JAMES TULLY

Public Philosophy in a New Key

Volume II
Imperialism and Civic Freedom

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PUBLIC PHILOSOPHY IN A NEW KEY
VOLUME II
IMPERIALISM AND CIVIC FREEDOM

These two ambitious volumes from one of the world's most celebrated political philosophers present a new kind of political and legal theory that James Tully calls a public philosophy, and a complementary new way of thinking about active citizenship, called civic freedom. Professor Tully takes the reader step by step through the principal debates in political theory and the major types of political struggle today. These volumes represent a genuine landmark in political theory. In this second volume, Professor Tully studies networks and civic struggles over global or imperial relations of inequality, dependency, exploitation and environmental degradation beyond the state. The final chapter brings all of the author's resonant themes together in a new way of thinking about global and local citizenship, and of political theory in relation to it. This forms a powerful conclusion to a major intervention from a vital and distinctive voice in contemporary thought.

JAMES TULLY is Distinguished Professor of Political Science at the University of Victoria, Canada. He is one of the most influential and distinctive political philosophers writing today.

Public Philosophy in a New Key
Volume II: Imperialism and Civic Freedom

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PUBLIC PHILOSOPHY
IN A NEW KEY

Volume II: Imperialism and Civic Freedom

JAMES TULLY

University of Victoria

To Debra

Contents

Volume II

Volume I

Acknowledgments

There are far too many people who have helped with these two volumes to mention them individually. Firstly, I would like to thank all the students who have kept me paddling hard to keep up with their questions and stimulating research. At the University of Victoria I would like to thank my colleagues, including staff members, and President David Turpin for making this university among the best in the world for interdisciplinary research, teaching and community outreach. I am also pleased to thank the Pierre Elliott Trudeau Foundation and its former director, Stephen Toope, for providing a community of engaged fellows and scholars in which many of my ideas were formulated. I would not have been able to benefit from a large range of debates without the discussions I have had with scholars and activists from around the world. I have tried to thank each one of you in the appropriate chapters. However, I must mention a few to whom I am exceptionally indebted: Annabel Brett, David Owen, Boaventura de Sousa Santos, Neil Walker and Antje Wiener.

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I am most grateful to Richard Fisher at Cambridge University Press for his indispensable help, support, encouragement and advice over now many years of work and friendship. Many thanks go to Mike Simpson for his careful work on editing and improving the typescript and for helpful conversations. I also wish to express my gratitude to Jacqueline French for her exceptional care and proficiency in copy-editing and improving the final typescript, and Rosanna Christian and Jodie Barnes of Cambridge

I owe a special kind of debt to the old growth forests of the Pacific Northwest. As the imperial alliance I write against in *Volume II* invaded and occupied Iraq and Afghanistan, these awe-inspiring ecosystems in their magnificent unity in diversity taught me another, pacific way of being in the world that could still be ours one day.

Pacific Rim National Park

Credits

Theory and the Rights of Indigenous Peoples (Cambridge: Cambridge University Press, 2000).

Chapter 9: From 'Recognition and Dialogue: The Emergence of a New Field', in *Critical Review of International Social and Political Philosophy* 7, 3 (Autumn 2004).

Volume II

Chapter 1: From 'The Kantian Idea of Europe: Critical and Cosmopolitan Perspectives', in Anthony Pagden, ed., *The Idea of Europe: From Antiquity to the European Union* (Cambridge: Cambridge University Press, 2002).

Chapter 2: From 'Democracy and Globalization: A Defeasible Sketch', in Ronald Beiner and Wayne Norman, eds., *Canadian Political Philosophy: Contemporary Reflections* (Toronto: Oxford University Press, 2001).

Chapter 3: From 'An Ecological Ethics for the Present', in Brenden Gleeson and Nicholas Low, eds., *Governing for the Environment: Global Problems, Ethics and Democracy* (London: Macmillan, 2000).

Chapter 4: From 'The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy', *Modern Law Review* 65, 2 (March 2002), republished in Melissa Williams and Stephen Macedo, eds., *Political Exclusion and Domination* (New York: New York University Press, 2005).

Chapter 5: From 'On Law, Democracy and Imperialism', in Emilios Christodoulidis and Stephen Tierney, eds., *Public Law and Politics: The Scope and Limits of Constitutionalism* (London: Ashgate, 2008).

Chapter 6: From 'Communication and Imperialism', in Arthur Kroker and Marilouise Kroker, eds., *The Critical Digital Studies Reader* (Toronto: University of Toronto Press, 2008).

Chapter 7: From 'The Imperialism of Modern Constitutional Democracy', in Martin Loughlin and Neil Walker, eds., *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007).

Chapter 8: From 'A New Kind of Europe? Democratic Integration in the European Union', *Critical Review of International Social and Political Philosophy* 10, 1 (March 2007).

Chapter 9 is new. An earlier article from which I have drawn some parts is 'Two Meanings of Global Citizenship', in Michael A. Peters, Harry Blee and Alan Britton, eds., *Global Citizenship Education: Philosophy, Theory and Pedagogy* (Rotterdam: Sense Publishers, 2008).

Introduction

Public philosophy and civic freedom: a guide to the two volumes

Public Philosophy in a New Key is a new approach to the study of politics. The role of a public philosophy is to address public affairs. This civic task can be done in many different ways. The type of public philosophy I practise carries on this task by trying to enter into the dialogues with citizens engaged in struggles against various forms of injustice and oppression. The aim is to establish pedagogical relationships of reciprocal elucidation between academic research and the civic activities of fellow citizens. The specific role of this public philosophy is to throw a critical light on the field of practices in which civic struggles take place and the practices of civic freedom available to change them. It does this by means of historical and critical studies of the field and the given theoretical forms of representation of it. Reciprocally, this critical ethos learns from citizens and the successes and failures of their civic activities how to improve the historical and critical studies and begin again.

In the studies that follow, I use the term 'citizen' to refer to a person who is subject to a relationship of governance (that is to say, governed) *and*, simultaneously and primarily, is an active agent in the field of a governance relationship. While this includes the official sense of 'citizen' as a recognised member of a state, it is obviously broader and deeper, and more appropriate and effective for that reason. By a 'relationship of governance', I refer not only to the official sense of the institutional governments of states, but to the broad sense of any relationship of knowledge, power and subjection that governs the conduct of those subject to it, from the local to the global. Governance relationships in this ordinary sense range from the complex ways individuals and groups are governed in their producing and consuming activities to the ways peoples and subalternised states are subject to global imperial relationships of inequality, dependency and exploitation. They comprise the relationships of normativity, power and subjectivity in which humans find themselves constrained to recognise themselves and each other, coordinate interaction, distribute goods, act on the environment

and relate to the spiritual realm. 'Practices of civic freedom' comprise the vast repertoire of ways of citizens acting together on the field of governance relationships and against the oppressive and unjust dimensions of them. These range from ways of 'acting otherwise' within the space of governance relationships to contesting, negotiating, confronting and seeking to transform them. The general aim of these diverse civic activities is to bring oppressive and unjust governance relationships under the on-going shared authority of the citizenry subject to them; namely, to civicise and democratise them from below.

What is distinctively 'democratic' about public philosophy in a new key is that it does not enter into dialogues with fellow citizens under the horizon of a political theory that frames the exchange and places the theorist above the *demos*. It rejects this traditional approach. Rather, it enters into the relationships of normativity and power in which academic researchers and civic citizens find themselves, and it works historically and critically on bringing them into the light of public scrutiny with the particular academic skills available to the researchers. Every reflective and engaged citizen is a public philosopher in this sense, and every academic public philosopher is a fellow citizen working within the same broad dialogue with his or her specific skills. Studies in public philosophy are thus specific toolkits offered to civic activist and civic-minded academics working on the pressing political problems of our times.

I first developed this approach in *Strange Multiplicity: Constitutionalism in an Age of Diversity*. By means of a series of historical studies, I argued that constitutional democracies could respond to contemporary struggles over recognition by reconceiving constitutions as open to continuing contestation and negotiation by those subject to them. This would be a transition from constitutional democracy (where the constitution is conceived as founding and standing behind democratic activity) to democratic constitutionalism (where the constitution and the democratic negotiation of it are conceived as equally basic). In the decade since it was published, I have come to see that this approach can be improved and applied to a broader range of contemporary struggles: over diverse forms of recognition, social justice, the environment and imperialism. These two volumes explore this complex landscape.

Volume I, Part 1 sets out this public philosophy, its employment of historical studies, its relation to contemporary political struggles and its orientation to the civic freedom of citizens. Chapter 1 is a sketch of my approach, the tradition from which it derives, the contemporary authors from whom I have learned this approach, and a contrast with the dominant

theory-building approach. Chapters 2 and 3 provide the groundwork of public philosophy through an interpretation and adaptation of the works of Wittgenstein, Foucault and the Cambridge school. These chapters provide the methods that are employed in the case studies that follow in both volumes.

Volume I, Part 2 consists of three applications to the democratic struggles over the appropriate forms of recognition of diverse, multicultural and multinational citizens in contemporary societies. Chapter 4 locates the approach relative to trends in political philosophy over the last thirty years and sketches out the general field of relations of power and the freedom of citizens that is studied in detail in the following chapters. Chapter 5 is a study of ways to democratise various types of contemporary recognition struggles while generating appropriate civic bonds of solidarity among diverse citizens. Chapter 6 is a study of democratic forms of recognition in political associations that are not only multicultural but also multi-national, based on the work of an international team of social scientists from the European Union and Canada. This is a comprehensive yet defeasible analysis of the actual legal and political practices of democratic constitutionalism for multinational associations.

Volume I, Part 3 consists of two studies of the struggles of Indigenous peoples for recognition in modern states and under international law. The first sets out a normative framework for the bi-civilisational negotiation of decolonisation and reconciliation of the rights of Indigenous peoples to govern themselves in their own ways over their territories and the rights of states that have colonised them over the last half millennium. It is based on my work for the Canadian Royal Commission on Aboriginal Peoples (1991–5). Chapter 8 addresses the prevailing discursive and practical obstacles to the negotiation of reconciliation proposed in Chapter 7 and the practices of freedom available to Indigenous peoples and their supporters to overcome the obstacles and initiate negotiations.

Chapter 9 concludes *Volume I*, setting out this new approach to recognition and distribution struggles developed in the course of these studies and the ways in which contemporary societies are beginning to adopt this democratic approach in their legal and political institutions. I show how this approach represents a fundamental transformation of the manner in which struggles over recognition are standardly conceptualised today in the dominant schools of thought. It recommends a transition from the orientation to discrete and dyadic struggles for the just and definitive form of legal recognition in a state to multiple and interrelated negotiations over the always-imperfect prevailing norms of mutual recognition of members of

any form of association. This modest democratic approach has a much better chance of bringing peace to the deeply diverse world of the twenty-first century than the standard approaches.

Volume II applies public philosophy in a new key to global politics. It consists of historical and critical studies of global relationships of horrendous inequality, dependency, exploitation and environmental damage, and of the corresponding practices of civic freedom of global *and* local citizens to transform them into democratic relationships. The transition to *Volume II* does not only mark a broadening of the field of public philosophy to the global. More emphasis is also placed on specific locales of civic struggles, the diversity of governance relationships and the range of ways of acting otherwise in them, provincialising Eurocentric traditions and bringing in more non-Western voices and perspectives.

Volume II, Part 1 consists of studies of global relationships and practices of civic freedom available from the perspectives of the dominant schools of globalisation. Chapter 1 critically examines the tradition of international relations and global justice associated with Kant's theory of a world federation of identical nation-states. Chapter 2 examines the theories of globalisation, global governance and cosmopolitan democracy. Chapter 3 examines the activities of environmental movements from the perspective of civic freedom and advances a democratic ethic of ecological politics. Chapter 4 is the most comprehensive. It is an immanent critique of the dominant and agonistic approaches to global justice and international law. The critique leads step by step to the conclusion that only a more historical and contextual approach, related to the actual practices of freedom on the ground, can illuminate the unequal global relationships and the possibilities for their transformation. The conclusion I draw from these four studies is that these approaches, while illuminating and useful, are nevertheless limited and inadequate because they overlook the historically persisting imperial character of the global relationships they analyse. This provides the transition to Part 2.

