

New Rights for Old? Cosmopolitan Citizenship and the Critique of State Sovereignty

David Chandler

University of Westminster

Cosmopolitan international relations theorists envisage a process of expanding cosmopolitan democracy and global governance, in which for the first time there is the possibility of global issues being addressed on the basis of new forms of democracy, derived from the universal rights of global citizens. They suggest that, rather than focus attention on the territorially limited rights of the citizen at the level of the nation-state, more emphasis should be placed on extending democracy and human rights to the international sphere. This paper raises problems with extending the concept of rights beyond the bounds of the sovereign state, without a mechanism of making these new rights accountable to their subject. The emerging gap, between holders of cosmopolitan rights and those with duties, tends to create dependency rather than to empower. So while the new rights remain tenuous, there is a danger that the cosmopolitan framework can legitimise the abrogation of the existing rights of democracy and self-government preserved in the UN Charter framework.

How should we assess the trend towards increasing prominence for individual rights in the international sphere and the restricted interpretation of traditional rights of sovereign independence and self-government? Over the last decade, many leading international relations theorists have developed a cosmopolitan perspective, which sees current trends as benign or potentially positive.¹ Leading cosmopolitan theorists seek to challenge the inter-state framework of the UN Charter period, established in the aftermath of the Second World War, which prioritised the principles of sovereign equality and of non-intervention. They argue that these principles need to be replaced by new ones based on a higher level of public accountability, which make the universal individual rights of members of 'global society' the primary focus. Rather than the rights of states being the founding principle of international society it should be the rights of individual citizens. Today, a new consensus is forming that 'there is a pressing need to rethink the concept and practice of sovereignty' (Camilleri and Falk, 1992). Andrea Bianchi argues that the values and principles governing international law are under challenge:

The two opposite poles of the spectrum are evident. On the one hand, there stands the principle of sovereignty with its many corollaries ... on the other, the notion that fundamental human rights should be respected. While the first principle is the most obvious expression and ultimate guarantee of a horizontally-organized community of equal and independent states, the second view represents the emergence of values

and interests ... which deeply [cut] across traditional precepts of state sovereignty and non-interference in the internal affairs of other states (Bianchi, 1999, p. 260).

Geoffrey Robertson QC, a leading advocate of individual rights and author of *Crimes Against Humanity: the Struggle for Global Justice* argues:

Customary international law is in the human rights field anachronistic, to the extent that it is an emanation of agreements between sovereign states. ... [M]illions of ordinary men and women ... do not talk about *jus cogens* and *erga omnes*: they believe in the simple language of the Universal Declaration, and they are not bound by Article 2(7) of the UN Charter to avert their eyes from repression in foreign countries ... These citizens, of global society rather than the nation state, cannot understand why human rights rules should not rule (Robertson, 1999, p. 82).

Cosmopolitan democrats argue that democracy and accountability can no longer be equated with sovereignty and non-intervention: 'democracy must transcend the borders of single states and assert itself on a global level' (Archibugi, 2000, p. 144). To meet the needs of cosmopolitan or global citizens it is necessary to extend democracy beyond the nation-state. David Beetham argues that in a world of nation-states 'the *demos* that is democracy's subject has come to be defined almost exclusively in national terms, and the scope of democratic rights has been limited to the bounds of the nation-state' (Beetham, 1999, p. 137). He suggests that in the same way that democracy was extended from the level of the town to that of the state in the eighteenth century it should, in the twenty-first century, be extended from the nation to humankind as a whole.

The reason for this new and more expansive institutionalisation of democracy is held to be the impact of globalising processes, which have created a 'democratic deficit' at the national level. Daniele Archibugi and David Held assert that decisions made democratically by citizens of one state or region can no longer be considered to be truly democratic if they affect the rights of 'non-citizens', that is, those outside that community, without those people having a say. Held argues that, for example, villagers in sub-Saharan Africa, who live at the margins of some of the central power structures and hierarchies of the global order, are profoundly affected by the policies made in these inter-state forums (Held, 1998, p. 14). Archibugi stresses that the inequalities of global power relations mean that decisions democratically restricted to the nation-state can not be considered democratic from a cosmopolitan perspective:

... few decisions made in one state are autonomous from those made in others. A decision on the interest rate in Germany has significant consequences for employment in Greece, Portugal and Italy. A state's decision to use nuclear energy has environmental consequences for the citizens of neighbouring countries. Immigration policies in the European Union have a significant impact on the economic development of Mediterranean Africa. All this happens without the affected citizens having a say in the matter (Archibugi, 1998, p. 204).

Cosmopolitans highlight that, for democracy to exist in a globalised world, it is necessary to have the consent of the entire community, which will be affected by a particular decision. To this end, new political constituencies need to be created to address these questions. These constituencies may be smaller or larger than the nation-state, depending on the issue at stake. For David Held, in a cosmopolitan democratic system:

People can enjoy membership in the diverse communities which significantly affect them and, accordingly, access to a variety of forms of political participation. Citizenship would be extended, in principle, to membership in all cross-cutting political communities, from the local to the global (Held, 1995, p. 272).

In order to address this 'democratic deficit', cosmopolitans propose replacing the territorially-bounded political community of the state as the subject of international decision-making with new flexible frameworks based on the rights of the global citizen, freed from territorial restrictions. To quote Archibugi:

If some global questions are to be handled according to democratic criteria, there must be political representation for citizens in global affairs, independently and autonomously of their political representation in domestic affairs. The unit should be the individual, although the mechanisms for participation and representation may vary according to the nature and scope of the issues discussed (1998, p. 212).

Cosmopolitans argue that there is still an important role for the state and for representative democracy, but that these institutions can not have the final say in decision-making. In certain circumstances, where this is not democratic enough it must be possible for sovereignty to be overridden by institutions which are 'autonomous and independent' and whose legitimacy is derived from the universal rights of the global citizen, unconstrained by the nation-state framework. Martin Shaw writes:

The crucial issue, then, is to face up to the necessity which enforcing these principles would impose to breach systematically the principles of sovereignty and non-intervention ... The global society perspective, therefore, has an ideological significance which is ultimately opposed to that of international society (Shaw, 1994a, pp. 134–5).

