edifice. Every legal decision is a logical and determinate judgment in which low generality norms are subsumed to those above them all the way to the last point of ascription or basic norm, that of international law. In such a system national laws cannot be in conflict with international norms and still be valid. In a direct reference to Kantian metaphysics, Kelsen argued that the unity of the legal system mirrors the moral concord of humanity and gives international law its highest component, moral nature. The legal unity of humanity was akin to the *civitas maxima* of the Roman Empire.

36 Carl Schmitt, *The Concept of the Political* (G. Schwab, trans.) (Chicago, IL, University of Chicago Press, 1996), Chapter III.

37 Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in James Bohann and Matthias Lutz-Bachmann, eds, *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA, MIT Press, 1997), 130.

38 David Held, *Democracy and the Global Order* (Cambridge, Polity, 1995).

39 Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Cambridge, Polity, 1999).

40 Hans Kelsen, *The Pure Theory of Law* (Berkeley, CA, University of California Press, 1934).

Starting from these premises, Kelsen argued that a concept of right, emanating exclusively from the pyramid of domestic laws and judicial decisions, is inadequate and insufficient. To be complete, national law should be placed within an international legal order creating an integrated whole. Such a universal legal system would bring together legality and morality and put an end to conflict among states. Legal right would coincide with ‘the organisation of humanity and would therefore be one with the supreme ethical idea’.<sup>41</sup> Observing the newly created United Nations, Kelsen thought that it was a step towards Kant’s project of a cosmopolitan world government. In this new world order, all states would be formally equal. Its law would be both superior to that of individual states and encompass them all ensuring internal security and international stability. Based on this rather outlandish conception of the international legal order, Kelsen promoted the idea of ‘legal pacifism’, of a peace founded and promoted through respect for the international rule of law. For this to be achieved, however, the constitutional arrangements of the world order should be improved. Both the League of Nations and the United Nations had placed inordinate emphasis on their respective councils with their political composition and predominantly executive role. This was a design error; greater importance should be placed on a new world court. The court should become the highest legal authority and have the power to decide whether a state is in breach of international law and order reprisals or even war against it. Peace through law would be guaranteed only through the creation of such an international legal authority, which should stand above state disputes and have at its disposal a police force with sufficient powers of enforcement.

Kelsen went on to argue that on the way to the future cosmopolitan order and despite the lack of an authoritative legal authority, war could be used as a ‘legal sanction’ against states violating international law under an implicit legal authorisation.<sup>42</sup> In a paradoxical extension of his position, the formalist and pacifist Kelsen saw a rejuvenated theory of just war as the beginning of the future perpetual peace. Repeating Kant’s accusations, Kelsen denounced realist international lawyers for abandoning the normative terrain for pragmatic calculations and the consolations of realpolitik. His belief that law had replaced religion and morality as the ultimate criterion of going to war made him see ‘the ethical doctrine of “just war” as the condition for the legal legitimacy of

41 Hans Kelsen, *Das Problem des Souveränität in die Theorie des Völkerrechts* (Tübingen, Mohr, 1920) 205 quoted in Hardt and Negri, *op. cit.*, 5.

42 Hans Kelsen, *Principles of International Law* (3rd edn) (New York, Holt, Rinehart, Wilson, 1967), 29–33.

the international system'.<sup>43</sup> But as Danilo Zolo put it, the political core of the primacy of international law and of legal pacifism in international politics is the 'inverted image of imperialism'.<sup>44</sup>

### Postmodern cosmopolitanism

Kant's idealism is not convincing in our post-metaphysical world and Kelsen's vision has remained just that, an unrealistic and unrealised vision. Recently, however, Jürgen Habermas has undertaken the task of rescuing and updating the Kantian vision. Habermas starts by distinguishing Kantian cosmopolitanism from conventional international law, which is unable to deliver the cosmopolitan order. Public international law, based on the principle of national sovereignty, allows states to renounce violence and even join a league of nations through multilateral agreements while retaining their independence. As a result, their voluntary coalition can be dissolved at will, if they decide that it acts against their interests. Only a self-imposed moral duty would keep them in the league since there would be no binding legal obligation. For Habermas, this is unsatisfactory. Cosmopolitanism should bring this Hobbesian 'state of nature' to an end. Its law should be based on binding and strict constitutional arrangements, unlike the loose and flexible agreements of alliances and federations.