Volume II, Part 2 consists in studies of global relationships under the description of them as a network of vastly unequal *imperial* relationships between the North and global South (the 120 former colonies that comprise the majority of the world's population). The three chapters show how different aspects of the contemporary global order continue to be structured by imperial relationships inherited from five hundred years of Western imperialism. These relationships survived decolonisation in the twentieth century in a new phase of imperialism, standardly called post-colonial or informal imperialism.

Chapter 5 sets out this argument in historical detail and shows how each of the major approaches to globalisation and international relations overlooks the imperial dimensions of the present in different ways and marginalises other approaches that study globalisation under the category of imperialism. Even some of the approaches that claim to take into account informal imperialism misrepresent the contemporary form of imperialism. With this disclosure of the field of globalisation as the continuation of Western imperialism by informal means and through institutions of global governance, Chapter 6 turns to the networkisation and communications revolution of the last twenty years. I show that this revolution, which is often portrayed as democratising globalisation, has been Janus-faced: helping global citizens to organise effectively at the local and global levels, yet also helping institutions of global governance, multinational corporations and the US military to network and govern informally the global relationships of inequality they inherited from the period of colonial imperialism. Chapter 7 shows how the imperial spread of the modular form of modern, Western-style constitutional nation-states and international law by colonisation, indirect rule and informal rule over the last three hundred years has not freed the non-West from imperialism. Quite the opposite: it has been and continues to be the political, legal and economic form in which relationships of inequality, dependency and exploitation have been extended and intensified around the world.

Volume II concludes by asking the crucial question: what can citizens who are subject to these imperial relationships (in both the North and global South) do to transform them into non-imperial, democratic relationships by bringing them under their shared authority? The general answer is the exercise of civic freedom by citizens in the North and global South and the exercise of academic research in networks of reciprocal learning with these global/local citizen movements: namely, a new public philosophy for a de-imperialising age. Chapter 8 takes the citizenry of the European Union as an example. I argue that European citizens are already taking the lead in improvising new forms of democratising civic activities with respect to immigration, alternative economics and relationships with the global South.

Chapter 9 is the conclusion to *Public Philosophy in a New Key*. It draws together the strands of argument throughout the two volumes and weaves them into a sketch of a new kind of local *and* global citizenship I call 'glocal' citizenship. This mode of citizenship has the capacity to overcome the imperialism of the present age and bring a democratic world into being from the local to the global. Since it is the conclusion to the two volumes,

I will provide a brief synopsis at the outset to give a preliminary indication of where the chapters lead.

The first part of the chapter summarises the imperial character of the present global order and the dominant modular form of citizenship (*modern* citizenship) that has been spread by Western expansion. Far from offering a challenge to imperialism, it actually serves in a number of ways to extend it, in both its national (civil) and its global (cosmopolitan) forms. The second part argues that there is another mode of citizenship (*diverse* citizenship) that also developed historically in both the West and non-West. It provides the democratic means to challenge and transform imperial relationships in both its local (civic) and local/global (glocal) forms. I set out the main features of the traditions of diverse civic citizenship historically and conceptually, and then apply it to global struggles of de-imperialisation and democratisation. It is a form of citizenship that is grounded in local civic practices yet extended globally by democratic networks. The chapter thus brings together the three themes of the two volumes: public philosophy, practices of civic freedom and the countless ways they work together to negotiate and transform oppressive relationships. This is not only possible but what millions of citizens, non-governmental organisations (NGOs), networks and social movements are doing today. The chapter ends with a view of Gandhi's life as a civic citizen contra imperialism; it stands as an exemplar of civic citizenship and engaged public philosophy.

There are many public philosophers from whom I have drawn inspiration. John Locke, Mary Wollstonecraft, Emma Goldmann, Antonio Gramsci, Sojourner Truth, Paulo Friere, Bertrand Russell, Maude Barlow, Edward Said, Noam Chomsky, Vandana Shiva, Boaventura de Sousa Santos, Iris Marion Young and Gandhi are exemplary. And, as I mentioned, every engaged and reflective citizen is an inspirational public philosopher in this democratic sense. But I have always questioned why more political philosophers and political theorists are not also *public philosophers*. What stops many of them from seeing their work as a discussion with their fellow citizens as equals? I think the answer is that many tend to enter into a relationship with citizens under the horizon of a political theory that sets them above the situated civic discourses of the societies in which they live. This presumptive elevation is standardly based on four types of assumption.

The first assumption is that there are causal processes of historical development (globalisation) that act behind the backs of citizens and determine their field of activity. It is the role of the theorist of modernisation to study these conditions of possibility of civic activity. The second is

that there are universal normative principles that determine how citizens ought to act. It is the role of the theorist of global justice to study these unchanging principles that prescribe the limits of democracy. The third is that there are background norms and goods implicit within democratic practices that constrain and enable the field of democratic activity of citizens in the foreground. It is the role of the interpretative and phenomenological theorists to make these background conditions explicit. The fourth is that there are canonical institutional preconditions that provide the foundations of democratic activity and it is the role of political scientists to study these legal and political institutions.

In each of these four cases, the theorist is elevated above the *demos* by the assumption that there are background conditions of possibility of democracy that are separate from democratic activity and it is his or her role to study them, not what takes places within them. In the course of the studies in the two volumes, each pillar of elite political theory falls to the ground. Each of the four conditions of possibility is shown to be internally related to and reciprocally shaped by the everyday activities of democratic citizens, not separate from and determinative of their field of freedom. It is this revolutionary discovery that brings political philosophy 'down' into the world of the *demos* and renders it a situated public philosophy in conversation with fellow citizens. Equally important, it enables us to see that we are much freer and our problems more tractable than the grand theories of the four pillars make it seem. For while we are still *entangled* in conditions that constrain and enable, and are difficult to change, we are no longer *entrapped* in background conditions that determine the limits of our foreground activities, for none is permanently off limits. I associate this revolutionary insight with the late Richard Rorty (*Volume I*, Chapter 4). Others will associate it with other writers and their own experiences of human freedom and agency where they were told it was impossible.

I would like to say a few words about the phrase 'in a new key'. Just as a jazz musician plays a composition in a new key relative to the classic performances of it, so too a specific public philosopher plays the role in his or her own new *style* in relation to the classic public philosophers in his or her field. The *style* of these studies is a new key in that it combines historical studies and a reciprocal civic relationship in what I hope is a distinctive way. Jazz musicians play in a new key in the course of improvising with other musicians and in dialogue with classic performances and present audiences. Analogously, public philosophers improvise in dialogues with contemporary theorists, the classics, engaged citizens and in response to the political problems that confront and move them. This is the situated

freedom of a public philosopher. I see the studies in these volumes as improvisations in this sense.[1]

Finally, I would like to respond to a common objection to this style of public philosophy. Radical critics often say, given the radical character of your particular public philosophy, why do you engage in the 'mainstream' academic debates and use the conservative language of citizenship, public philosophy, governance, democracy and civic freedom? Your work will be co-opted by the mainstream you disagree with and alienated from the civic activists you hope to reach. You should write in a language of radical politics.

I acknowledge that my views are somewhat radical relative to much of the literature I discuss. However, there are three reasons for the approach I take. Firstly, the alternative language of radical politics often involves a kind of self-marginalisation and an attitude of self-righteousness that I find incompatible with a democratic ethos. Moreover, there are already many excellent public philosophers, such as Chomsky, who write directly to civic activists and bypass the theoretical debates, and they too write in the same plain and simple language of citizens, public goods and freedom. Secondly, the economic, political and military elites and their ideologists have inherited not only much of the earth and its resources but also many of its languages, including the manipulable language of citizenship, democracy, civic goods and freedom. Yet, it is precisely this ordinary language that the oppressed and exploited of the world have always used to express their outrage at the injustices of the present and their hopes and dreams of another world. Like Edward Said, I refuse to surrender it to our adversaries without a fight and abandon the repository of the history of struggles from which we derive.[2] Moreover, the fall of the four pillars of the *ancien régime* also brings down the fiction of an alternative, pure language of freedom (radical or otherwise) that stands above the fray of politics and is impervious to unpredictable redescription by one's fellow adversaries. Thirdly, I have deep respect for the elaborate Western and non-Western traditions of critical political reflection, the great yet partial insights they can bring, and the people who carry them on today in this public language. While I disagree with the dominant theories that legitimate the status quo in these terms, engagement with them forces dissenters like myself constantly to test our own views against them and, in so doing, to try to move the academic debate in another

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[1] For this analogy, see Bruce Ellis Benson, *The Improvisation of Musical Dialogue: A Phenomenology of Music* (Cambridge: Cambridge University Press, 2003).

[2] Edward W. Said, 'The Public Role of Intellectuals and Writers', in *Humanism and Democratic Criticism* (New York: Columbia University Press, 2004).

direction. As we will see, I am far from the first or only one to take this agonistic stance. Furthermore, is it not presumptuous to assume that these debates are alien and of no interest to citizens? The following chapters were written in conversations with engaged citizens. Academic debates are not as far from and unrelated to the public debates as they are often portrayed from the perspectives of the four pillars. They are a historically integral part of the complex field of practical discourses on which public philosophy is inescapably thrown and in which it can find its voice and make a distinctive difference.

Except for the concluding chapter of *Volume II*, all chapters are based on works published previously over the last eight years and then rewritten to bring them together in the sustained argument of these two volumes. The concluding chapter of *Volume II* was written for the two volumes and to bring their themes together in a portrait of global/local civic freedom and public philosophy contra imperialism.

Global governance and practices of freedom

The Kantian idea of Europe: critical and cosmopolitan perspectives

INTRODUCTION

This chapter is the first of several criticisms in this volume of the imperial dimensions of the Kantian tradition in International Relations, political theory and practice. It is an immanent critique of what Edward Said called the pervasive 'cultural imperialism' of Kant's theory. This line of criticism and anti-imperialism derives from Johann Herder, Frantz Fanon, Edward Said, Charles Taylor and Iris Marion Young. If we take the respect for cultural diversity and democratic freedom seriously, as I argue in favour of in *Volume I*, then we have to criticise and go beyond the imperial, Eurocentric uniformity of the Kantian framework.[1] My thesis is that a survey of the critical attitude that has developed in response to this tradition over the last two hundred years will change our idea of Europe and its relation to the rest of the world, from a Eurocentric to a more pluralistic conception of cosmopolitanism.[2]

I THE KANTIAN IDEA OF EUROPE AND THE WORLD

In *The Idea of Europe*, Anthony Pagden, Biancamaria Fontana and John Pocock present a wide variety of ideas of Europe from various ages and go on to single out the idea associated with Kant and Constant, suggesting that

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[1] See especially *Volume I*, Chapter 9.

[2] That is, I demur from the suggestion, advanced by many of Kant's followers, that his political philosophy *is* cosmopolitan. Kant himself claims only that his philosophy has a cosmopolitan 'intent'; Immanuel Kant, 'Idea for a Universal History with a Cosmopolitan Intent', in *Perpetual Peace and Other Essays*, ed. Ted Humphrey (Indianapolis: Hackett Publishing Company, 1983). This I do not dispute. For a recent and unmodified claim that Kant's political and moral philosophy is cosmopolitan, see Martha C. Nussbaum, 'Kant and Stoic Cosmopolitanism', *Journal of Political Philosophy* 5(1), 1997: 1–26.

it remains relevant today.[3] This idea contains five main features. Firstly, Europe is tending towards a federation of independent or sovereign states, each and every one of which has what Kant calls a 'republican' constitution: that is, the formal equality of citizens under the law, the separation of legislature and executive, and representative government.[4] Secondly, the federation is held together by six 'preliminary articles', the cosmopolitan right of universal hospitality ('the right of an alien not to be treated as an enemy on his arrival in another's country') and commerce or 'the spirit of trade'.[5] In addition, as Fontana emphasises, Constant added the proviso that a degree of variation in local customs and ways should be tolerated within independent states.[6]

Thirdly, the European states and their federation are the prototype for the development of a federation of all the peoples of the world organised into identical states.[7] The rise and gradual spread of this idea of federation is, fourthly, understood as the consequence of a set of historical processes and 'stages' of world development, including the spread of commerce and the rule of law by European wars of imperial expansion.[8] Finally, the rise of this federal idea is understood to mark the decline of an older and incompatible idea of Europe as the centre of world empires, in the sense of either European imperialism associated with Napoleon, as Fontana explains, or earlier ideas of European imperialism based on war, conquest and the

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[3] See Anthony Pagden, 'Europe: Conceptualizing a Continent'; Biancamaria Fontana, 'The Napoleonic Empire and the Europe of Nations'; and John Pocock, 'Some Europeans in Their History', each in *The Idea of Europe: From Antiquity to the European Union*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 2002).