Ken Booth similarly claims that:

In 1948, with the Universal Declaration of Human Rights, the individual was potentially brought back to the centre. A building block was constructed for the possible development of a cosmopolitan democracy in a world of post-sovereign states ... This is the hope of progressively leaving behind the politics of the concentration camp – the ultimate sovereign space – for a cosmopolitan democracy aimed at reinventing global human being – being human globally – based on the politics of the-I-that-is-an-other, and badged with common humanity (1999, pp. 65–66).

This limitation on state-based mechanisms of democracy and accountability, and on states as the subjects of international law, relies on the possibility of a 'higher

law' derived from the individual global citizen as a new, and prior, subject of international relations. It is at this point that the theoretical underpinnings of the cosmopolitan project appear fragile. The citizen-subject of international decision-making appears overburdened with both theoretical and practical problems. The following section raises some theoretical questions about the essence of the cosmopolitan perspective: the extension of democracy beyond states and the development of the global citizen as a subject of international law. Further sections will develop the theoretical and practical implications of the cosmopolitan framework for questions of state sovereignty and the relationship between states and international institutions.

Cosmopolitan Democracy?

Cosmopolitan theorists accept that there is no global state or global federation or institutional framework and also argue that, if there were, it would be a bad thing. They are clear that the establishment of democratic institutions on a global level would meet the opposition of nation-states and that, even if this could be brought into existence, it would involve such a high level of homogenisation, through social, economic and cultural regulation, that it could only be imposed through war and repression (see, for example, The Commission on Global Governance, 1995, p. xvi; Kaldor, 1999a, p. 148; Held, 1995, p. 230). In which case, there can be no cosmopolitan framework of formal political rights, which enable individual citizens to be represented as political equals. The global citizen can not have the same sorts of rights as the citizen of a nation-state. The formal rights of the global citizen are a thorny issue for cosmopolitan theorists and for many the question falls 'outside the scope' of their immediate concerns (Kaldor, 1999a, p. 148). Archibugi (1998, p. 216) states: 'World citizenship does not necessarily have to assume all the demands of national citizenship. The real problem is to identify the areas in which citizens should have rights and duties as inhabitants of the world rather than of secular states.'

The rights of the global citizen are certainly 'less demanding'. For cosmopolitan theorists, the new institutions, through which the cosmopolitan citizen can exercise their rights, must exist independently of states and their governments. Theorists, who develop the implications of this approach, go further to add that national political parties, which are orientated around national questions rather than global ones, also can not be vehicles for cosmopolitan citizenship, capable of representing individuals on global issues (Archibugi, 2000, p. 146). For this reason the global citizen can only be represented through global or trans-national civil society, which it is argued can forward non-statist concerns and hold governments to account, through trans-national campaigning and media pressure (Beetham, 1999, p. 142).²

There are several difficulties with this perspective. First, there is little agreement on the extent to which civil society groups can influence government policy-making and thereby create a new mechanism of political 'accountability' (Forsythe, 2000, p. 169; Charnovitz, 1997). Second, and most importantly, even if civil society groups did wield influence over policy-makers, this may not necessarily enhance the level of democratic accountability. Civil society operates in close relationship

to the sphere of formal politics but, by definition, civil society organisations – whether they are community groups, single issue pressure groups, NGOs, grassroots campaigns, charities, media organisations, research groups, or non-government-funded policy advisers – operate outside the political sphere of institutionalised democratic equality and accountability. Civil society groups play a legitimate and often crucial role in policy-making but, as Michael Edwards (1999, p. 180) notes, it is vital to ‘differentiate between the views of special interest groups (however well intentioned) and formal representation from below’. While it is often possible for individuals to participate in the organisations of global civil society, it is difficult to accept the assertion that ‘signing petitions for and donating charitable contributions to such organisations must surely count as acts of world citizenship’ (Heater, 1999, p. 144).

The opportunity for participation depends on the organisation concerned. For example, many of the NGOs most active and influential in defending rights, like Human Rights Watch, the International Crisis Group or the International Commission of Jurists, have no mass membership and concentrate on elite advocates to enable them to gain admittance to government and international officials (Forsythe, 2000, pp. 167–8; Charnovitz, 1997, p. 270; de Waal, 1997, pp. 3–4). The extent of any participation differs between organisations and even where there are high levels of participative involvement this generally stops short of having any say over policy. As Jenny Bates, at the Progressive Policy Institute, states: ‘NGOs are not elected and, unlike governments, need not answer to the broad public they claim to represent’ (cited in Bosco, 2000). There is no direct link between (non)participation and any conception of citizenship rights which can be given content through formal mechanisms of democratic accountability. We are not all equally involved in civil society, we do not vote for civil society policies and we can not hold civil society to account.

Third, global civil society is no less shaped by national governments and state-based political structures than national political parties and other representative institutions. Without a global state or a global political framework, it is debatable whether it is possible to talk about a ‘global’ civil society beyond the nation-state. Martin Köhler, for example, argues that it is misleading to talk of a ‘global’ or ‘transnational civil society’ in the same way as the independent realm of civil society within the domestic sphere:

[T]he transnational public sphere itself cannot be conceived of simply as the extension of the national one. The very concept of the public sphere is intrinsically bound up in structures of authority and accountability which do not exist in the transnational realm ... [A]s long as the state continues to be the only site of political authority in international relations, it is impossible for a transnational public sphere ... to emerge (Köhler, 1998, p. 233).