Kant had been understandably suspicious of constitutionally organised alliances of nations, because such groupings had acted as the main tool of power politics in his age. In Kant's philosophy of history, the 'great artist nature' would make political interest and moral duty coincide. Habermas does not need such an exalted insurance policy. He believes that the cosmopolitan idea had started taking concrete roots after the Second World War. Nuremberg was the turning point. The introduction of the concepts of crimes against peace, created under the Briand–Kellogg pact of 1928 but first prosecuted in Nuremberg, and crimes against humanity was epoch-making. These two innovations removed the immunity of states and seriously undermined the presumption of innocence of political and military leaders. But the Kantian scheme needs to be radicalised further. Combining Kant's philosophy and Kelsen's jurisprudence, Habermas envisages a world political system in which a single world government would replace the nation-states. Cosmopolitan law

43 Danilo Zolo, *Invoking Humanity* (Federico and Gordon Poole, trans.) (London, Continuum, 2002), 88.

44 Danilo Zolo, 'Hans Kelsen: International Peace through International Law' 9/2 *European Journal of International Law* 306 (1998), 323.

must be institutionalised and bind governments while the use of sanctions will ensure that states act lawfully. Second, world citizenship rights, similar to the human rights enjoyed currently by Western citizens, should be given to everyone. The world citizens of cosmopolitanism will have a direct and unmediated relationship with a single sovereign centre as free and equal persons. Cosmopolitan law 'goes over the heads of the collective subjects of international law to give legal status to the individual subjects and justifies their unmediated membership in the association of free and equal world citizens'.<sup>45</sup> Finally, the world government should have full executive powers and adequate mechanisms of enforcement to punish those who violate cosmopolitan law and human rights. This universally valid code of law would bring together the Kantian principle of normative universalisation and the globalised world of economic transactions and instant communications in what could be called a universalistic globalisation and a cosmopolitan citizenship.

But the German tradition represented by Habermas includes dissenting voices. For Friedrich Nietzsche, morality is the eternalisation of temporary relations and universalism the moralisation and absolutisation of the balance of power. Warning to this theme, Carl Schmitt attacked the moralisation of politics. Cosmopolitanism would lead to the world hegemony of a single power, which, based on some version of absolute morality, would attack its enemies as 'evil', impose its will under a cloak of implementing human rights and destroy politics and the pluralism that characterised the pre-Second World War international scene. How can Habermas answer these telling criticisms? How can he jettison the noblest part of the German *Rechtsstaat* tradition, namely the separation between law and morality? This was the greatest achievement of legal modernity; it removed religion and morality from politics and subjected power to legal rules. Habermas accepts partly the legitimacy of Schmitt's critique which, like those of Hegel and Horkheimer, is 'directed against the false and transfiguring abstraction of a Platonic general concept with which we often only cover up the dark side of the civilisation of the victors'.<sup>46</sup> He is also aware of the political objection that recent wars and sanctions can be seen as part of a renewed imperial project, which uses a strong moral language as a tool against political enemies. To answer them, Habermas introduces a crucial distinction between human rights and morality. Human rights are the creations of law not morality. They are juridical concepts, the origins of which lie in the tradition of individual civil liberties. Modern morality, on the other hand, derives from the Kantian 'philosophical revolution'. But while their

45 Habermas, *op. cit.*, 128.

46 *Ibid.* 145.

histories differ, human rights and morality share the same foundation and can be justified in the same manner.