[4] Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch', in *Perpetual Peace and Other Essays*, pp. 112–18. The republican constitution is the first definitive article of peace and the federation of such states is the second.

[5] *Ibid.*, pp. 107–11, 118–19, 125. The cosmopolitan right is the means by which commerce is offered to other nations; Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1991), p. 158.

[6] Benjamin Constant, 'The Spirit of Conquest and Usurpation and Their Relation to European Civilization', in *Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), pp. 73–8, 149–56. Constant realised that his defence of the variety of customs against uniformity was unpopular, and he believed that the economic and political processes of modernisation would lead to uniformity in the long run.

[7] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 117 ('this *idea of federalism* should eventually include all nations'). See Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c.1500–c.1800* (New Haven: Yale University Press, 1995), p. 190. The federation can use economic power, rather than war, to force other nations to comply (p. 125).

[8] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, pp. 120–5; and Kant, 'Universal History', in *Perpetual Peace and Other Essays*. For a recent historical survey and defence of the stages theory of historical development in Enlightenment thought, see Istvan Hont, 'The Permanent Crisis of a Divided Mankind: Contemporary Crisis of the Nation State in Historical Perspective', in *Contemporary Crisis of the Nation State?*, ed. John Dunn (Oxford: Blackwell, 1995).

dispossession of Indigenous and other non-European peoples. Kant's sketch of *Perpetual Peace* in 1795 marks, as Pagden concludes, the transition from the idea of 'empire' to 'federation'.[9] Although Kant uses his federal ideal to criticise as 'unjust' the earlier imperial spread of European commerce and law-governed colonies by warfare, the federation accepts and builds on this older imperial foundation, understood as the 'will' or 'mechanism' of 'nature', and does not permit any resistance to it.[10]

This idea of Europe and of the world as a European federation writ large is worth serious consideration because it has played the role of something like a Kantian 'regulative ideal' over the two centuries since the publication of *Perpetual Peace* in 1795. It has come to function as a more or less taken-for-granted normative standard against which many people organise and evaluate forms of political association in Europe and throughout the world. Initially, as we have seen, it gave philosophical expression to widely held assumptions about political association and historical development in eighteenth-century Europe. Across the Atlantic, James Madison, according to Nicolas Greenwood Onuf, argued that the federation of the thirteen Euro-American states in 1787 was modelled on this 'continental' idea of federation, but that the United States added an 'Atlantic' element of active republican citizenship which is absent from Kant's formulation.[11] The Atlantic element is the republican and 'neo-roman' concepts of freedom, which involves the civic responsibility to serve the public good through participation, yet adapted to a federal system in which citizens are represented at both state and federal levels.[12] The United States' modification and use of the European idea served in turn as a norm for some of the

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[9] Pagden, *Lords of All the World*, pp. 178–200. The title of this concluding chapter is 'From Empire to Federation'.

[10] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, pp. 120–5, especially 124. Kant explains this conservative doctrine in *The Metaphysics of Morals*, pp. 129–33. Under no circumstances can any existing constitutional order be questioned with regard to obedience. Moreover, like many of the 'stages' theorists of the eighteenth century, Kant apparently believes that legal order and peaceful relations only arise with sedentary agriculture and trade in any case, so the Indigenous peoples who hunt, fish and herd have no laws and are 'the most contrary to a civilised constitution' ('Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 122 and note).

[11] Nicolas Greenwood Onuf, *The Republican Legacy in International Thought* (New York: Cambridge University Press, 1998).

[12] For the neo-Roman concept of freedom in the seventeenth and eighteenth centuries, see Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), and for the civic republican concept of freedom, see John G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition, with a New Afterword*, 2nd edition (Princeton: Princeton University Press, 2003). In contrast to this widespread concepts of republican and neo-Roman freedom, Kant defines 'freedom' as 'the privilege not to obey any external laws except those to which I have been able to give my consent', yet he calls this 'republican' ('Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 112 and note).

non-Indigenous liberal revolutions in Latin America and, to some degree, for the federation of the four provinces of Canada in the nineteenth century.

In the early twentieth century, Woodrow Wilson's vision of decolonisation, independent state-building and the League of Nations was informed by the Kantian idea. As Carl Freidrich argued in *Inevitable Peace*, the idea should be seen to play a normative role in the establishment and governance of the United Nations.[13] To come full circle, Fontana and Pagden surely speak for many when they suggest that the Union of Europe in our time ought to be viewed in the light of Kant's idea of federalism, and so too does David Held when he sets out his model of 'cosmopolitan governance' for the planet with reference to Kant's *Perpetual Peace* as his normative standard.[14]

2 A CRITICAL ENLIGHTENMENT ATTITUDE TOWARDS THE KANTIAN IDEA OF EUROPE

Without denying its importance, is it nonetheless possible to call this idea of Europe into question and take up a critical attitude towards aspects of it and the regulative role it plays in political thought and action? The answer is yes. Such an attitude has developed in response to the five features of the Kantian idea over the last two hundred years. A survey of this critical attitude enables us to see the Kantian idea no longer as a regulative ideal but as a critical ideal: as one form of organisation of the political field among many rather than as the framework in which alternatives are evaluated. This attitude is neither anti-Enlightenment nor post-Enlightenment but a critical attitude that derives from the Enlightenment and finds expression, for example, in one of Kant's works, the essay *What is Enlightenment?*.[15] It is a form of critical reflection on and test of the habitual and regulative assumptions or, more accurately, 'limits' of the present, including the limits that Kant and other Enlightenment thinkers claim to have established as beyond doubt. In the words of Michel Foucault, the 'critical question' that best

[13] Carl J. Freidrich, *Inevitable Peace* (Cambridge, MA: Harvard University Press, 1948).

[14] David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford: Stanford University Press, 1995), pp. 226–30.

[15] Immanuel Kant, 'What is Enlightenment?', in *Perpetual Peace and Other Essays*. For the Enlightenment context of this essay, see James Schmidt, ed., *What is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions* (Berkeley: University of California Press, 1996). For the interpretation of *What is Enlightenment?* as initiating a form of critical reflection on the dominant assumptions of the present, including the assumptions of the Kantian tradition of political philosophy, see Michel Foucault, 'What is Critique?' and 'What is Enlightenment?', in *The Politics of Truth*, eds. Sylvere Lotringer and Lysa Hochroth (New York: Semiotext(e), 1997); and *Volume I*, Chapter 3.

characterises this attitude or *ethos* is, 'in what is given to us as universal, necessary, obligatory, what place is occupied by whatever is singular, contingent, and the product of arbitrary constraints?'[16] This enlightened form of critical reflection on the federal idea of Europe, therefore, is the application of Kant's critical 'attitude' to one of his own ideas that has become a more or less taken-for-granted assumption of the present.

To begin the historical survey of how the limits of Kant's idea of Europe have been called into question by the practitioners of the Enlightenment critical attitude of *Sapere Aude*, recall that his idea is presented as marking a transition in European political self-understanding from Europe as the centre of world empires to the centre of a cosmopolitan federation: 'the creation', in Pagden's words, 'of a universal federation bound by common commercial interests'.[17] It was not the understanding of Kant and his like-minded contemporaries that federalism would replace the economic relations and constitutional forms spread by the wars of European imperialism and colonisation but, as we have seen, that independent states and international federalism would be built on this historical foundation.

Notwithstanding this change in European self-understanding, European imperialism did not decline and federalism develop (despite Kant's argument that nature 'does it herself, whether or not we will it').[18] Rather, European imperialism entered into a second and heightened phase from 1800 to after the Second World War. 'Consider', Edward Said writes,

that in 1800 Western powers claimed 55 per cent but actually held approximately 35 per cent of the earth's surface, and by 1878 the proportion was 67 per cent, a rate of increase of 83,000 square miles per year. By 1914, the annual rate had risen to an astonishing 240,000 square miles, and Europe held a grand total of roughly 85 per cent of the earth as colonies, protectorates, dependencies, dominions and commonwealths. No other associated set of colonies in history was as large, none so totally dominated, none so unequal in power to the Western metropolis.[19]

Although *Perpetual Peace* played an important role in promoting a form of post-colonial state-building and international organisation towards the end of this second and higher stage of imperialism, it is not unreasonable to question if it has not also played a role in continuing aspects of imperialism, given the context in which it was written (of the transition from one phase of imperialism to another) and the apparently uncritical stance the text takes

[16] Foucault, 'What is Enlightenment?', in *The Politics of Truth*, pp. 124–5.
[17] Pagden, *Lords of All the World*, p. 187.
[18] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 123.
[19] Edward W. Said, *Culture and Imperialism* (New York: Knopf, 1993), p. 8.

to the possibility of the continuity of underlying forms of economic and constitutional imperialism. Now, these are exactly the kinds of historical and contextual questions the practitioners of the Enlightenment critical attitude, such as Said and Homi K. Bhabha, take up.[20] Their writings are characterised as 'post-imperial' and 'post-colonial' not because they believe imperialism is over but because they contend that it is necessary to continue the task of decolonisation by questioning and criticising the vestiges of imperialism in the received ways of thinking about and organising politics, especially where these are presented as non-imperial and the imperial setting of their composition and dissemination is overlooked.

'Whether these efforts [of critique] succeed or fail is a less interesting matter than what distinguishes them, what makes them possible', Said, a Palestinian-American, writes in his classic study, *Culture and Imperialism* (here writing specifically of the United States):

an acute and embarrassed awareness of the all pervasive, unavoidable imperial setting. In fact, there is no way that I know of apprehending the world from within American culture (with a whole history of exterminism and incorporation behind it), without also apprehending the imperial contest itself. This, I would say, is a cultural fact of extraordinary political as well as interpretative importance, yet it has not been recognized as such in cultural and literary theory, and is routinely circumvented or occluded in cultural discourses. To read most cultural decon structionists, or Marxists, or new historicists is to read writers whose political horizon, whose historical location is within a society and culture deeply enmeshed in imperial domination. Yet little notice is taken of this horizon, few acknowledge ments of the setting are advanced, little realization of the imperial closure is allowed for. Instead, one has the impression that interpretation of other cultures, texts and peoples … occurs in a timeless vacuum, so forgiving and permissive as to deliver the interpretation directly into a universalism free from attachment, inhibition and interest.[21]

There are of course many aspects of the imperial setting of the Kantian idea – economic, military and geographic – that could be and have been questioned.[22] The aspect I wish to survey is cultural, what has come to be called 'cultural imperialism'. Said characterises it in the following way:

In our time, direct colonialism has largely ended; imperialism … lingers where it has always been, in a kind of general cultural sphere as well as in specific political, ideological, economic and social practices. Neither imperialism nor colonialism is a simple act of accumulation and acquisition. Both are supported and perhaps

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[20] Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994).
[21] Said, *Culture and Imperialism*, p. 56.
[22] I discuss these other imperial aspects in Chapters 5 and 7, this volume.

impelled by impressive ideological formations that include notions that certain territories and people *require* and beseech domination, as well as forms of knowledge affiliated with domination: the vocabulary of classic nineteenth century imperial culture is plentiful with words and concepts like 'inferior' or 'subject' races, 'subordinate peoples', 'dependency', 'expansion', and 'authority'.[23]

For, he continues,

a whole range of people in the so called Western or metropolitan world, as well as their counterparts in the Third or formerly colonized world, share a sense that the era of high or classical imperialism, which . . . more or less formally ended with the dismantling of the great colonial structures after World War Two, has in one way or another continued to exert considerable cultural influence in the present. For all sorts of reasons, they feel a new urgency about understanding the pastness *or not* of the past, and this urgency is carried over into perceptions of the present and future.[24]

The 'new urgency' to understand the imperial horizons of European texts such as *Perpetual Peace* and the cultural influence they continue to exert in the present is a critical response to a central problem raised by the struggles of decolonisation after the Second World War and, in Eastern Europe, after 1989. These struggles and their aftermath did not unfold in accord with what Kant calls the 'guarantee of perpetual peace': the tendency to republican constitutions, cosmopolitan federalism and the acceptance of the existing economic order. Rather, they gave rise to 'an acute and embarrassed awareness of the all-pervasive, unavoidable imperial setting' of these ideas and institutions.