In the cosmopolitan framework, it would appear problematic to talk about the exercise of rights, or of democracy, outside the framework of nation-states. As Charnovitz highlights, even the involvement of international NGOs in policy-making can not make nation-states more accountable, the establishment of NGO advisory committees actually gives nation-state governments greater control over

decision-making as the real power belongs to the international officials who determine which NGOs to appoint (Charnovitz, 1997, p. 283). This reality of dependency is acknowledged in the frameworks articulated by Archibugi and Held, and in similar reform proposals forwarded by the Commission on Global Governance. These allow citizens and civil society groups to participate in global or regional institutional forums where they have specific competencies, for example, in those that deal with the environment, population issues, development or disarmament. However, this participation 'would supplement but not replace existing inter-governmental organizations'. As Archibugi (1998, p. 219) stresses: 'Their function would be essentially advisory and not executive'.

Despite the desires of cosmopolitan advocates, there appears to be little evidence of the claims of any 'new' levels of democracy or political accountability, promised to the global citizen, as opposed the humble citizen of the nation-state, who can formally hold their government to account.³ In fact, any search for the formal democratic rights of the cosmopolitan citizen would be a fruitless one. The new rights that the cosmopolitan citizen possesses can not be located within the liberal rights tradition, which equates the rights-holder and the duty-holder within the same legal subject. These 'new' rights do not manifest themselves at the level of the citizen but rather at the level of international institutions:

Rights ought to relate, in the first instance, to the sphere of survival and to issues which cross national boundaries. In relation to these rights, world citizens undersign certain duties which enable global institutions to perform a function of temporary replacement, subsidiarity and substitution *vis-à-vis* national institutions (Archibugi, 1998, p. 219).

The new 'rights' of global citizens are not exercised by the rights-holders but by international institutions, which have new 'duties' corresponding to the new rights created. As shall be highlighted below, the duties and rights created in the cosmopolitan discourse are of a qualitatively different nature to those established under the domestic framework of the rule of law and enforced through the police and the courts. The equation of the 'right' of the global citizen or global civil society with the 'duty' of international institutions creates a new level of rights on paper but is problematic in practice. This is clearly demonstrated in the fundamental area of the prevention of wide-scale abuses of human rights:

The institutions of global civil society would exercise direct control in one essential area: the prevention and impediment of acts of genocide or domicile. To do so they would be entitled to demand the immediate intervention of the governments of all states (Archibugi, 1998, p. 219).

The exercise of this right of protection or prevention is dependent on the actions of international institutions and major powers, which have the economic and the military resources to intervene. The new rights of cosmopolitan citizens, additional to their territorial citizenship rights, are ones which they can not act on or exercise themselves, and in this crucial respect the new rights are highly conditional. While there may be a duty to protect the new rights of the cosmopolitan citizen the cosmopolitan framework provides no mechanism of accountability to give content to these rights. There is no link between the 'right' and the 'duty' of its

enforcement. The additional rights upheld in the cosmopolitan framework turn out to be a chimera. As Beetham (1999, p. 140) notes: 'the weak point in this regime of course remains enforcement'. Archibugi (1998, p. 149) concedes:

There is undoubtedly a contradiction here: the cosmopolitical project would delegate to structures devoid of coercive powers (... institutions of the world's citizens) the job of establishing when force should be used, while asking states, who monopolize the means of military might, to acquiesce in their decisions.

As Neil Stammers (1999, p. 992) writes, the imperative of action to defend the human rights of cosmopolitan citizens ironically entails a *realpolitik* which is highly state-centric. Rather than exercising 'direct control' the cosmopolitan citizens and cosmopolitan civil society groups are dependent on nation-states to accede to their claims. The rights of democratic accountability remaining restricted to the 'limited' sphere of the national *demos*.

The Ethical Approach

While the previous section considered the limited and conditional nature of the new rights of the cosmopolitan citizen, this section seeks to outline the consequences of this approach for the rights of state sovereignty and representative democracy. If the cosmopolitan framework merely held out the promise of additional rights, but still needed to further develop the theory to establish mechanisms through which these rights could be realised, there would be little problem. In which case, one could sympathise with what Held terms the 'embedded utopianism' inherent in the project, or with Mary Kaldor's defence of the need for a 'ridiculously utopian project', and with Archibugi's advocacy for the 'politics of cosmopolitan dreams' (Held, 1995, p. 286; Kaldor, 1999b, p. 212; Archibugi, 2002, p. 38). However, what makes the cosmopolitan project important for international scholars is not so much the chimera of empowering global citizenship but the consequences which this framework has for the defence of existing sovereign rights. While the new rights may be difficult to realise, the cosmopolitan cause has helped cohere a powerful consensus on the need to recast the relationship between international institutions and the nation-state.

Far from a utopian theory of hope in progress and the development of democracy, cosmopolitan theory appears to be a reflection of a growing disillusionment with politics at the international level. Cosmopolitan theorists are disappointed that after the end of the Cold War the resources of international society have not been devoted towards resolving outstanding 'global concerns'. Liberal international relations theorists often display a teleological or idealistic view of progress at an international level, assuming that the creation of international society in itself established a framework through which differences could be put aside and new means developed for the resolution of global problems. It appears that the only thing stopping progress today, after the 'diversion' of the Cold War, is the narrow preoccupation of nation-states with appeasing their electorates as opposed to addressing global concerns.

This disillusionment with the narrow or selfish interests of *realpolitik*, and its legitimisation through democratic mandates, has resulted in a growing attention to the prioritisation of ethical or moral approaches. Philip Allott (1999, p. 34), for example, argues that traditional international relations theory is based on Machiavellism, 'the overriding of general moral duty by *raison d'état*', a paradoxical 'morality of immorality'. For Allott, this privileging of the political sphere over the ethical meant that international relations theory tended to be innately conservative and uncritical:

Machiavellism was ... a calculated negation of a long tradition which conceived of values that transcend the power of even the holders of the highest forms of social power. Those ideas – especially ideas of justice and natural law, but also all those philosophies which speak of 'the good' or 'the good life' – were transcendental and aspirational and critical in character; that is to say they were conceived of as an *ideal* which could not be overridden or even abridged by the merely *actual*, and in relation to which the actual should be oriented and would be judged. The ideal makes possible a morality of society (Allott, 1999, p. 35).