Following standard liberal theory, Habermas argues that human rights do not impose or promote a particular version of the good life or a partial moral viewpoint. They are the progeny of two parallel universalist traditions, one moral the other legal. As legal entitlements, legislated in Bills of Rights and international treaties, human rights carry the legitimacy of democratically enacted legislation; as moral claims, they carry the normative validity of universal rationality bestowed on them by the values they promote. This means that human rights and moral norms share form and function. While their validity derives from their legal history and legislative enactment, it points beyond any particular legal order. As legal rights, they stand higher than the ordinary rights given by states to their citizens. They are given to people not on account of their membership in some group, such as nation, state, class or profession, but simply because of their common humanity. This gives them their moral appeal. At the same time, human rights and morality share what Habermas calls their 'structure of validity', their justification: they have a common foundation, the 'fundamental discourse principle', which precedes the historical separation between law and morality. This is an elaboration of the Kantian categorical imperative with a Rawlsian inflection: 'just those action-norms are valid to which all possible affected persons could agree as participants in a rational discourse.'<sup>47</sup> Furthermore, the universalism of law and morality are similar. 'Basic rights are equipped with such universal validity claims precisely because they can be justified *exclusively* from the moral point of view.'<sup>48</sup> But their common justification does not turn human into moral rights. The differences remain: unlike morality, human rights retain their status as actionable legal claims; their enforcement is entrusted in legal remedies and courts of law; they are tools for acting out individual desires; finally, they enjoy preference over duties, with the latter arising only as legal restrictions on individual liberties. Cosmopolitan law extends the juridical logic beyond the frontiers of the state. In the cosmopolitan order, human rights violations are not moral wrongs but criminal actions similar to war crimes and crimes against humanity. Interventions to stop them are not just wars but police action against criminals.

This is the most sophisticated argumentation for postmodern cosmopolitanism. Following this analysis, Habermas argued that the Kosovo war was an attempt to push international law towards its cosmopolitan phase, by creating

47 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (W. Rehg, trans.) (Cambridge, MA, MIT Press, 1996), 107.

48 *Ibid.* 138.



and upholding rights to universal citizenship. In a highly controversial article,<sup>49</sup> Habermas wrote that until the full cosmopolitan order has been introduced and international institutions have been reformed in accordance with his blueprint, the border between law and morals will be blurred. In Kosovo, the dual legitimacy of law was split. NATO appealed to the moral validity of human rights and to norms of peacekeeping and rescue, which are clearly part of the evolving cosmopolitan dispensation although not actually applied or upheld by the international community. In an unacknowledged revival of Kelsen's position, Habermas argued that NATO's action was legitimate despite the lack of Security Council authorisation, because it anticipated the future cosmopolitan order while at the same time promoting its advent. The cosmopolitan project of peace through law will put an end to murderous ethnic nationalisms and will transcend international law in the direction of Kant and Kelsen.

Are these claims about an emerging cosmopolitanism credible? Is cosmopolitanism an alternative or a supplement of empire? Habermas's discussion and elaboration of the Weberian link between legality and legitimacy has been one of his most celebrated contributions to social theory. By promoting their radical separation, Habermas is realising one of the worst nightmares of Max Weber. Even the uber-cosmopolitan Ulrich Beck has difficulties with the principle that 'human rights trump international law'. We cannot tell, Beck admits, what is more dangerous, the old system of sovereign states, the 'murky complex' of international institutions in hock to powerful states or the 'self-authorisation of a hegemonic power which "defends" human rights in foreign territories'.<sup>50</sup> Carl Schmitt has a clear answer to Beck's question. Cosmopolitanism inevitably leads to world hegemony, the subjection of politics to morality and the destruction of the pluralism of the international stage. Habermas, who seems to be ceaselessly fighting with Schmitt's ghost, accepts that his opponent's dread about the moralisation of politics is partly justified. This fear will be realised, however, only if the sphere of legal protection breaks down and politics becomes directly subjected to morality without the mediation of law. The 'legal presupposition of an authority that judges impartially and fulfils the conditions of neutral criminal punishment' saves the day.<sup>51</sup>

This is a rather meek defence of the principle of separation between law and morality. It is an example of the adverse effects John Rawls's *Theory of Justice* has had on political theory. It is also a symptom of the recent attraction