In addition to dismantling the formal features of colonialism, the struggles of liberation also aimed to overthrow a form of cultural identity that had been imposed on the colonised people by the colonisers against their democratic will and to establish practices of liberty in which they could invent and discover new identities: through post-colonial nationalism, then in contestation of the imposed dimensions of that national identity and, finally, in establishing practices and institutions of liberty.[25] In *The Wretched of the Earth* (1961), Frantz Fanon was one of the first to link decolonisation clearly with the struggle against the imposed cultural

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[23] *Ibid.*, p. 9. For a very good introduction to the field of study of cultural imperialism, see John Tomlinson, *Cultural Imperialism: A Critical Introduction* (Baltimore: Johns Hopkins University Press, 1991).

[24] Said, *Culture and Imperialism*, p. 7.

[25] For this historical sequence of decolonisation, see *Ibid.*, pp. 239–81. For the distinction between liberation and practices of liberty, see Michel Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom', in *The Essential Works of Foucault*, Vol. I, *Ethics, Subjectivity and Truth*, ed. Paul Rabinow (New York: New York University Press, 1997), pp. 282–3.

identity of imperialism and then against the pitfalls of national culture.[26] This struggle against cultural imperialism consists first and foremost, according to Fanon, in refusing to imitate precisely the sort of idea expressed in *Perpetual Peace*. 'Let us decide not to imitate Europe', Fanon writes. 'We today can do everything so long as we do not imitate Europe, so long as we are not obsessed by the desire to catch up with Europe.' If all the colonised people wish to do is to 'turn Africa into a new Europe … then let us leave the destiny of our countries to Europeans. They will know how to do it better than the most gifted among us.'[27] The United States, according to Fanon, provides an example of what happens when former colonies seek to imitate Europe:

Two centuries ago, a former European colony decided to catch up with Europe. It succeeded so well that the United States of America became a monster, in which the taints, the sickness and the inhumanity of Europe have grown to appalling dimensions.[28]

Rather, the task is to create 'states, institutions, and societies' that do not 'draw their inspiration' from Europe or the United States. Reversing the stages view of historical development, he concludes that, if 'we want humanity to advance a step further, if we want to bring it up to a different level than that which Europe has shown it [humanity], then we must invent and we must make discoveries'.[29]

  Fanon's point seems to be that dismantling the formal ties of colonialism through struggles of liberation is a necessary but insufficient condition of liberty. If the people establish a political association modelled on the European nation-state, these institutions and practices will serve to impose a European cultural identity and so continue imperialism by imitation. To avoid this cultural imperialism and the devastating pathologies associated with an imposed identity that would 'linger in the general cultural sphere', it

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[26] Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963). For the status of this text in the Third World as roughly equivalent to *Perpetual Peace* in the First World, see Lewis R. Gordon, T. Denean Sharpley-Whiting and Renee T. White, eds., *Fanon: A Critical Reader* (Oxford: Blackwell, 1996); and Said, *Culture and Imperialism*, pp. 267–78.

[27] Said, *Culture and Imperialism*, pp. 312–13.   [28] *Ibid*., p. 313.

[29] *Ibid*., p. 315. Fanon's argument here that modern Western 'humanism' or the Enlightenment philosophy of 'Man' serves to legitimate the violence of cultural imperialism had a large influence in Europe as well as in the Third World. Jean-Paul Sartre emphasised this theme in his Preface, it was repeated and extended by Roland Barthes, and Michel Foucault investigated the extent to which the Enlightenment philosophy of Man plays a role in the processes of uniform subjectification and identity formation within Europe in *The Order of Things* (London: Tavistock, 1970), *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1977), and 'What is Enlightenment?', in *The Foucault Reader*.

is necessary for the people to establish institutions and practices of liberty in which they can experiment with both discovering and inventing new identities.[30] I take it that by 'discover' and 'invent' he means that the people should both draw on Indigenous traditions, customs and ways and innovate with cultural borrowing and adaptation.

On this account, then, the Kantian idea of free states and federation is not culturally neutral but is the bearer of processes of a homogenising or assimilating European cultural identity. As we have seen, Constant saw it this way as well, as rendering subjects culturally undifferentiated and 'uniform'. On the contrary, Pagden claims that many of the proponents of Kantian European and world federalism from Andrew Fletcher to Woodrow Wilson saw it as 'culturally pluralist'.[31] But, those who have struggled to liberate themselves from imperialism over the last forty years have tended to agree with Constant and Fanon. They have seen their struggles as a project to secure not only liberation from a formal colonial system but also, and just as importantly, the recognition and accommodation of cultural diversity against forms of cultural imperialism imposed by the very institutions that Kant took to be cosmopolitan.

Moreover, these struggles over the last fifty years do not always involve the establishment of an independent state through decolonisation or secession, although this is common enough from Algeria and Vietnam to the break-up of the Soviet Union. These struggles for 'cultural recognition', as Charles Taylor points out, just as often take place within existing constitutional states (including within newly decolonised states, as Fanon predicted), to recognise and accommodate a diversity of cultural identities either in the shared institutions of unitary political associations, as in the United States, or through institutions of legal and political pluralism in multiethnic and multinational federations and confederations, as in the European Union.[32] These demands are put forward by Indigenous peoples, linguistic, religious and ethnic minorities, nations within multinational

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[30] Fanon, *The Wretched of the Earth*, pp. 206–49.   [31] Pagden, *Lords of All the World*, p. 188.
[32] Charles Taylor, 'The Politics of Recognition', in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994). This collection provides a good introduction to the politics of recognition or 'difference'. See also Seyla Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996); Bhabha, *The Location of Culture*; and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995). Said traces the connection between decolonisation struggles against cultural imperialism in the Third World and the politics of difference in the First World and Fourth World (Indigenous peoples) in *Culture and Imperialism*, pp. 191–281.

states, immigrants, exiles, refugees and multicultural citizens.[33] The aim is not to overturn but to amend the institutions of constitutional democracy, so they will express the cultural plurality of the sovereign people, or peoples, rather than impose the dominant culture's identity while 'masquerading' as universal and difference-blind.[34] Will Kymlicka writes:

> Throughout the world, minorities and majorities clash over such issues as language rights, federalism and regional autonomy, political representation, religious free dom, education curriculum, land claims, immigration and naturalization policy, even national symbols such as the choice of national anthem or public holidays.
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>   Resolving these disputes is perhaps the greatest challenge facing democracies today. In Eastern Europe and the Third World, attempts to create liberal demo cratic institutions are being undermined by violent nationalist conflicts. In the West, volatile disputes over the rights of immigrants, indigenous peoples, and other cultural minorities are throwing into question many of the assumptions which have governed political life for decades. Since the end of the Cold War, ethnocultural conflicts have become the most common source of political violence in the world, and they show no signs of abating.[35]

Since these struggles against five hundred years of imperialism are only forty years old, it is too early to say if they will be effective or if they will simply mark the transition to a third phase of imperialism. Nevertheless, they have manifestly challenged the purported cultural impartiality and universality of constitutional states and federations in practice and the response in theory has been 'urgent' critical reflection on the 'imperial setting' of one of their most authoritative regulative ideals, the Kantian idea of Europe. Three cultural aspects of the Kantian idea in particular have come in for criticism: the conception of cultures, the relation of cultures to constitutions and federations, and the procedures that render a constitution impartial and legitimate. I will now survey these criticisms in the present and their relation to the earlier tradition of an Enlightenment critical *ethos* in order to show how they give rise to a distinctive attitude towards, and a changed understanding of, the idea of Europe.

3 RETHINKING CULTURES

As we saw in the first section, the fourth feature of the Kantian idea of Europe is a background philosophy of world history. This philosophy of

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[33] James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).
[34] Taylor, 'The Politics of Recognition', p. 44.
[35] Will Kymlicka, ed., *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995), p. 1.

history ties all five features of the Kantian idea together into a comprehensive world-view. In *Perpetual Peace* and *Idea for a Universal History with a Cosmopolitan Intent*, Kant lays out his version of the Enlightenment stages idea of world-historical development. All societies are located on hierarchically arranged levels of historical development. Western European nation-states with their emerging republican constitutions, commerce, inchoate federal relations, enlightened self-seeking, competitive motivation of 'unsocial sociability', cultivated civilisation and, finally, intimations of a single and universal 'culture' and 'morality' are closest to the highest stage, yet only halfway there:

> We are, to a high degree, *cultivated* beyond bearing by all manner of social convention and propriety. But we are a long way from being able to regard ourselves as *moral*. For the idea of morality belongs to culture; and yet using this idea only in references to semblances of morality, e.g. love of honour and outward propriety, constitutes mere civilization.[36]

All other societies, with their lower political, economic and cultural ways, are described and ranked from the standpoint of the European level. The stage that European societies are approaching – of independent nation-states with republican constitutions and one culture and morality in a federation – is universal and cosmopolitan. It is the end-state to which all others are tending in due course, the level of the development of all the capacities of the human species, and the level of perpetual peace.[37]

As the processes of colonial rule and commerce spread around the globe from the European nations, 'which will in all likelihood eventually give laws to all others',[38] they stimulate the lower societies to 'progress' in such a way as to shed their primitive institutions, cultures and 'different kinds of historical *faiths*',[39] which were appropriate to their lower stage of development, and either develop into independent states themselves or become incorporated into the European colonies, which develop into independent nation-states. Cultures tend to be relative to the underlying stage of political and economic development, with 'barbarism' and 'savagism' at the inferior, hunter and gatherer stage and 'civilisation' and 'refinement' at the superior, commercial stage. The motive of unsocial sociability, which drives the process of the development of human capacities through individual

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[36] Kant, 'Universal History', in *Perpetual Peace and Other Essays*, p. 36.
[37] *Ibid*., pp. 36–9 (theses eight and nine).   [38] *Ibid*., p. 38.
[39] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 125 note. For Kant there is no religious or moral pluralism. There is only one religion (and one morality) 'valid for all men in all times'. The variety of faiths historically can 'be nothing more than the accidental vehicles of religion and can only thereby be different in different times and places'.

competition for 'honor, power, or property, to secure status among his fellows', appears to emerge at the transition from shepherding to agriculture and initiates the 'first true steps from barbarism to culture':

Without those characteristics of unsociability … man would live as an Arcadian shepherd, in perfect concord, contentment and mutual love, and all talents would lie eternally dormant in their seed; men docile as the sheep they tend would hardly invest their existence in any worth greater than that of cattle; and as to the purpose behind man's creation, his rational nature, there would remain a void.[40]

In the same way as antagonisms among competitive individuals within crude political organisations have the unintended consequence of constructing the foundations of a 'perfect civil constitution', the antagonism of war among political organisations leads unintentionally to the development of federations:

through wars, through excessive and never remitting preparation for war, through the resultant distress that every nation must, even during times of peace, feel within itself, they are driven to make some initial, imperfect attempts; finally, after much devastation, upheaval, and even complete exhaustion of their inner powers, they are driven to take the step that reason could have suggested, even without so much sad experience, namely, to leave the *lawless state of savagery* and enter into a federation of peoples.[41]

This 'course of improvement' can be discerned first in the history of 'the constitutions of the nations on our continent' from the Greeks to the present, and then used as a guiding thread to clarify and predict 'the national histories of other peoples'.[42] The reason why the process began, spread from, and will reach its goal first in Europe is the superiority of the 'national characteristics' of Europeans over other races:

The inhabitant of the temperate parts of the world, above all the central part, has a more beautiful body, works harder, is more jocular, more controlled in his passions, more intelligent than any other race of people in the world. That is why at all points in time these peoples have educated the others and controlled them with weapons. The Romans, Greeks, the ancient Nordic peoples, Genghis Khan, the Turks,

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[40] Kant, 'Universal History', in *Perpetual Peace and Other Essays*, p. 32.

[41] *Ibid.*, p. 34 [my emphasis]. Compare 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 121. The 'lawless state of savagery' underlined in the quotation refers to international relations but also to the hunter, gatherer and fisher stage of development ('Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 122 and note).

[42] Kant, 'Universal History', in *Perpetual Peace and Other Essays*, p. 38.