In contrast to realist approaches to politics and international relations, that have been accused of justifying the status quo, ethical international relations theory sets out a radical agenda of criticism. Ken Booth asserts that the narrow focus on the political sphere of state interests and inter-state rivalry in international relations theory has become a barrier to developing new approaches which can address the problems of the international arena: 'What is needed must have *moral* at its centre because the fundamental questions of how we might and can live together concern values, not instrumental rationality' (Booth, 1995, p. 110). He argues:

To my mind the twenty-first will be the century of ethics, and global ethics at that. What I would like to see is a shift in the focus of the study of international relations from accumulating knowledge about 'relations between states' (what might be called the 'dismal science' of Cold War international relations) to thinking about ethics on a global scale (Booth, 1995, pp. 109–10).

Andrew Linklater, similarly, argues that international relations theory needs to develop a 'bolder moral standpoint' (cited in Wheeler, 1996, p. 128). Richard Falk, drawing on the cosmopolitan democracy position of Held and Archibugi's emphasis on the agency of global civil society, suggests that 'normative democracy' may be the best description of a unifying cosmopolitan ideology which can galvanise social change. He states that: 'I prefer normative to substantive democracy because of its highlighting of ethical and legal norms, thereby reconnecting politics with moral purpose and values ...' (Falk, 2000, p. 171).

This article suggests that the self-acknowledged utopian aspects of cosmopolitan theory stem from the fact that there is more attention to the ethical ends of cosmopolitan democracy than there is to the mechanisms and means of ensuring these. The irony is that, despite the talk about extending and deepening democracy, cosmopolitan theory is not really concerned with establishing new frame-

works for democracy on the international level. The question that cosmopolitans seek to address appears to be rather how to legitimise moral and ethical policy ends against the apparently 'narrow limits' of liberal democratic frameworks and of sovereign government. The cosmopolitans and global governance advocates are hostile to sovereignty, and strongly in favour of international regulation of the sovereign sphere, but not in order to strengthen the mechanisms of democratic accountability. They challenge the existing order because they represent a growing belief that progressive ends – such as the protection of human rights, international peace or sustainable development – would be more easily achieved without the institutional constraints of democratic accountability or the formalised rights of state sovereignty.

In fact, the moral and ethical premises of cosmopolitan democracy necessarily lead advocates of this perspective to downgrade the importance of the rights framework of democracy and political equality. For cosmopolitans, the artificial construction of the global citizen-subject is the key concept in their attempt to privilege the sphere of morality and ethics over that of politics. The cosmopolitan, or non-national, democratic subject is defined through being freed from any political framework which institutionalises liberal democratic norms of formal accountability. The cosmopolitan citizen, by definition, has no fixed territorial identity and thereby no place within any institutionalised framework of legal and political equality from which to hold policy actors to formal account. Freed from any such framework, the 'rights' of the cosmopolitan citizen become dependent on the advocacy of an external agency. By default, the cosmopolitan subject becomes concrete only through 'representation' on a particular issue through the agency of civil society institutions that also have an existence free from the institutionalised political framework of the nation-state.

Without the institutionalisation of mechanisms of accountability civil society claims to 'represent the people' remain unsubstantiated (Edwards, 1999, p. 180). Whereas the claim for representation is inevitably contested, civil society institutions and movements often assert that the crucial role that they perform is that of 'articulation' of the needs of global citizens. Because the global citizen cannot directly hold policy-makers to account, the role of civil society interlocutors becomes central to give content to claims of democracy without formal representation. Kaldor (2001) argues that 'the role of NGOs is not to be representative but to raise awareness', adding that the 'appeal is to moral conscience' not to political majorities. Johan Galtung (2000, p. 155), similarly, gives support to this form of 'empowerment', which he terms 'democracy by articulation, not by representation'.

In this respect, cosmopolitan theorists reflect broader political trends towards the privileging of advocacy rights over the representational democracy of the ballot box. Political activity is increasingly undertaken outside of traditional political parties and is becoming a sphere dominated by advocacy groups and single-issue campaigns who do not seek to garner votes but to lobby or gain publicity for their claims. Today, groups which campaign on a minority cause often support their case by exaggerating their moral claim to make up for political weakness. For example, if a group opposes the construction of a hydro-electric dam in another country or the construction of a motorway or the building of an out-of-town superstore closer

to home, they do not say they are just representing the personal views of those involved. Instead, they argue that they have a greater claim, not as individuals but as advocates for the rights of others, such as the rights of rare butterflies or the natural diversity that would be destroyed if these developments went ahead. They are, in fact, arguing against formal democracy, that democracy should come second to the ethical or moral concerns that they champion.

Groups that disapprove of mass production, today often argue that democracy must be overridden by the 'rights' of the environment or the 'rights' of future generations. These rights are fictitious rights. The subjects of these rights can not speak or act for themselves.⁴ Often it is radical critics, who oppose the injustices of the world, who bolster their cause through the reliance on fictitious rights. Cosmopolitan theorists start from a radical critique of existing norms in international relations, but it is a critique based on moral advocacy. The essence of cosmopolitan democracy vis-à-vis traditional views of liberal democracy, is that the new citizenship 'rights' it calls for are not democratic rights but are moral claims.⁵ Andrew Linklater's assertion that he derives the 'moral principles', which should guide international policy-making, from the rights of cosmopolitan citizenship, is open to question (Linklater, 1998, p. 207). This article suggests that the actual relationship is inverted. The cosmopolitan impulse is, in fact, to forward moral principles in the form of the 'rights' claims of cosmopolitan citizens. This inversion of the relationship between rights and their subjects relies on the legitimacy of fictitious rights.