49 Jürgen Habermas, 'Bestialität und Humanität', *Die Zeit*, 29 April 1999.

50 Beck, op. cit., 121.

51 Habermas, op. cit., fn. 37, 147.

law holds for those who know little about the long critical legal tradition, to which the early Frankfurt School was such an important contributor. Rawls's revisionist definition of justice in terms of rights had the effect of turning political philosophy into a branch of jurisprudence. His followers have presented political, social and economic conflict as a matter of rights and have replaced the understanding of antagonism with a discussion of legitimacy. Habermas's recent writings have moved in the same direction. He combines Rawls's American liberalism with German constitutionalism in directions that are alien to both. His over-hasty adoption of claims about the neutrality of law and judges, after two centuries of legal demystification from Marxist, realist and critical legal perspectives, is not convincing. Abstract legality and impartial lawyers are hardly sufficient, if law is to act as the judge and arbiter of the new cosmopolitanism. The emphasis on the judiciary follows the proliferation of criminal trials, which accompanies the defeat of the new order's enemies. Whatever their merits, however, criminal trials are backward-looking and cannot give much guidance about the legality of a future war or the direction of foreign policy.<sup>52</sup> International lawyers turned to morality to justify the Kosovo and Iraq wars precisely because the law ran out and was of little help.<sup>53</sup> Their admission that the law would face great difficulties in the Herculean task Habermas assigns to it is far more realistic and cannot be answered by the latter's grand claims about the shared foundations of law and morality.

By neglecting the insights of 200 years of legal critique in favour of an unrepresentative view of law, Habermas has paved the way for an assortment of social theorists to use the law as the answer to the problems facing political and social theory. One has argued that the legal moralism of human rights should be extended towards an 'ethical judicialism' (*sic*) that would expand the legalisation of culture.<sup>54</sup> Another insists that having cosmopolitan trials expresses

52 Milošević was indicted while still the President of Yugoslavia; Saddam Hussein was repeatedly threatened with criminal prosecution before the attack on Iraq. In this sense, judicial proceedings have become tools for putting pressure on leaders and states. But this is not a case of expanding the judicial regulation and oversight of foreign policy in a cosmopolitan direction. It is a pre-emptive use of criminal law to accompany the pre-emptive use of military force.

53 See Chapter 9.

54 Tom Osborne, 'What is Neo-Enlightenment', 2/4 *Journal of Human Rights* 523 (2003). Osborne starts from the standard appropriation of juridical practices but distances his position from that of Habermas. His neo-humanism is based not on Kantian moral principles but on 'ethical' norms and practices. A human rights culture, Osborne claims, comes about through ethical performances, dialogical practices, truth commissions, reconciliation, etc. Neither universal nor local, it leads to immanent and performative problem-solving through the use of e.g., shaming practices rather than through overarching moralities. According to Osborne,

a ‘wordliness as the practical wisdom of those who by hook or crook know how to construct a touch of humanity in the most forbidding circumstances’.<sup>55</sup> Finally, a third believes that it is possible to adopt a legalistic cosmopolitan approach to politics ‘without elevating that universal principle to an essential absolute which finds everything that resists it expendable’.<sup>56</sup> The law has become the *deus ex machina* of cosmopolitanism. It is brought in when the concepts of social theory or the resources of politics run out. As a proponent puts it, ‘cosmopolitan social theory may be viewed as a multi-disciplinary attempt to reconstruct the core concepts of the human sciences – society, political community, democracy, culture, sovereignty etc’.<sup>57</sup> Ulrich Beck responded to the call by launching ‘cosmopolitan social science’ and the ‘new grammar’ of the social and the political and by conducting ‘the epistemological turn, the empirical-analytical cosmopolitanism’.<sup>58</sup> Cosmopolitanism may not launch a thousand ships or even a thousand campaigners or protesters, but it will certainly launch a thousand academic books and learned articles.