Tamurlaine, the Europeans after Columbus's discoveries, they have all amazed the southern lands with their arts and weapons.[43]

This world-view is, as Said puts it above, the 'vocabulary of classic nineteenth-century imperial culture'. It is 'imperial' in three senses of this polysemic word. It ranks all non-European cultures as 'inferior' or 'lower' from the point of view of the presumed direction of European civilisation towards *the* universal culture; it serves to legitimate European imperialism, not in the sense of being 'right' (which Kant roundly denies) but, nevertheless, in being the direction of nature and history and the precondition of an eventual, just, national and world order; and it is imposed on non-European peoples as their cultural self-understanding in the course of European imperialism *and* federalism. Fanon's patriotic plea to the Third World to avoid the imitation of Europe is presumably directed at all three senses. Decolonisation must not fall into the comprehensive identity given by this scheme, and thereby continue imperialism by other means of dependency, but must refuse it by exploring alternatives, and so become independent.

   The first challenge to Kant's idea came from one of his former students, Johann Gottfried Herder (1744–1803). In *Ideas on the Philosophy of the History of Mankind* (1784–91), Herder put forth a defence of cultural pluralism.[44] He argued that 'each culture contains its own unique and incommensurable truth or worth, and as such could not be subordinated or elevated as inferior or superior to another'.[45] Kant reviewed Herder's work and reasserted his view that all cultures can be ranked relative to a developmental logic and a normative apex. In a particularly revealing passage of the review (which reasserts the thesis of the *Idea for a Universal History*), Kant asks rhetorically:

Does the author really mean that, if the happy inhabitants of Tahiti, never visited by more civilised nations, were destined to live in their peaceful indolence for

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[43] Immanuel Kant, 'Observations on the Feeling of the Beautiful and Sublime', in *Race and the Enlightenment: A Reader*, ed. Emmanuel Chukwudi Eze (Oxford: Blackwell, 1997), p. 64. Kant wrote this in 1764, twenty years before the 'Idea for a Universal History with a Cosmopolitan Intent'. However, there is nothing in the latter text (or in *Perpetual Peace*) that repudiates or contradicts his earlier view on national characteristics and, as we have seen, the whole tenor of the text is complementary to it (see especially pp. 38–9). He also continued to write on the racial superiority of Europeans in 1775 ('On the Different Races of Men') and 1798 ('Anthropology from a Pragmatic Point of View'). For an introduction to Kant's views on race and national characteristics, see Eze, ed., *Race and the Enlightenment*, pp. 1–9, 38–70.

[44] Johann Gottfried Herder, *Ideen zur Philosophie de Geschichte der Menschheit* (1784–91), translated in part as *Ideas on the Philosophy of the History of Mankind* (New York: Bergman Publishers, 1800).

[45] Eze, ed., the *Race and the Enlightenment*, p. 65. Compare Charles Taylor, 'The Importance of Herder', in *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995).

thousands of centuries, it would be possible to give a satisfactory answer to the question of why they should exist at all, and of whether it would not have been just as good if the island had been occupied by happy sheep and cattle as by happy human beings who merely enjoy themselves?[46]

Herder's work challenges two features of the Kantian idea – the presupposition that all cultures can be ranked relative to a European norm and that they all develop (once they come into contact with the more civilised nations) towards that apex – and it presents an alternative attitude of cosmopolitanism as cultural pluralism: the presumption that all cultures are of intrinsic worth and that they have their own histories. Herder called into question the attitude of European cultural superiority informing the Kantian idea and helped to foster an outlook of cultural pluralism. This outlook is expressed in early twentieth-century anthropology, the respect for non-European cultures that began to emerge during decolonisation and the more recent demands of multiculturalism. As Taylor suggests, the demands of multiculturalism rest on the 'premise' derived from Herder that 'we owe equal respect to all cultures'. This is understood as a 'presumption' that cultures are of 'equal worth'. By 'presumption', he means that, 'It is a starting hypothesis with which we ought to approach the study of another culture. The validity of the claim has to be demonstrated concretely in the actual study of the culture.'[47]

Notwithstanding, Herder did not question another feature of the stages view of cultures and constitutions: the idea that each nation has one culture and that it is independent, separate and internally uniform. Indeed, he may be said to have put the idea of a national culture on a new and influential footing. The more recent critics of cultural imperialism have accepted Herder's presumption but challenged his 'billiard-ball' picture of cultures. They have argued that the culturally complex character of decolonising and First World nations, the tangled and overlapping struggles for cultural recognition in all societies today (mentioned by Kymlicka above), as well as the history of cultural interaction and suppression, all seem to suggest that cultures are not independent, separate and internally uniform, but overlapping, interacting and internally contested or negotiated. Moreover, the multiplicity of cultures does not seem to bear any straightforward

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[46] Immanuel Kant, 'Review of Herder's *Ideas on the Philosophy of the History of Mankind*', in Kant's *Political Writings*, ed. H. Reiss (Cambridge: Cambridge University Press, 1970), cited in Eze, ed. *Race and the Enlightenment*, p. 70.

[47] Taylor, 'The Politics of Recognition', pp. 66–7.

relation to constitutional and economic development or to tend to convergence and uniformity. Quite the opposite.[48]

Consequently, cultures should be seen, in the words of Said, as 'contrapuntal ensembles'.[49] The overlapping, interacting and internally negotiated character of cultures is expressed as a second presumption, of cultural 'diversity' rather than Herder's pluralism or Kant's monism. Reflecting on the cultural diversity and demands for recognition within the emerging European Union, Jacques Derrida writes that, contrary to both Kant and Herder, 'what is proper to a culture is not to be identical to itself'. This is not to say that cultural identity is not important or 'not to not have an identity', but 'to be able to take the form of a subject only in the difference with itself'. There is, he suggests, 'no culture or cultural identity without this difference with itself'.[50] This second presumption is, like the first, a working hypothesis, an attitude one takes to culture, not a preconceived idea to which reality must correspond. When approaching a culture or any demand for the acknowledgment of a culture, it instructs us always to ask three questions: Are there other cultures or, recalling Fanon, other activities of cultural discovery and invention that share the same geographic space and deserve mutual presumptive respect? Is the culture in question constituted temporally by interaction with other cultures? Are there others who share the culture in question yet contest the way it is articulated and expressed by spokespersons claiming to speak for all?[51]

What are the differences between the attitude towards cultures in the two presumptions of cultural diversity and in Kant's idea of Europe? The first and most obvious difference is the attitude of presumptive respect for cultural differences in contrast to the presupposed attitude of cultural superiority (of Europeans). The second presumption suggests that a citizen or a people will be the bearer of more than one culture, of multiple cultural identities, and that this diversity is better approached more as activities of cultural discovery, invention, reimagination and contestation in agonistic relation to the powers of cultural imposition and assimilation

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[48] For Herder's view that cultures are separate and incommensurable, see Anthony Pagden, *European Encounters with the New World* (New Haven: Yale University Press, 1993), pp. 172–81. The change in the understanding of cultures as overlapping, interacting and internally negotiated is summarised in Michael Carrithers, *Why Humans Have Cultures: Explaining Anthropology and Social Diversity* (Oxford: Oxford University Press, 1992), pp. 12–33.

[49] Said, *Culture and Imperialism*, p. 52.

[50] Jacques Derrida, *The Other Heading: Reflections on Today's Europe* (Bloomington: Indiana University Press, 1991), p. 9.

[51] For these three questions, see Tully, *Strange Multiplicity*, pp. 1–29.

than as a diversity of fixed cultural formations – more Dionysian than Apollonian.[52]

   The third difference is the understanding that culture is closely related to identity. Kant understood this as well, but he saw cultural identity, except at the highest stage, as something superficial and irrelevant to one's identity as a citizen. One's identity as a citizen is defined in the First Definitive Article of *Perpetual Peace* in terms of a metaphysical and universal theoretical identity, towards which the species is tending, of autonomy: the capacity of rational agents to direct their lives reflectively in accordance with universal principles. In contrast, cultural identity is seen as an important aspect of one's 'practical identity' and the appropriate acknowledgment of and respect for one's practical identity is now seen as relevant to one's identity as a citizen. 'Practical identity' refers to the aspects of citizens' identities that 'matter' to them, the answer to the question 'Who are we?', or the 'structure of strong evaluations' in accord with, and against which, humans live their lives.[53] In an influential and representative analysis, Christine Korsgaard describes practical identity in the following way:

The conception of one's identity in question here is not a theoretical one, a view about what as a matter of inescapable scientific fact you are. It is better understood as a description under which you value yourself, a description under which you find your life worth living and your actions worth undertaking … Practical identity is a complex matter and for the average person there will be a jumble of such conceptions. You are a human being, a woman or a man, an adherent of a certain religion, a member of an ethnic group, a member of a certain profession, someone's lover or friend, and so on. And all of these identities give rise to reasons and obligations. Your reasons express your identity, your nature; your obligations spring from what that identity forbids.[54]

   Fourthly, the awareness that the jumble of cultural aspects that make up one's practical identity matter to one's sense of self-worth has led to the argument that they require a level of mutual respect in one's society in order to live the sort of life of self-directed agency presupposed by Kant. This

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[52] For one important attempt to work out the implications of this second difference, see William E. Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995).

[53] For these ways of characterising practical identity, see Michel Foucault, 'The Subject and Power', in Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (London: Harvester Wheatsheaf, 1982), pp. 210–13; Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989), pp. 3–101; David Owen, *Maturity and Modernity: Nietzsche, Weber, Foucault, and the Ambivalence of Reason* (London: Routledge, 1994), pp. 64–216.

[54] Christine Korsgaard, *The Sources of Normativity*, ed. Onora O'Neill (Cambridge: Cambridge University Press, 1995), p. 101.

point has been presented most forcefully by John Rawls, who argues that self-respect must be seen as a primary good of a liberal society and that self-respect requires a threshold of mutual acknowledgment and respect of citizens' respectworthy practical identities (or practices of identity formation and reformation).[55] As a consequence, Anthony Laden argues, developing Rawls' claim, that forms of cultural disrespect, such as racism, sexism or the a priori ranking of citizens' cultures as superior or inferior in the Kantian scheme, and misrecognition and non-recognition of cultural differences, such as the suppression and assimilation of minority cultures and languages, are now seen as serious forms of oppression and injustice, as undermining the conditions of self-respect required for free and equal citizenship.[56]

These four differences mark the fairly widespread transition from and repudiation of the conception of cultures in the Kantian idea of Europe to the recognition of the problem of cultural imperialism and the exploration of the two presumptions of cultural diversity, not only between the so-called First and Third Worlds, but within European and North Atlantic societies themselves. This change in outlook is in part the achievement of the critical Enlightenment attitude and, in particular, Fanon's contribution to it. Nevertheless, one could agree that this is a change in the understanding of cultures from the one in Kant's idea of Europe but deny that it entails any change in what is really essential to the Kantian idea: the concepts of constitutions and federations. It is to this that we now turn.

4 RETHINKING CONSTITUTIONS AND FEDERATIONS

Recall that on Kant's account the constitution of every free and independent nation-state should be the same. The constitution is republican and this means that it treats each citizen the same, as free and equal. '*Rightful equality*', Kant explains, 'is that relation among citizens whereby no citizen can be bound by a law, unless all are subject to it *simultaneously and in the very same way*'.[57] This 'idea' of equality gives expression to the principle that all humans are equally worthy of respect in virtue of their status as rational agents with the capacity for autonomy. To recognise citizens as equals in this sense involves treating them 'impartially' ('in the very same way') and,

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[55] John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), pp. 440–1.
[56] See Anthony Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca, NY: Cornell University Press, 2001). There are well-known limits to Rawls' respect for diversity. See Chapter 4, this volume.
[57] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 112, note [my emphasis].

so Kant thought, in a difference-blind manner. It is standardly expressed in individual rights and duties, formal equality before the law and the principle of non-discrimination. The upshot of the change in understanding of cultures is that there is another aspect under which humans ought to be recognised and respected as equals: their capacity to form, contest and transform practical identities or identity-related cultural differences as individuals and as members of cultural groups. However, the presumption of the equal recognition and respect for cultural differences, which, as we have seen, seems to follow from recognition of the equal capacity to form such cultural differences, comes into conflict with the presumption of equality as impartiality or difference blindness, which seems to follow from the equal capacity for autonomy. The tension between these two kinds of equality of respect and recognition, which are both equally well grounded in the values of modern politics, can be formulated in a number of different ways.[58]

The first and most 'Kantian' resolution is to argue that the recognition and respect for cultural differences takes place outside the political realm, in the realm of 'ethics' and 'self-esteem', whereas 'citizens' are recognised and accorded respect solely under the description of impartial equality: that is, as bearers of identical rights and duties.[59] It is certainly true that many cultural differences and forms of multiculturalism can be treated fairly in this way. Citizens can express and contest many aspects of their practical identities while exercising the rights and duties of impartial equality in the same way and fight against various forms of cultural imposition and disrespect, such as sexism, racism and cultural denigration, by the application of the principle of non-discrimination, as, for example, Jeremy Waldron has asserted.[60]

However, there are many cases where the two aspects of equality cannot be separated in this way into two mutually exclusive categories; where the equal recognition and respect for cultural differences involves some conflict with the Kantian idea of a constitution based solely on impartial equality. As Taylor neatly summarises the conflict:

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[58] For this formulation of the debate between Kantians and their critics as a question of the relation between two kinds or aspects of equality of recognition and respect, rather than as equality *versus* difference, see Taylor, 'The Politics of Recognition', pp. 41–3.