New Rights for Old

Fictitious rights separate rights from their subject. The rights of the cosmopolitan citizen are outside the control of their subject in much the same way as animal rights or environmental rights can not be acted upon by their subjects. The problem with rights without subjects is that they may become a licence for undermining (limited but nevertheless important) existing rights, such as those of democracy and self-government. The proposed framework of cosmopolitan regulation, based on the fictitious rights of global citizenship, rather than the expression of rights through the political framework of the nation-state, recognises neither the democratic rights of citizens nor the collective expression of these rights in state sovereignty.

It is important to stress the qualitative difference between the liberal-democratic approach, which derives rights from self-governing human subjects, and the cosmopolitan approach of claiming rights on the behalf of others. The central component of all democratic systems of rights or legal systems, and their theoretical starting point, is the individual's capacity for self-government. The subject of the modern law is a person assumed to be a moral agent or self-willing actor. As a rights-bearing subject the person is not simply coerced into accepting the law by forces outside their influence. The law is seen to be freely accepted and to derive from his or her own will. The framework of regulation of the modern democratic system is historically and logically derived from the formal assumption of equal self-governing individuals, responsible and accountable for their actions and capable of rational decision-making. All modern doctrines of the enforcement of

contract, the punishment of crime, the election of governments and the state system of international law rest on this core assumption (Heartfield, 1996). This can be usefully highlighted by a brief consideration of the different facets of a modern state's 'rights-framework' or legal system.

Civil law is the clearest expression of the derivation of the law from the will of the self-governing subject. In enforcing the law of contract, civil law does not impose an alien or external goal onto individuals. In fact, the civil law only binds individuals to their word; this is an expression of the will of the legal subject as the contract is voluntarily made. There is no compulsion to higher policy goals or ends; the only object of the law is the contract between two equal contracting parties. Criminal law also assumes the equality and free will of the legal subject. The accused is represented at the court in the same way as for breaches of civil law and has the right to defend their interests in court equal to any other citizen. The law is binding on the individual as if it were a contract, although there is no formal contract beyond the assumption of assent to membership of a law-bound community (mythologised in social contract theory). This is clearly only notional assent, but it is through this fiction of consent that the equal rights of defendants before the law are enshrined. In constitutional law, the notional social contract is given content. For all its limitations, the principle of popular sovereignty is a thoroughly radical conception of authority from the people. It argues that the state's authority derives exclusively from the people, without any external source of either power or legitimacy.

This idealised picture reveals the centrality, to all aspects of the modern framework of rights, of the rights-bearing individual with the capacity for self-government. The source of democratic rights is the citizen, as an autonomous legal subject, rather than the abstraction of the cosmopolitan or global human individual. As Hannah Arendt (1979, p. 300) noted, the concept of rights, separated from a specific political framework, would mean claimants falling back 'upon the minimum fact of human origin'. For Arendt:

Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organisation ... We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights (1979, p. 301).

The universal human subject of cosmopolitan rights may be identifiable as an individual, but unless that individual can act within a political or legal framework they will be unable to exercise equal legal or political rights. Lewis (1998, p. 85) notes:

Placing the concept 'human' in front of 'rights' may represent a quantum leap up. But this is only in the abstract. No matter how these rights are presented, what they have in common is the fact that they are not derived from legal subjects.

This central distinction in approach to the rights-subject explains why the two different rights approaches have an opposing conception of the importance of the political sphere and its institutions at the level of the state and international society. In the work of cosmopolitan theorists this distinction, and the consequent undermining of traditional liberal democratic rights, is clear. In reinterpreting rights as a

moral category, as opposed to a legal and political one, a contradiction appears between the enforcement and guarantee of cosmopolitan rights and the formal equality of the liberal democratic legal and political framework. Within the ethical normative framework of cosmopolitan theory, vital areas of formal accountability, at both the domestic and international level, are questioned while new and increasingly *ad hoc* frameworks of decision-making are seen to be positive.

First, the formal right of sovereign equality under international law. The UN Charter regime was a radical break from the pre-World War Two system of legitimate Great Power domination. For the first time non-Western states had the same legitimacy and international rights as the more developed Western states, despite the inequality of economic and military power. Unlike the UN, which recognises the equality of nation-states regardless of political regime, cosmopolitans argue that many regimes are illegitimate. The right to equality under international law, the central pillar of the post-colonial international system, would be a conditional or residual right under the cosmopolitan framework. As Held (2000, p. 24) notes, 'sovereignty *per se* is no longer a straightforward guarantee of international legitimacy'. Archibugi (1998, p. 210) argues that it is a matter of urgency that 'democratic procedures should somehow be assessed by external agents'. Beetham (1999, pp. 151–94) has developed a 'democratic audit' framework to undertake such assessments. States that fail the assessments of their legitimacy will no longer have equal standing or full sovereign rights and could be legitimately acted against in the international arena.

Cosmopolitan regulation is in fact based on the concept of sovereign inequality, that not all states should be equally involved in the establishment and adjudication of international law. Ironically, the new cosmopolitan forms of justice and rights protection involve law-making and law-enforcement, legitimised from an increasingly partial, and explicitly Western, perspective. Held (1995, p. 232), for example, argues:

In the first instance, cosmopolitan democratic law could be promulgated and defended by those democratic states and civil societies that are able to muster the necessary political judgement and to learn how political practices and institutions must change and adapt in the new regional and global circumstances.

Shaw explains that behind the language of cosmopolitan universals lies the reality of legitimisation through 'economic, political and military resources' which gives the Western powers a new 'duty' or 'right' to assert 'global leadership':

This perspective can only be centred on a new unity of purpose among Western peoples and governments, since only the West has the economic, political and military resources and the democratic and multinational institutions and culture necessary to undertake it. The West has a historic responsibility to take on this global leadership ... (Shaw, 1994, pp. 180–1).