Many of these theorists are opposed to the imperialist direction of the new world order. What they cannot explain, however, is how a court of law and judges with armies at their disposal could avoid becoming either an Imperial Court themselves or a tool in the plans of the Great Power. As Bill Rasch sardonically commented, ‘with this fine differentiation between moral fundamentalism and legal constitutionalism, the police actions undertaken by a world government . . . can be positively contrasted with repressive moral or cultural crusades’.<sup>59</sup> The response by Robert Kagan, an avowed American imperialist, is even more telling. Commenting on European double standards over Kosovo (morality trumps legality) and Iraq (legality trumps American national interest), Kagan ironically retorts:

Any ‘rules-based’ international order must apply the same sets of rules to different situations. Otherwise we return to a world where nations individually or in groups decide for themselves when a war is and is not

human rights ethical culture may be leading us to a ‘contextualism of the universal’, a rather interesting paradox that would have profited from a discussion of the Hegelian ‘concrete universal’. In normative terms, neo-humanism is identical with the standard version and is an exalted title for pragmatism.

55 Bob Fine, *Political Investigations: Hegel, Marx, Arendt* (London, Routledge, 2001), 162.

56 David Hirsch, *Law Against Genocide: Cosmopolitan Trials* (London, Glasshouse, 2003), 154.

57 Bob Fine, ‘Cosmopolitanism and Social Theory’ quoted in Hirsch, *ibid.* xii.

58 Beck, *op. cit.*, 33.

59 William Rasch, *Sovereignty and its Discontents* (London, Birkbeck Law Press, 2005), 61.

justified, guided by their own morality and sense of justice and order. In fact that is the world we live in, and the only world we have ever lived in. It is a world where those with power, believing they have right on their side, impose their sense of justice on others.<sup>60</sup>

Let us move to the claim that Kosovo was the first step towards a cosmopolitan order with a binding constitution and rights of world citizenship. There is little evidence to indicate that a world constitution is emerging in the way that such instruments are initiated. Domestically, this could happen through revolution or a constitutional convention. A global constitution on the other hand could emerge either through agreement among a majority of states and possibly, as in the European case, popular referenda around the world; or, through occupation and imposition of the law by the victors on the vanquished. The most important formal move in the direction of rewriting international law recently was the unilateral and unlawful declaration of war in Kosovo, Afghanistan and Iraq and the successful conduct of these campaigns. Habermas had to admit as much after the Iraq war. In an article published in 2003, he accused the United States of violating international law with their attack. Focusing his criticism on the Bush doctrine of spreading liberal states and free markets through violence, Habermas claims that while the United States was the ‘pacemaker of progress on the cosmopolitan plan’, Iraq meant that it has ‘given up its role as guarantor of international rights . . . its normative authority lies in ruins’.<sup>61</sup> Habermas distinguished Kosovo from Iraq arguing that in the former, war was justified because it aimed at preventing ethnic cleansing, it followed ‘the provision of international law for emergency aid’ and, finally, it was carried out by democratic and rule of law states. The Americans can claim, of course, that all three criteria were similarly met in the case of Iraq. The war aimed, among other issues, to stop extensive human rights abuses, it had a higher degree of international law legitimacy than Kosovo and, it was carried out by the two oldest democracies in the world.

Habermas concludes his extraordinary confession, which comprehensively undermines the cosmopolitan position, by arguing that there is little difference between classical imperialism and American hegemonism. Imperial campaigns spread ‘the universal values of their own liberal order, with military force if necessary, throughout the entire world. This arrogance doesn’t become any more tolerable when it transfers from nation-state to a single hegemonic

60 Robert Kagan, *Paradise and Power* (London, Atlantic Books, 2004), 130–1.

61 Jürgen Habermas, ‘Interpreting the Fall of a Monument’, 4 *German Law Journal* 7 (1 July 2003). The essay originally appeared in the *Frankfurt Allgemeine Zeitung* on 17 April 2003.

state'.<sup>62</sup> This is the closest Habermas comes to a genuine *mea culpa* and an admission that despite the brutal attacks, Carl Schmitt may have carried the day. As Chapters 9 and 10 argue, the suspension of international law and the state of exception these attacks introduced can be interpreted as the beginning of a new legal order. This order and the space it applies on are the result of the action of the hegemon who, by violating and suspending the law, becomes the sovereign of an empire in the making. Instead of moving to a cosmopolitan order, this brutal assertion of sovereignty is an attempt to move the world towards a global principle of sovereignty in search of empire.