[59] This is the response associated with Jürgen Habermas in, for example, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press, 1995). For a historical account from Kant to the present, see Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge: Polity Press, 1995).

[60] Jeremy Waldron, 'Minority Cultures and the Cosmopolitan Alternative', in *The Rights of Minority Cultures*.

These two modes of politics, then, both based on the notion of equal respect, come into conflict. For one, the principle of equal respect requires that we treat people in a difference blind fashion. The fundamental intuition that humans command this respect focuses on what is the same in all. For the other, we have to recognize and even foster particularity. The reproach the first makes to the second is just that it violates the principle of nondiscrimination. The reproach the second makes to the first is that it negates identity by forcing people into a homogeneous mold that is untrue to them. This would be bad enough if the mold were itself neutral nobody's mold in particular. But the complaint generally goes further. The claim is that the supposedly neutral set of difference blind principles of the politics of equal dignity is in fact a reflection of one hegemonic culture. As it turns out, then, only the minority or the suppressed cultures are being forced to take alien form. Consequently, the supposedly fair and difference blind society is not only inhuman (because suppressing identities) but also, in a subtle and unconscious way, itself highly discriminatory.[61]

Such conflicts constitute one of the central problems of the present. Perhaps it is enough to say that the problem cannot even be formulated in the terms of the Kantian idea of Europe to show how the understanding of constitutional essentials has been modified by the changed understanding of cultures. However, it is possible to mention briefly how the Kantian idea of a constitution and a federation has been amended in two types of case.

John Stuart Mill was one of the first to suggest how the Kantian idea of equality should be amended to take into account such cases. He argued that the 'a priori presumption' should remain in favour of 'impartiality' and 'the law' should 'treat all alike', except 'where dissimilarity of treatment is required by positive reasons, either of justice or of policy'.[62] In the first type of case, citizens reason that they cannot exercise the rights and duties of impartial equality and so participate in the public and private life of their constitutional association without injustice unless they are allowed to exercise them in ways that recognise and accommodate, rather than misrecognise and denigrate, their cultural differences. The relevant cultural difference may be linguistic, religious, gender, ethnic and so on. This is not a challenge to the shared rights, duties and institutions associated with

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[61] Taylor, 'The Politics of Recognition', p. 43.

[62] John Stuart Mill, 'The Subjection of Women', in *Three Essays* (London: Oxford University Press, 1975), pp. 428–9. Of course Mill argues that no reasons of justice or policy advanced to treat women dissimilarly by subordinating them to men are convincing. Nevertheless, he introduces the proviso that impartial equality can be amended if reasons for dissimilar treatment of some citizens *that does not involve subordination* can be made good. This is what recent feminists have argued, for purported impartial public norms often embody a male norm.

impartial equality but only to the requirement that all exercise them always 'in the very same way'.[63]

The 'positive reasons' advanced for this 'dissimilarity of treatment' often appeal to the very value of impartial equality that was thought to entail difference blindness. If, under the rubric of impartial equality, a constitution upholds one public language, statutory holidays that coincide with one religion, public practices that uphold a male norm, public education that upholds one historical narrative, and so on, then the constitution, while treating everyone 'in the very same way', does not treat them 'impartially'. It is partial to, and serves to impose, one culture at the expense of subordinating and assimilating all others to some extent. To be impartial in all such cases, the constitution cannot be difference-blind, which is impossible in these cases, or difference-partial, as it is by upholding one set of dominant cultural differences while pretending to be impartial; rather, it must be difference- or diversity-aware: that is, accord equal due recognition and respect, in some way, to the respectworthy cultural differences of all citizens. This is the same structure of argument against cultural imperialism we saw earlier with Constant and Fanon, but now advanced by the culturally diverse citizens of contemporary societies. Alternatively, it has been argued by Kymlicka that the due recognition and respect for the cultural differences of citizens is a necessary condition of the exercise of the capacity for autonomy that impartial equality is meant to secure. In these and other ways, the idea of a constitution in the Kantian idea has been modified from within to include, as a matter of justice, the equality of respect for cultural diversity.[64]

The second and stronger type of case is where citizens reason that the equal recognition and respect of their cultural identities requires as a matter of justice different institutions of self-government: that is, forms of legal and

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[63] It must be noted that Mill's political theory is a theory of European imperialism over the non-European world and that he would not have applied this difference and non-subordination principle outside of Europe. He argued that non-Europeans should be subordinate and, in most cases, governed despotically. See Jennifer Pitts, *The Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005), and for a comprehensive account of Millian liberal imperialism, Timothy Eric Smith, 'JS Mill and Liberal Imperialism: The Architecture of a Democratization Theorem' (MA thesis, University of Victoria, 2007). My point is that there are resources within liberalism to criticise and overcome its cultural imperialism if self-critical liberal theorists wish to do so. See James Tully, 'Ethical Pluralism and Classical Liberalism', in *The Many and the One: Religious and Secular Perspectives on Ethical Pluralism in the Modern World*, eds. Richard Madsen and Tracy B. Strong (Princeton: Princeton University Press, 2003).

[64] The literature is vast. See, for example, Gutmann, ed., *Multiculturalism*; Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1991) and *Multicultural Citizenship*. In this and the second type and case, I set aside arguments that appeal to the equal respect for cultural differences as a value in its own right.

political pluralism that accord with cultural differences by means of devices of subsidiarity, devolution, regional autonomy, federalism and confederalism within a larger constitutional association. This demand conflicts with a second principle of a republican constitution according to Kant, the principle 'of the *dependence* of everyone on a single, common [source of] legislation (as subjects)'.[65] In multiethnic and multinational constitutional associations, the positive reasons for this second type of dissimilarity of treatment have been similar to those advanced by Constant immediately after the publication of *Perpetual Peace*, or they have been analogous to the ones advanced in the first type of case: that participation in the same legislative body in all matters would involve some degree of cultural imperialism. The consequence is that citizens are dependent on more than one common source of legislation (regional, provincial, national, federal, etc.) and the powers of these legislative assemblies are not ordered in a single hierarchy. The resulting form of federalism differs in two fundamental respects from Kant's 'idea of federalism': it can occur within as well as among constitutional associations, and it is based on the recognition and respect of cultural diversity rather than on cultural uniformity.[66]

One of the best examples of both types of case (diverse constitutionalism and federalism) is arguably the very organisation that was supposed to unfold in accord with the Kantian idea, the European Union. Another example which exposes the limitations of Kantian constitutionalism and federalism is the demand of the Aboriginal peoples of the world to free themselves from the internal colonialism imposed on them over the last five hundred years by the former colonies of European imperialism and to govern themselves in their own constitutional associations. As we have seen, the Kantian idea locates these peoples at the lowest, hunting and gathering, stage, without laws and property, and (as in all cases), without a right to challenge the system of laws imposed on them by the European settler states:

A people should not *inquire* with any practical aim in view, into the origin of the supreme authority to which it is subject, that is, a subject *ought not to rationalize* for the sake of action about the origin of this authority, as a right that can still be called into question [*ius controversum*] with regard to the obedience he owes it. For, since a

[65] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 112.
[66] For the EU, see Richard Bellamy, 'The Constitution of Europe: Rights or Democracy', in *Democracy and Constitutional Culture in the Union of Europe*, ed. Richard Bellamy (London: Lothian Foundation Press, 1996). The literature on this second type of case is also vast. See Kymlicka, ed., *The Rights of Minority Cultures*, and Kymlicka, *Multicultural Citizenship*; Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); and Laden, *Reasonably Radical*.

people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority, it cannot and may not judge otherwise than as the present head of state wills it to. Whether a state began with an actual contract of submission as a fact, or whether power came first and law arrived only afterward, or even whether they should have followed in this order: For a people already subject to civil law these rationalizations are altogether pointless and, moreover, threaten a state with danger.[67]

Once this is settled, Aboriginal peoples have no appeal for the recognition and protection of their cultures and Aboriginal rights, for, as we have seen, they face assimilation under the Kantian idea of equality, which decrees their subjection to non-Aboriginal legislative authority in 'the very same way' as every other citizen.

Of course, this dimension of the Kantian idea has always been contested by Aboriginal peoples themselves, and they continue to challenge it in the courts and legislatures of Canada, the United States, Australia and New Zealand, and in international law today.[68] In addition, it was forcefully challenged from within the Enlightenment tradition of constitutionalism by John Marshall, Chief Justice of the Supreme Court of the United States, in the early nineteenth century. Like Herder, he repudiated the stages view on which it is based and reasoned that Aboriginal peoples should be recognised and respected as equal: that is, as self-governing nations, equal in juridical status to European nations. As he famously wrote:

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and the rest of the world, having institutions of their own, and governing themselves by their own laws.[69]

As a result, Marshall goes on to conclude, the just establishment of non-Aboriginal constitutional states in America requires the consent of the Aboriginal nations acquired through nation-to-nation treaties, thereby giving rise to a treaty-based federalism between self-governing, coexisting Aboriginal nations and the American (and Canadian) governments.[70]

Abandoning Kant's understanding of cultures in this case, therefore, entails overriding two central features of Kantian constitutionalism and federalism: the difference-blind application of his principle of equality and the principle of citizens' dependence on a single, common source of

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[67] Kant, *The Metaphysics of Morals*, pp. 129–30.
[68] See Royal Commission of Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, 5 Vols. (Ottawa: Canada Communication Group Publishing, 1996), especially Vols. I and II.
[69] John Marshall, CJ, in Supreme Court of the United States, *Worcester* v. *the State of Georgia*, pp. 426–7.
[70] *Ibid.*, pp. 435, 445. See Tully, *Strange Multiplicity*, pp. 117–38.

legislation, for Aboriginal peoples are dependent first and foremost on their own legislation and the source of this legislative authority is not the United States nor the Canadian Constitution, but the status of Aboriginal peoples as self-governing nations prior to the arrival of Europeans. Moreover, this line of argument has been extended to question the underlying Eurocentric direction of constitutional and federal development in Kant's framework. A number of scholars and the United States Senate have argued that the federation of the United States was influenced not only by European and Atlantic ideas of federalism but also by the federation of the five Iroquois nations. Other scholars have gone on to suggest that the Iroquois federation and its constitution, the Great Law of Peace, is a better heuristic for global federalism than the Kantian idea precisely because it respects and recognises cultural diversity.[71]

5 FROM MONOLOGUE TO COSMOPOLITAN MULTILOGUE

As a result of this survey, it appears that the Enlightenment critical attitude towards the problem of cultural imperialism has been able to call into question and modify all five features of the Kantian idea of Europe and the world. However, recall the line of argument. Two 'presumptions' regarding the equality of respect for cultures gave rise to three questions and four differences with respect to Kant's understanding of cultures. It followed from these presumptions, questions and differences that Kant's ideas of constitutions and federations should be amended, specifically the ideas that equality always entails difference-blind treatment and that there must be one locus of authority in a constitutional association. These amendments lead to the justification of two non-Kantian types of case: where citizens share the same rights and institutions yet exercise and participate in them in different ways (diverse constitutionalism), and where citizens require a plurality of legal and political institutions (diverse federalism) in order to accord equal respect to the diversity of their cultural similarities and differences.