Second, the right of sovereign autonomy or self-government. Cosmopolitans assert that despite adherence to all internationally accepted formal democratic procedures, a state's government may not be truly democratic. For Archibugi (1998,

p. 213): 'The governments of states do not necessarily represent global interests. On the contrary, they tend to privilege the particular interests of their own political quarter'. Because of this 'bias' of self-interest a decision or choice made by the *demos*, or the people, even with full information and full freedom of decision-making, would not necessarily have democratic legitimacy. In the cosmopolitan framework a decision by popular vote could be as flawed as national governments having the final say. The *demos* can not necessarily be the final arbiter of democracy because:

... the choices of a people, even when made democratically, might be biased by self-interest. It may, for example, be in the interests of the French public to obtain cheap nuclear energy if they manage to dispose of radioactive waste in a Pacific isle under their control, but this will obviously be against the interests of the public living there (Archibugi, 1998, p. 211).

For cosmopolitan theorists the ethical ends for which they advocate are privileged above the sphere of democracy. In this framework a small minority may be more 'democratic' than a large majority, if they have an outlook attuned to cosmopolitan aspirations.⁶ Kaldor (1999, p. 120) draws out the implications of the argument when she suggests that the international community should not necessarily consult elected local representatives but seek 'to identify local advocates of cosmopolitanism' where there are 'islands of civility'. Just as states can not be equally trusted with cosmopolitan rights, neither can people. Instead of the 'limited' but fixed *demos* of the nation-state there is a highly selective '*demos*' identified by international institutions guided by the cosmopolitan impulse.

Good Governance

If governments and people can not be trusted to overcome their narrow 'political' differences and prejudices, then a new authority is needed to act in important international situations. This authority must be 'independent' of established political mechanisms of democratic accountability. Cosmopolitan theorists favour an independent and 'higher' mechanism of international regulation in the belief that under such a system the ethical ends of cosmopolitan liberalism can be enforced. The authority they wish to establish, without democratic accountability but with the legitimacy to overrule popular opinion and elected governments, is that of cosmopolitan governance. The essential attribute of 'governance' is that it is regulation freed from the formal restrictions of 'government'. Cosmopolitan governance, the less accountable power of international regulation, is the ideological counterpart to the cosmopolitan citizen, who has less rights of democratic accountability. In exchange for new 'rights' for the global individual, the cosmopolitans want to sacrifice the old rights of sovereignty, which are seen to restrict the benign and protective actions of international institutions. Kaldor (cited in Archibugi, 1998, p. 216) suggests:

[T]he term cosmopolitan, when applied to political institutions, implies a layer of governance that constitutes a limitation on the sovereignty of

states and yet does not itself constitute a state. In other words, a cosmopolitan institution would co-exist with a system of states but would override states in certain clearly defined spheres of activity.

For Held (1995, p. 227), the framework of global governance is 'cosmopolitan democratic law' a 'domain of law different in kind from the law of states and the law made between one state and another, that is, international law'. This law 'transcends the particular claims of nations and states' and would be upheld by a framework of 'interlocking jurisdictions' (Held, 1995, p. 232). While there is no world state that is constituted politically, there are international and transnational institutions that have the authority to undermine sovereignty when the need arises regarding an issue of 'global concern'.

Held's prescription of a new form of flexible law-making, no longer formally restricted by traditional domestic or international frameworks of accountability reflects the evolving practice of leading Western states in international intervention. Over recent years the legitimisation of intervention through claims of protecting the universal rights of citizens has clashed with traditional international law restrictions on interference in the internal affairs of sovereign nation-states. The report of the Independent International Commission on Kosovo (2000, p. 10) acknowledged the gap between international law and the practice of leading Western states and suggested 'the need to close the gap between legality and legitimacy'. However, rather than proposing to extend the formal reach of international law, the Commission sought to justify a new moral conception of 'legitimacy', one which differed from formal legality. They described their doctrinal proposal for humanitarian intervention as 'situated in a gray zone of ambiguity between an extension of international law and a proposal for an international moral consensus', concluding that 'this gray zone goes beyond strict ideas of *legality* to incorporate more flexible views of *legitimacy*' (Independent International Commission on Kosovo, 2000, p. 164).

This international commission was followed by the International Commission on Intervention and State Sovereignty which held further discussions on the question throughout 2001.⁷ These discussions indicate that formal legal equality will be undermined by current 'developments' in international law. In a typical panel, leading policy-advisor Adam Roberts noted that it would be a mistake to 'focus mainly on general doctrinal matters' regarding rights under formal international law:

The justification for a particular military action, if it is deemed to stand or fall by reference to the question of whether there is a general legal right of intervention, is likely to be in even more difficulty than it would be if legal considerations were balanced in a more *ad hoc* manner (Roberts, 2001, p. 2).

He recognised that in the current international context where 'there is no chance of getting general agreement among states about the types of circumstances in which intervention may be justified', it was necessary to counterpoise 'powerful legal and moral considerations' (Roberts, 2001, p. 13). The attempt to resolve the

clash between the partial demands of Western powers and the universal form of law means that the advocates of cosmopolitan forms of international law assert the need for new, more flexible legal forms:

It may be for the best that the question of a right of humanitarian intervention, despite its undoubted importance ... remains shrouded in legal ambiguity. While there is no chance of a so-called right of humanitarian intervention being agreed by a significant number of states ... answers to the question of whether in a particular instance humanitarian intervention is viewed as legal or illegal are likely to depend not just on the circumstances of the case ... but also the perspectives and interests of the states and individuals addressing the matter: in other words, they are not likely to be uniform (Roberts, 2001, p. 13–14).

Whether a military intervention is 'legal' is held to be a matter of 'the perspectives and interests' of those involved. This viewpoint, which seems certain to be adopted by the Commission, is an open argument for law-making by an elite group of Western powers sitting in judgement over their own actions.