We will examine the role of human rights in the new world order in the next chapter. Here, I would like to address briefly two related cosmopolitan claims. First, the proposition that a cosmopolitan citizenship is the necessary building block of a world republic and, second, the accompanying assertion that human rights are given to people on account of their humanity rather than membership of narrower groups. The citizen is the Roman translation of the Greek *polites*, the man of the city who participates in political deliberation and decision-making about common affairs. Citizenship has always been situated; it is political belonging to a city, a nation or a state, it is citizenship of Athens or Rome, England or France. Today, citizenship is still closely linked with state sovereignty, which acts as both its effect and putative cause. It is the law of a particular state that recognises someone as its citizen with the associated rights and duties. The separation between human and citizen is the main characteristic of modern law (Chapter 4). The modern subject reaches his humanity by acquiring political rights of citizenship by being admitted to the 'nationality' of a nation-state. In a world in which every part of the world comes under the direct or indirect rule of the 'condensed' sovereign to be without the legal protection of state citizenship, rather than opening to a world citizenship, is equivalent to civic death. If human rights were given to people simply because they are members of the human species, as Habermas claims, one would expect that those who do not enjoy citizen rights, such as refugees, should have the greatest possible protection of their human equivalent. Refugees have left the protection of their state of origin but have not as yet received the protection of a receiving state. Their only characteristic is their humanity, as it is for those confined to legal black-holes, such as Guantánamo Bay or Abu Ghraib. And yet, they have none. All the evidence shows, that those abandoned by state law and citizenship rights do not enjoy some higher human or cosmopolitan protections but they become just 'bare life', people who can be tortured, abused or sacrificed with total impunity, the *homines sacri*<sup>63</sup> of the new world order.

62 Ibid.

63 Agamben, op. cit.

Despite the hopes of Habermas and his continuous references to the German philosophical and legal tradition, a commitment to humanity or his 'constitutional patriotism' cannot replace (German or American) nationalism. The language of humanity has often been the tool of imperial expansion. According to Reinhart Koselleck,

the dualistic criteria of distribution between Greek and Barbarian, and between Christian and Heathen, were always related, whether implicitly or explicitly, to humanity as a totality . . . the *genus humanum*, was a presupposition of all dualities that organised humanity physically, spiritually theologically or temporally.<sup>64</sup>

For the Greeks, who introduced a distinction between us and the others, the barbarians were simply foreigners, people who spoke gibberish (bar-bar), an incomprehensible language. The Christian ecumenical mission of salvation changed that. Every person has a soul and can be saved and, as a result, the conquest of the heathens' lands and their brutal proselytisation or extermination is justified in order to bring them to Christ's ecumenical truth. The civilising mission of the Christians has now been transferred to the humanitarians.

Carl Schmitt's prescience in predicting the shape of recent events is quite unnerving. 'When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponents', Schmitt wrote in 1934.<sup>65</sup> Humanity cannot wage war because it has no enemy, at least not on this planet. Logically, 'humanity' excludes the concept of the enemy, because an earthly enemy does not cease to be a human being. When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war where a particular state seeks to usurp the universal concept against its military opponents. As Proudhon put it, 'whoever invokes humanity wants to cheat'.<sup>66</sup> When humanity becomes the ground concept, its enemies are in a worse position than the barbarian for the Greeks or the infidel for the Christians. This is because the term 'human' may be commonly seen as a factual distinction or classification, but its action is evaluative and normative. For the Christians, both believers and infidels belong to the same species. Humanity was the wider category, which enabled the distinction. But according to Carl Schmitt, 'only

64 Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (Cambridge, MA, MIT Press, 1985), 186.