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[71] José Barriero, ed., *Indian Roots of American Democracy* (Ithaca, NY: Aewkon and Cornell University Press, 1988); Robert W. Venables, 'American Indian Influences on the America of the Founding Fathers', in *Exiled in the Land of the Free*: *Democracy, Indian Nations, and the U.S. Constitution*, ed. Oren Lyons (Santa Fe: Clear Light Publishers, 1992); and Iris Marion Young, 'Hybrid Democracy: Iroquois Federalism and the Postcolonial Project', in *Political Theory and the Rights of Indigenous Peoples*, eds. Duncan Ivison, Paul Patton and Will Sanders (Cambridge: Cambridge University Press, 2000). For a careful treatment of the demands for recognition of Aboriginal peoples and the principles of liberal democracy, see Michael Murphy, 'Nation, Culture and Authority: Multinational Democracies and the Politics of Pluralism' (Ph.D. dissertation, McGill University, Montreal, 1997).

These rather dramatic changes in the understanding of the principles and practices of constitutions and federations rest entirely on two 'presumptions' that the cultural differences in question are worthy of respect. The changes should be accepted if and only if the two presumptions can be made good. We have assumed this for the sake of the argument, but the point of describing them as 'presumptions' is precisely to flag that they are open to question. So, the two-part question is, How is it to be decided if a presumption of equal respectworthiness for identity-related cultural difference is valid and, if so, what kind of constitutional or federal recognition is due? The answer to this question marks the final and most important change in the understanding of constitutions and federations brought about by the Enlightenment critical attitude.

Kant's answer is, as we have seen, that he decides. Firstly, he judged the relative worth of the cultures of the world and ranked them relative to his background Eurocentric philosophy of history. Secondly, he determined the corresponding essentials for all legitimate constitutions and federations (by means of his 'transcendental principle of publicness' that functions like the test of universalisation and non-contradiction in morality).[72] The very idea that the question can be answered in this way, 'monologically' and 'comprehensively', has come to be challenged as yet another dogma of cultural imperialism.

Take first of all the question of the validity of the presumption of equal value of a culture or cultural difference. A necessary condition of reaching an impartial answer is that we enter into dialogue with members of the culture in question. Drawing again on Herder and the tradition of cultural hermeneutics that developed in part from his work, Taylor explains why cross-cultural dialogue is necessary:

We may have only the foggiest idea *ex ante* of in what its valuable contribution might consist. Because, for a sufficiently different culture, the very understanding of what it is to be of worth will be strange and unfamiliar to us. We learn [by dialogue] to move in a broader horizon, within which what we have formerly taken for granted as the background to valuation can be situated as one possibility alongside the different background of the formerly unfamiliar cultures. The 'fusion of horizons' operates through our developing new vocabularies of comparison, by means of which we can articulate these contrasts. So that if and when we ultimately find substantive support for our initial presumption, it is on the basis of an

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[72] Kant, 'On the Agreement Between Politics and Morality According to the Transcendental Concept of Public Right', in *Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970).

understanding of what constitutes worth that we couldn't possibly have had at the beginning.[73]

If Kant had entered into dialogue with members of the cultures he ranked monologically, he could have opened himself to broadening his horizon by seeing it (the idea for a universal history with a cosmopolitan intent) as one background of valuation among many, and entered into the difficult but rewarding activity of comparing the worth and public respectworthiness of European and non-European cultures and their internal diversity in a genuinely cosmopolitan way. This activity would change not only his understanding of other cultures but also his idea of Europe itself.[74]

Since citizens themselves are required to accord the appropriate mutual respect to each other's respectworthy cultural differences (for the reasons given above by Rawls), it follows that citizens must engage in this kind of intercultural and agonistic dialogue. Given the need to test the second presumption of cultural diversity in the course of the dialogue, the dialogue is properly called a 'multilogue'. Such a public multilogue can be thought of as a reformulation of Kant's ideal of 'public enlightenment' in the face of cultural diversity. Although the persons who decide the second part of the question (what kind of constitutional or federal recognition is due?) must engage in the multilogue to determine which cultural differences are candidates for constitutional recognition (i.e. are worthy of respect), must all citizens reach agreement on the second part of the question or can it be decided by a few? The answer given by Kant is that a few can decide questions of constitutional essentials as long as they are 'compatible with their being made public' (the test of 'public reason') and citizens on individual reflection are able to give their consent (the test of 'external freedom').[75]

However, this monological feature of Kantian constitutionalism and federalism has been challenged from within the Kantian tradition, by John Rawls and Jürgen Habermas. Both argue that Kant's monological test of public reason and external freedom is insufficient to ensure impartiality and justification. It is through an actual dialogue in which equal citizens exchange public reasons in order to reach mutual understanding and agreement on constitutional essentials, Habermas explains, in explicit contrast to Kant, that partialities can be exposed and overcome and the form

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[73] Taylor, 'The Politics of Recognition', p. 67.

[74] For the logic of this kind of intercultural and agonistic multilogue, see *Volume I*, Chapters 7 and 9.

[75] Kant, 'On the Agreement Between Politics and Morality', p. 125, and 'Perpetual Peace', in *Perpetual Peace and Other Essays*, p. 112 note.

of consent required for public justification achieved.[76] The dialogical reformulation of the demands of an ideal of public reason and freedom is presented by Habermas in terms of principle D: 'Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*.'[77] Since citizens begin the public discussion on constitutional essentials from within their various cultural understandings, the two-part question (relating to the respect-worthiness of citizens' cultural differences and their appropriate form of recognition) is raised and addressed in the same practical discourse:

The descriptive terms in which each individual perceives his interests must be open to criticism by others. Needs and wants are interpreted in the light of cultural values. Since cultural values are always components of intersubjectively shared traditions, the revision of the values used to interpret needs and wants cannot be a matter for individuals to handle monologically.[78]

This change in the understanding of constitutionalism can be seen as a reformulation of the ideal of public reason in order to place the constitutional rule of law on equal footing with the democratic idea of the sovereignty of the people who impose the constitution on themselves. The thesis that the rule of law and democracy (or self-rule) are co-equal principles, associated in European theory with Locke and Rousseau, has come to be widely accepted in the twentieth century despite Kant's objections to it. On this understanding, a constitution or a federation rests on the agreement of the sovereign people reached through processes of deliberation or what is now called 'democratic constitutionalism'.[79] A cultural difference is worthy of respect and some form of recognition if it can be shown to be 'reasonable'. It is reasonable if through the exchange of public reasons among free

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[76] See Jürgen Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification', in *Moral Consciousness and Communicative Action*; Habermas, 'Reconciliation Through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*', *Journal of Philosophy* 92(3), 1995: 109–31; and Rawls, 'Reply to Habermas', in *Political Liberalism*; John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005).

[77] Habermas, 'Discourse Ethics', p. 66. The role of dialogue in overcoming partiality and securing consent based on conviction is on pp. 66–7. Habermas interprets Rawls' theory here as monological like Kant's. Rawls corrects him on this in 'Reply to Habermas' and clarifies his own conception of public dialogue on constitutional essentials. For the limitations of both theories see Chapter 4, this volume.

[78] *Ibid*., pp. 67–8.

[79] See Habermas, 'Reconciliation Through the Public Use of Reason', *Journal of Philosophy* 92(3), 1995: 126–31; John Rawls, 'Political Realism: Reply to Habermas', *Journal of Philosophy* 92(3), 1995: 161–7; and Habermas, 'Popular Sovereignty as Procedure', in *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), pp. 463–90. For Kant's objection that popular sovereignty is self-contradictory, see *The Metaphysics of Morals*, p. 130.

and equal citizens the cultural difference in question can be 'made good to citizens generally'. In the exchange of public reasons, citizens accept the burdens of judgment associated with freedom and equality in conditions of cultural diversity or reasonable pluralism: the awareness of and respect for those identity-related cultural differences that are compatible with reaching agreement on a shared identity as citizens.

The changed understanding of constitutionalism, Laden explains, is a matter of rejecting the view that a conception of citizenship is 'worked out ahead of time', based on 'supposedly universal principles', and then arguing 'that any identities with non-political aspects which are incompatible with this notion of citizenship are unreasonable, and complaints about the burdensomeness of citizenship from their perspectives are not legitimate charges of injustice'. Rather,

We start not from a conception of citizenship, but from an ideal of society ordered by a shared will formed through a process of reasonable political deliberation. The realization of that ideal involves members of the society coming to construct a political identity they can share despite their other differences. We call that identity citizenship, and try to work out some of its basic features given the role it plays in securing the possibility that deliberation could construct such a shared will. Freedom and equality come in to its characterization in this fashion.[80]

In his early presentation of principle D, Habermas appeared to hold that cultural differences would be filtered out in the course of the dialogue, by processes of generalisation and role-taking, and citizens would reach agreement on a difference-blind constitution.[81] However, as the critical response to Habermas has shown, this reintroduction of difference-blind equality as the regulative ideal of discourse cannot be sustained. If citizens take into account the culturally different or 'concrete' other, as well as the 'generalized' other, in the course of their deliberation, as they must, then there is no reason in principle why citizens may not be able to give good public reasons for the respect for and public recognition of those differences in diverse forms of constitutions and federations: reasons that are not particular to the members of that culture but are based on considerations of justice, freedom, equality, non-subordination and so on that are shared by citizens

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[80] Anthony Laden, 'Constructing Shared Wills: Deliberative Liberalism and the Politics of Identity' (Ph.D. dissertation, Harvard University, 1997), pp. 338–9.

[81] Habermas appears to modify his earlier view to some extent, perhaps in response to the critical literature, in 'Struggles for Recognition in the Democratic Constitutional State', in *Multiculturalism*, and 'Citizenship and National Identity', in *Between Facts and Norms*, pp. 491–516.

generally.[82] Furthermore, as Iris Marion Young has gone on to argue, if citizens are to treat each other equally in the discussion itself, they will have to recognise that Habermas' *form* of public argumentation itself is not impartial but culturally particular and thus accept culturally different forms of argumentation. In these and other ways, the imperial aspects of the early formulation of principle D can be and have been exposed and corrected, making way for a post-imperial and genuinely pluralistic conception of the critical exchange of public reasons among free and equal citizens and peoples as the basis of constitutionalism and federalism.[83]

CONCLUSION

This brief survey of the criticism of the Kantian idea of Europe and the world over the last two hundred years has sought to show that the idea is not as cosmopolitan as Kant intended it to be. His conceptions of cultures, constitutions and federations, and the procedures of constitutional legitimation are partial in one way or another, and, as a result, they continue cultural imperialism when they are treated as if they were universal. The critical survey was not restricted to this negative Socratic task of showing that Kant's idea of Europe and the world does not possess the cosmopolitan status it intends to possess. The Enlightenment critical attitude is often criticised for being only negative, for failing to put forward an alternative. In response to this objection, the survey has also sought to show how a different way of thinking about and acting in relation to the cultures, constitutions and federations of Europe and the world has been developed in the course of the two hundred years of criticism. This is furthermore a way of thinking and acting that appears to be less imperial and more cosmopolitan, and perhaps more peaceful, than the Kantian idea that it simultaneously respects and challenges, as I argue in the following chapters.[84]

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[82] See Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (London: Routledge, 1992), pp. 148–77.

[83] Young, 'Communication and the Other: Beyond Deliberative Democracy'. See *Volume I*, Chapter 3 for Young's argument and Chapters 4 and 5, this volume, for deeper criticisms and alternatives.

[84] This attitude of both respecting and challenging the prevailing forms of thought and action in the present *is* the Enlightenment critical attitude. See *Volume I*, Chapter 1.

Democracy and globalisation: a defeasible sketch

In this chapter I extend my investigation of the anti-imperial critical ethos in Chapter 1 by introducing two ways of studying globalisation and democratisation. The first is by means of 'restrictive' practices of governance and practices of democratic freedom (or democratisation). I argue that the global governance and cosmopolitan democracy approaches to globalisation are examples of this restrictive way (often referred to as 'globalisation from above'). The second is by means of 'extensive' practices of governance and democratic freedom. This way is particularly effective in throwing light on globalisation and democratisation 'from below' and its possibilities for deeper democratisation. The chapter draws on my development of this practice-based approach to government and freedom in *Volume I*, Chapters 1–3 and begins the application of it to globalisation in the following chapters. I open by situating my particular public philosophy approach in the critical tradition from which it derives.