The cosmopolitans allege that this 'ethical' framework can lead to a more equal society, as any state can be intervened in if it breaches moral or ethical norms. However, larger and more powerful states will have the resources and opportunities to intervene whereas weaker states will be unable to take on the interventionist duties on behalf of the 'global citizen'. The Independent International Commission on Kosovo (2000, p. 169), for example, stated that 'not only is the interventionary claim important, but also the question of political will, perseverance, and capabilities'. The question of will and capacity are commonly highlighted as crucial to the legitimacy of military intervention, as Ramesh Thakur, vice rector of the United Nations University in Tokyo, argues, if there is no normative consensus on intervention there has to be 'realistic assessments of our capacity to coerce recalcitrant players' (Thakur, 2001, p. 43). This approach sets up the scenario where intervention is the prerogative of the powerful against the weak.

This flexible and multi-layered framework, where the strict hierarchies of international law are absent, and there are no established frameworks of accountability in decision-making, undermines the UN Charter protections for non-Western states. The realities of unequal power relations mean that the more flexible decision-making is, and the less fixed international law, the easier it is for more powerful states to dictate the international agenda. International regulation, which is no longer based on sovereign equality, means excluded states will no longer have the opportunity to have a say in or consent to international regulation, abolishing the universal equality of international law (see Chandler, 2000, pp. 55–66).

The restrictions of formal equality in the international sphere and of non-intervention in the affairs of weaker states will have disappeared but no other constitutional framework will have replaced it. This does not mean that we will have international anarchy, but it does indicate a return to the days of 'might equals right' where the only limits on the capacity of major states to exert their influence internationally will be their ability to enforce their wishes. Smaller and weaker states were always under the influence of larger powers, the difference is that,

today, it is increasingly difficult to call on international law as a formal barrier to direct intervention and domination.

Conclusion

Cosmopolitan theorists have highlighted a crucial need for the extension of democracy to the international sphere. This is of particular importance in the post-Cold War world where it appears that the new 'duties' created by 'globalised interconnectedness' necessitate a new framework by which international institutions can be held accountable for their actions (and inaction). Beetham (1999, pp. 138–9) stresses the 'duties to strangers that we all owe' arguing that global interdependence means we must 'expand our definition of the stranger who merits our concern'. Kaldor (1999, p. 118) takes the point to its logical conclusion, stating that 'there is no such thing as non-intervention'. We are so interconnected that we have a duty to take responsibility for events which affect citizens in any country in the world: 'The failure to protect the victims is a kind of tacit intervention on the side of those who are inflicting humanitarian or human rights abuses'. In these circumstances the gap between power and accountability at the international level becomes an ever more pressing problem.

By bringing the need for new forms of democracy to the fore, the cosmopolitan thesis has highlighted important institutional barriers to the extension of democracy from the level of the nation-state to that of the international. It appears that it will not be possible to extend the liberal democratic framework of citizenship rights as long as the rights of democratic accountability remain tied to the institutional framework of the nation-state. While global citizenship remains a positive aspiration, it is only an inherent possibility without the development of a globally-institutionalised framework of political and legal equality. Attempts to posit cosmopolitan rights of citizenship in the absence of such a framework have, in fact, taken the cosmopolitan argument full circle. Their starting point was that democracy was too restrictive because it excluded non-citizens who would be affected by decisions of foreign national governments. While this is undoubtedly a limitation, it is clear that short-cutting the process of creating new institutional frameworks, by allowing more lee-way for international institutions to act on behalf of global subjects, has merely allowed the affairs of these non-citizens to be brought more directly under the control of powerful foreign powers. While the non-citizens have gained no more power to influence the policy-making of the major Western states they have lost the right to hold their own governments to account. Rather than furthering democracy, the premature declaration of a framework of universal cosmopolitan rights can, in fact, result in rights that people did have being further restricted.

(Accepted: 22 October 2002)

About the Author

David Chandler, Centre for the Study of Democracy, University of Westminster, 100 Park Village East, London NW1 3SR, UK, email: D.Chandler@Westminster.ac.uk

Notes

This paper arises from a debate with Daniele Archibugi on 'Cosmopolitics' organised by the European University Institute, Florence, Italy, on 15 May 2001. The author would like to thank the organisers and those present for their comments and also the unnamed reviewers of *Political Studies* for their comments on an earlier draft.

- 1 The work of cosmopolitan theorists, for example, that of David Held, Daniele Archibugi, Mary Kaldor, Richard Falk, Ken Booth and David Beetham, differs in focus and emphasis, however, for the purposes of this brief survey, the similarities in their approach to the questions of democracy and rights are highlighted.
- 2 Shaw (1994b) identifies at least three major types of institutions which comprise emergent civil society: formal organisations which link nationally-based institutions (political parties, trade unions, educational bodies etc.); informal networks and movements (around women's rights, peace movements etc.); and globalist organisations (Amnesty, Greenpeace, Médecins sans Frontières etc.).
- 3 The limits of formal political accountability and the possibilities for the 'will of the majority' to be constrained and circumscribed even within the most highly developed constitutional frameworks have been well documented over the past one-and-a-half centuries. Nevertheless the epistemological premise of democracy – that there are no final truths about what is good for society that can be established through the powers of revelation or special knowledge – and the underlying principle of equality – that in any process of deciding the good 'everyone counts for one and none for more than one' – has maintained a legitimacy which has yet to be matched by any contending theory. See Beetham (1999, pp. 35–6).
- 4 The question of enforcing universal children's rights, raised by the UN Convention on the Rights of the Child, provides an excellent illustration of some of the problems with advocacy rights in the international sphere. See further, Norman Lewis (1998) and Vanessa Pupavac (2001).
- 5 Moral claims have always been a vital component of political struggles, including those for the extension of rights, for example, the campaign to abolish slavery. There is however a qualitative distinction between using moral arguments to extend the framework of political and legal equality, for example, through the abolition of slavery, and campaigning to subordinate political and legal institutions to moral ends.
- 6 This critique of 'narrow' or 'thin' democracy based on equal representation, and the privileging of normative or ethical views of democracy, is not unique to cosmopolitan theory and can also be found at the national level. See, for example, Guinier (1995).
- 7 For further information see the Commission's web page: <http://www.iciss.gc.ca/>.