65 Schmitt, *op. cit.*, 54.

66 *Ibid.*

when man appeared to be the embodiment of absolute humanity did the other side of this concept appear in the form of a new enemy: the *inhuman*'.<sup>67</sup> As William Rasch puts it, in his great defence of sovereignty and politics, humanity is not part of the distinction but its horizon. But once 'the term used to describe the horizon of a distinction also becomes also that distinction's positive pole, it needs its negative opposite . . . something that lies beyond the horizon . . . completely antithetical to horizon and positive pole alike . . . the inhuman'.<sup>68</sup>

Furthermore, cosmopolitical space turns all relations into domestic affairs. The cosmopolis leaves no barbarians outside the gates because the frontiers are gradually removed. As there is no outside every threat appears close, interconnected and frightening. The barbarians are now in our midst in the ghettos and *banlieus* of the metropolitan lands and the more remote badlands of Kosovo, Afghanistan, Iraq, Lebanon, Iran, Sudan. John Rawls, *The Law of the Peoples*, is a good example. Reasonable liberal and 'decent hierarchical' peoples possess superior institutions, culture and moral character. They are entitled to attack outlaw states when they violate human rights. Liberal aggression is justified because liberalism provides the universal standard of decency, while the indecent character of the rogues makes wars against them just.<sup>69</sup> Anthony Anghie concludes his examination of international law at the time of the conquest of the Americas, stating that the Indians were 'included in the system only to be disciplined'.<sup>70</sup> Some four hundred years later, we can generalise: 'To be truly human, one needs to be corrected.'<sup>71</sup>

Second, civil and political rights and, later, economic and social rights were fought for and won by people who exercised them as an aspect of democratic citizenship and an expression of popular sovereignty and participation in the legislative activity of the state. Morality and the natural entitlements of humanity do not endow people with rights, only with moral claims that may or may not be granted by the sovereign, who is still the only power recognising and enforcing rights. Are we moving towards a cosmopolitan citizenship?

67 Carl Schmitt, *Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York, Telos, 2003), 104.

68 Rasch, op. cit., 143.

69 John Rawls, *The Law of the Peoples* (Cambridge MA, Harvard University Press, 2001). Tony Judt has called the (left) liberals who have rallied to our recent wars and provide them with intellectual legitimacy, 'the useful idiots of the War on Terror', 'Bush's Useful Idiots', *London Review of Books*, 21 September 2006, 3.

70 Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law', 5 *Social and Legal Studies* 321 (1996), 331.

71 Rasch, op. cit., 145.

In the Stoic definition, the *cosmopolis*, the city of gods and men, combines the *demos* with law, justice and sophistication. None of these elements exists today or is likely to develop soon. There is no *demos* in the cosmos, no people of the world exist, brought together in community through what Chapter 11 calls bare sovereignty and cosmopolitan jurisdiction. The only common law we have is the disintegrating public international law; the only common justice, that of neo-liberal economics; the only sophistication, that of jet-setting cosmopolitans. If we are on the way to a world state with a sovereign capable of creating and enforcing citizens' rights this would be imperial rather than cosmopolitan. Massimo La Torre, a supporter of cosmopolitanism, reaches the obvious conclusion others avoid: the only way of creating a world citizenship would be if the United States take the 'Ancient Romans great example and give American nationality to all members of the globalised world community'.<sup>72</sup> A dominant centre of power is still the inescapable precondition of global citizenship but such an admission would fatally undermine the cosmopolitan project.

Cosmopolitanism in its different versions starts as a philosophical and moral universalism but it degenerates each time into imperial globalism. The ancient conflict between *cosmos*, the ideal order of the world, and *polis*, empirical social existence, is one of the great metaphysical divides. *Cosmopolis*, the name of its transcendence, one of the greatest early utopias. Diogenes, Zeno and Clemes found in the universal reason, virtue and eros of the *cosmos* the refutation of the artifice, greed and injustice of the *polis*. The *cosmopolis* must be first a place of the mind and soul before it becomes a place in the map, if it ever does. The cosmopolitanism of the Cynics and the Stoics was utopian. But is there any other? Let us have in conclusion a brief look at the sociological, philosophical and political positions of its contemporary proponents.