References

- Allott, P. (1999) 'The Concept of International Law', *European Journal of International Law*, 10, 31–50.
- Archibugi, D. (1998) 'Principles of Cosmopolitan Democracy', in D. Archibugi, D. Held and M. Köhler (eds), *Re-imagining Political Community*. Cambridge: Polity, pp. 198–228.
- Archibugi, D. (2000) 'Cosmopolitical Democracy', *New Left Review*, 4, July/August, 137–50.
- Archibugi, D. (2002) 'Demos and Cosmopolis', *New Left Review*, 13, Jan/Feb, 24–38.
- Arendt, H. (1979) *The Origins of Totalitarianism*. New York: Harvest.
- Beetham, D. (1999) *Democracy and Human Rights*. Cambridge: Polity.
- Bianchi, A. (1999) 'Immunity versus Human Rights: the Pinochet Case', *European Journal of International Law*, 10, 237–77.
- Booth, K. (1995) 'Human Wrongs and International Relations', *International Affairs*, 71 (1), 103–26.
- Booth, K. 'Three Tyrannies', in T. Dunne and N. Wheeler (eds), *Human Rights in Global Politics*. Cambridge: Cambridge University Press, pp. 31–70
- Bosco, D. (2000) 'Dictators in the Dock', *American Prospect*, 14 August.
- Commission on Global Governance, *Our Global Neighbourhood*. Oxford: Oxford University Press.
- Camilleri, J. A. and Falk, J. (1992) *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World*. Brookfield VT: Ashgate.
- Chandler, D. (2000) 'International Justice', *New Left Review*, 6, November/December, 55–66.
- Charnovitz, S. (1997) 'NGOs and International Governance', *Michigan Journal of International Law*, 18, 183–286.

- de Waal, A. (1997) 'Becoming Shameless: the Failure of Human-Rights Organizations in Rwanda', *Times Literary Supplement*, 21 February, 3–4.
- Edwards, M. (1999) *Future Positive: International Co-operation in the 21st Century*. London: Earthscan.
- Falk, R. A. (2000) 'Global Civil Society and the Democratic Prospect', in B. Holden (ed.), *Global Democracy: Key Debates*. London: Routledge, pp. 162–78.
- Forsythe, D. P. (2000) *Human Rights in International Relations*. Cambridge: Cambridge University Press.
- Galtung, J. (2000) 'Alternative Models for Global Democracy', in B. Holden (ed.), *Global Democracy: Key Debates*. London: Routledge, pp. 143–61.
- Guinier, L. (1995) *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*. New York: Simon and Schuster.
- Heartfield, J. (1996) 'Rights and the Legal Subject'. Unpublished Freedom and Law discussion paper.
- Heater, D. (1999) *What is Citizenship?* Cambridge: Polity.
- Held, D. (1995) *Democracy and the Global Order*. Cambridge: Polity.
- Held, D. (1998) 'Democracy and Globalisation', in D. Archibugi, D. Held and M. Köhler (eds), *Re-imagining Political Community: Studies in Cosmopolitan Democracy*. Cambridge: Polity.
- Held, D. (2000) 'The Changing Contours of Political Community: Rethinking Democracy in the Context of Globalization', in B. Holden (ed.), *Global Democracy: Key Debates*. London: Routledge.
- Independent International Commission on Kosovo, *The Kosovo Report*. Oxford: Oxford University Press.
- Kaldor, M. (1999a) *New and Old Wars: Organized Violence in a Global Era*. Cambridge: Polity.
- Kaldor, M. (1999b) 'Transnational Civil Society', in T. Dunne and N. J. Wheeler (eds), *Human Rights in Global Politics*. Cambridge: Cambridge University Press, pp. 195–213.
- Kaldor, M. (2001) *Analysis*, BBC Radio Four, 29 March.
- Köhler, M. (1998) 'From the National to the Cosmopolitan Public Sphere', in D. Archibugi, D. Held and M. Köhler (eds), *Re-imagining Political Community*. Cambridge: Polity, pp. 231–51.
- Lewis, N. (1998) 'Human Rights, Law and Democracy in an Unfree World', in A. Evans (ed.), *Human Rights Fifty Years On: a Reappraisal*. Manchester: Manchester University Press.
- Linklater, A. (1998) *The Transformation of Political Community*. Cambridge: Polity.
- Pupavac, V. (2001) 'Misanthropy without Borders: the International Children's Rights Regime', *Disasters*, 25 (2), 95–112.
- Roberts, A. (2001) 'Intervention: Suggestions for Moving the Debate Forward', Round Table Consultation, London, 3 February, *Discussion Paper*. International Commission on Intervention and State Sovereignty, p. 2. Available from: <http://web.gc.cuny.edu/icissresearch/london%20discussion%20paper.htm>.
- Robertson, G. (1999) *Crimes against Humanity: the Struggle for Global Justice*. London: Allen Lane/Penguin.
- Shaw, M. (1994a) *Global Society and International Relations: Sociological Concepts and Political Perspectives*. Cambridge: Polity.
- Shaw, M. (1994b) 'Civil Society and Global Politics: beyond a Social Movements Approach', *Millennium*, 23 (3), 647–69.
- Stammers, N. (1999) 'Social Movements and the Social Construction of Human Rights', *Human Rights Quarterly*, 21, 980–1008.
- Thakur, R. (2001) 'Global Norms and International Humanitarian Law: an Asian Perspective', *International Review of the Red Cross*, 83 (841), March, 19–43.
- Wheeler, N. J. (1996) 'Guardian Angel or Global Gangster: a Review of the Ethical Claims of International Society', *Political Studies*, 44 (1), 123–35.