Ulrich Beck, the sociologist, claims that the human condition itself has become cosmopolitan. Cosmopolitanism has 'left the realm of philosophical castles in the air and has entered reality . . . it has become the defining fixture of the era of reflexive modernity'.<sup>73</sup> But if this is the case, cosmopolitanism in its final and complete incarnation has lost its radical energy. Reason, the universal critical perspective of the Stoics, in its reflexive stage, acts as a buffer-zone by turning critical dissent into its opposite. According to Beck's rather exaggerated assertion, cosmopolitanism has been so effective in co-opting

72 Massimo La Torre, 'Global Citizenship? Political Rights under Imperial Conditions', 18/2 *Ratio Juris* 236 (2005), 255.

73 Beck, *op. cit.*, 2.



dissent to its goals and effects that it managed to turn ‘the anti-globalisation movement into the motor of cosmopolitanisation’.<sup>74</sup> Diogenes has left the barrel, has become a world citizen and meets Alexander in cocktail parties.

For the analytical philosopher Kwame Appiah, cosmopolitanism reminds us of the powerful ties that connect people across religions, cultures and nations, while also valuing differences. Its two strands are the ‘we have obligations towards others . . . beyond those to whom we are related by the ties of kith and kind’ and that ‘we take seriously the value of particular human lives [and] learn from our differences’.<sup>75</sup> Cosmopolitanism is about valuing sameness, difference and values themselves. As a prospectus, this covers the totality of liberal political philosophy but adds little to our understanding or normative commitments. Martha Nussbaum is a little more specific.<sup>76</sup> Humanism and cosmopolitanism involve cultivating a critical examination of our way of life, the capacity to identify with others in different groups, cultures or nations, and a ‘narrative imagination’ that helps us understand and empathise with others. The underlying principle is that common needs and aims are differently realised in different circumstances. This principle could become an important normative source leading to greater reflexive self-understanding, in the context of a world of many diverse cultures and perspectives. Discussing Marcus Aurelius’s cosmopolitanism, Nussbaum praises the way in which humanism can weaken anger and hatred, the damaging effects of politics. Even when we disagree with political opponents, we can see still see them as part of humanity rather than as ‘inhuman others’. But, as argued above, it is precisely the absolutisation of local moralities and their equation with humanity that creates the inhuman others. Furthermore, anger and hatred are justified reactions by the oppressed. It is fine for emperors, generals and philosophers to preach to the dominated *ataraxia* and moderation towards their rulers, justifying their subjugation. A political ideology that hails from Diogenes and Zeno on the other hand is critical towards unjust power and institutions and angry towards their apologists.

Finally, the political scientist David Held argues that

there is the significant entrenchment of cosmopolitan values concerning the equal dignity and worth of all human beings; the reconnection between international law and morality; the establishment of regional and

74 Ibid. 118.

75 Kwame Anthony Appiah, *Cosmopolitanism. Ethics in a World of Strangers* (London, Allen Lane, 2006), xv.

76 Martha Nussbaum, *Cultivating Humanity: A Classical Defence of Reform in Liberal Education* (Cambridge, MA, Harvard University Press, 1997).

global systems of governance; and growing recognition that the public good . . . requires coordinated multilateral action.<sup>77</sup>

Every single one of these propositions is contestable at the empirical level and highly problematic normatively. At least, however, this type of cosmopolitical approach retains a certain distance from reality and to that extent we could call it 'utopia lite'. None of its rather blunt premises exists or is about to come to life soon. But bluntness is its main problem: institutionalised cosmopolitanism risks becoming the normative gloss of globalised capitalism at its imperial stage. Once more, the hope of the cosmos will have been subjected to the will and power of the polis.

77 David Held, 'Violence, Law and Justice in a Global Age' in Daniele Archibugi, ed., *Debating Cosmopolitics* (London, Verso, 2003), 191.