When philosophy paints its grey in grey, then has a shape of life grown old. By philosophy's grey in grey it cannot be rejuvenated but only understood. The owl of Minerva spreads its wings only with the falling of dusk.[1]

Recall that in this famous conclusion to the Preface of the *Philosophy of Right*, Hegel advances two closely related claims about the relation between political philosophy and political practice. Only when an organised form of political life has come to maturity and grown old can it be given adequate expression by means of philosophical reflection. Philosophy 'appears only when actuality is already there cut and dried after its process of formation has been completed'.[2] At the same time, this philosophical reflection is

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[1] Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (Oxford: Clarendon Press, 1967), p. 13.
[2] *Ibid*., pp. 12–13.

provoked by a new and different form of political life coming into being out of the old. While the philosopher cannot help but notice this dawning activity, for it renders the present problematic and gives rise to critical reflection, he or she cannot grasp it adequately because it is different from, and often disruptive of, the shape of life in its twilight, which he or she paints so perspicuously in shades of grey. To use Hegel's example, while Plato adequately articulated the mature Greek political and ethical life in the *Republic*, he noticed but failed to understand adequately an emerging style of politics that 'was breaking into that life in his own time' and which would change the old ways forever.[3] This was 'a deeper principle', the 'free infinite personality': that is, the new form of political and ethical life based on *parrhesia* – modes of questioning oneself and other citizens exemplified by Socrates.[4] Plato failed to understand adequately the new way of being political not only because it was new and inchoate, but also because he tried to 'master' or comprehend it in the concepts appropriate to the old and thus 'did fatal injury to the deeper impulse which underlay it'.[5] He could see what Socrates had introduced only 'as a longing still unsatisfied' – not as a principled mode of being open to philosophical comprehension.[6]

We are in an analogous situation today with respect to the puzzling kinds of democratic activity that are emerging in the context of globalisation. We can see that they embody 'a longing still unsatisfied', but when we try to reflect critically upon them we misunderstand. We tend to characterise and seek to 'master' them in the concepts, theories and traditions that are appropriate to the democratic practices and institutions that have come to maturity and grown old over the last two hundred years and in which we ourselves think and act. Alternatively, as Hegel explains, if we try to grasp and anticipate what is happening here and now in some new normative vocabulary, this too is bound to fail since we cannot 'jump over Rhodes'; transcend our contemporary world.[7] The result is groundless and idle speculation about the future, 'the erection of a beyond, supposed to exist, God knows where', and 'where anything you please may, in fancy, be built'.[8]

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[3] *Ibid.*, p. 10.   [4] *Ibid.*   [5] *Ibid.*
[6] *Ibid.* Hegel argues that despite this lack of philosophical comprehension, Plato's peculiar 'genius' somehow enabled him to present a political theory that nevertheless 'turned' on the revolutionary principle Socrates embodies (*Ibid.*, p. 10). This back-handed compliment seems to be a desperate attempt by Hegel to save his account of philosophical understanding. A simpler explanation is that there is another mode of philosophical understanding of the present, outlined below, which Plato exhibited in the to-and-fro movement of his dialogues.
[7] *Ibid.*, p. 11.   [8] *Ibid.*, pp. 10, 11.

Certainly these two genres of contemporary political thought – the re-inscription of the new in terms of the old and the idle speculation about the future – are common enough, especially at the beginning of a new millennium. Nevertheless, since the time of the young Hegelians a third school of political philosophy has developed in response to Hegel's conservative pessimism about understanding what is happening right now, and it has established itself on the rough ground between his two extremes. From Kant's 1784 essay 'What is Enlightenment?', Marx, Nietzsche and Weber to Arendt, Wittgenstein, Foucault, Taylor, Giddens, Connolly and Skinner among others, this form of critical reflection on the present seeks to understand a new and problematic way of acting or language game (class struggle in the workplace, post-Christian ethics, the ascetics of capitalist behaviour, an enigmatic aspect of freedom) in terms of neither the dominant, cut and dried political institutions and traditions nor some new and fanciful vocabulary, but, rather, in terms of a relation of difference, of dissimilarity, relative to the dominant institutions and their traditions of thought. 'What difference does today introduce with respect to yesterday?', as Foucault succinctly summarises this whole orientation.[9] This careful, back-and-forth reciprocal elucidation of an unsettling political activity of the present in terms of its difference from, as well as similarity to, the prevailing forms of political thought and practice not only discloses the anomalous activity in a distinctive light; it also shows us these old forms, not as the taken-for-granted horizons in which we must understand the new, but as partial limits that the new activity may enable us cautiously to modify and venture beyond.[10]

While this intermediate tradition has learned from and adapted Hegel's historical approach and taken his advice to remain as close as possible to contemporary experience (abjuring the temptation to jump over Rhodes), it nevertheless rotates his orientation 180 degrees around the fixed axis of our real need. Rather than comprehending and reconciling the new and problematic activity from the twilight of the old, this approach uses the dawning

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[9] Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, p. 305.

[10] Although I draw on the later work of Foucault in the following paragraph to characterise this historical approach of reciprocal elucidation, it is shared in different ways by Ludwig Wittgenstein, *Philosophical Investigations*, 2nd edition (Oxford: Blackwell, 1997), §§122, 130–3; Charles Taylor, 'Comparison, History, Truth' in *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995); William E. Connolly, *Why I am not a Secularist* (Minneapolis: University of Minnesota Press, 1999); and Skinner, *Liberty Before Liberalism*. This school of political philosophy is examined in David Owen, 'Orientation and Enlightenment: An Essay on Critique and Genealogy', in *Foucault Contra Habermas: Recasting the Dialogue Between Genealogy and Critical Theory*, eds. Samantha Ashenden and David Owen (London: Sage, 1999); and in *Volume I*, Chapter 3.

light of the novel activity to free us from the sedimented conventions of the old (*se déprendre de soi-même*), to some limited and relative extent (*égarement*), in order to think differently (*penser autrement*).[11] By this form of philosophical investigation (*askesis*), one is able to 'test' in 'what is given to us as universal, necessary, obligatory' (the dominant institutions and their traditions) 'what place is occupied by whatever is singular, contingent and the product of arbitrary constraints' and to what extent it is possible 'to go beyond them' (*de leur franchissement possible*): 'to grasp the points where change is possible and desirable, and to determine the precise form this change should take'.[12]

Such an approach is difficult, precarious and uncertain. It has neither the security and comfort of reaffirming and legitimating our most familiar and mature institutions and traditions of political thought nor the excitement and media fame of hurling bold conjectures at the world at large. Any reciprocal elucidation is relative, contextual, partial and defeasible, and, therefore, open to continual reworking – a 'sketch' in Wittgenstein's sense rather than a 'theory'. We are thus always in the position of beginning again. Yet, in compensation, it is the orientation that has some chance of rendering aspects of the present world to which we belong a little less unclear, enabling us to find ourselves within it and perhaps even to go on. While Hegel is right to say that the owl of Minerva spreads its wings only with the falling of dusk, Bill Reid, the great Haida artist, reminds us that the raven of Haida Gwaii – the universal Indigenous symbol of our ability to modify our ways of being human relative to our past and become other than we are – takes flight at dawn; *indeed* brings the dawn into being and so sets the scene.[13] In sum, then, the defining temperament of this Enlightenment orientation, suspended between the owl's respect for and deep attachment to what our great teachers and predecessors have achieved and the raven's curiosity and always unsatisfied longing for what lies on our horizons, is perhaps expressed well by Nietzsche in the last paragraph of *Daybreak*, written in Genoa in 1880–1:

All those brave birds which fly out into the distance, into the farthest distance   it is certain! somewhere or other they will be unable to go on and will perch on a mast or a bare cliff face   and they will even be thankful for this miserable accommodation! But who would venture to infer from that, that there was *not* an immense open

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[11] Michel Foucault, 'Modifications', *The Use of Pleasure*, pp. 3–13. For the importance of this short text, see Arpad Szakolczai, *Max Weber and Michel Foucault: Parallel Life-Works* (London: Routledge, 1998), pp. 53–60.

[12] Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, pp. 315–16, 319.

[13] Bill Reid and Robert Bringhurst, *The Raven Steals the Light* (Vancouver: Douglas and McIntyre, 1988).

space before them, that they had flown as far as one *could* fly! All our great teachers and predecessors have at last come to a stop and it is not with the noblest or most graceful of gestures that weariness comes to a stop: it will be the same with you and me! But what does that matter to you and me! *Other birds will fly farther!* … Whither does this mighty longing draw us, this longing that is worth more to us than any pleasure? Why just in this direction, thither where all the suns of humanity have hitherto *gone down?*[14]

This approach can be applied to some aspects of the puzzling forms of political activity that have emerged in a variety of sites in the context of contemporary globalisation. Section 1 distinguishes two kinds of practices of government and democracy (and two corresponding uses of the terms 'government' and 'democracy') woven historically into our ways of ruling and being ruled (thus not 'the erection of a beyond, supposed to exist, God knows where'). One, the 'restrictive' sense of 'government' and 'democracy', refers to the mature and predominant practices of government and democracy typical of *representative* democratic nation-states, their institutions and the traditions of understanding in which they are described, operated and evaluated. The other, the 'non-restrictive' sense of 'government' and 'democracy', refers to the less prominent practices of government and democracy that do not conform to the typical practices of representative government and democracy and so cannot be understood adequately in terms of theories and traditions of representative government. Yet, by reciprocal elucidation, these non-restrictive practices have the capacity to illuminate a range of political activity in contemporary globalisation. I will refer to the former as, interchangeably, 'restrictive' or 'representative' and to the latter as 'non-restrictive' or 'extensive' practices of government and democracy, and to the class of both types as simply practices of government and democracy.

Section 2 summarises how the practices of representative government and democracy came to predominate and appear universal, necessary and obligatory, but now occlude understanding of anomalous forms of government and democracy, doing 'fatal injury' to the principles underlying them. Section 3 sets out a number of dimensions of contemporary political globalisation that have rendered the present problematic and given rise to critical reflection. Section 4 surveys the extent to which these changes can be understood in terms of the owlish language of representative government and democracy, in its unmodified and modified forms. Section 5 suggests

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[14] Friedrich Nietzsche, *Daybreak: Thoughts on the Prejudices of Morality* (Cambridge: Cambridge University Press, 1982), §575, p. 228.

how other aspects of global politics can be defeasibly characterised and analysed only in comparison to extensive practices of government and democracy.

The forms and the specific situations of the government of men [and women] by one another in any given society are multiple; they are superimposed, they cross, impose their own limits, sometimes cancel one another out, sometimes reinforce one another. It is certain that in contemporary societies the state is not simply one of the forms or specific situations of the exercise of power   even if it is the most important   but that in a certain way all other forms of power relation must refer to it. But this is not because they are derived from it; it is rather because power relations have come more and more under state control (although this state control has not taken the same form in pedagogical, judicial, economic, or family systems [of governance]). In referring here to the restricted sense of the word 'government', one could say that power relations have been progressively governmentalized, that is to say, elaborated, rationalized and centralized in the form of, or under the auspices of, state institutions.[15]

In this quotation from a short, synoptic text written four years before his death (1980), Foucault looks back over twenty-five years of studying the history of practices of government in which Europeans have constituted themselves as subjects engaged in coordinated interaction and summarises two major findings of his research. Firstly, 'the forms and the specific situations of the government of men [and women] by one another in any given society are multiple': that is, the 'practices of government' and the 'forms of subjects' of each practice come in a multiplicity of forms. The ways in which men and women are governed, govern themselves, and respond to and modify forms of governance in families, schools, churches, militaries, corporations, markets, bureaucracies, unions, voluntary organisations, municipalities, Indigenous nations, provinces, states, federations, international regimes and organisations, the United Nations, and global systems criss-cross and overlap in complicated but nonetheless analysable ways. Secondly, while the multiple practices of government have proliferated since the Reformation – from the consolidation of absolutist states in the early modern period to the formation of representative democratic nation-states in the modern period – they have tended to be elaborated, rationalised and centralised, either directly in the form of, or indirectly

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[15] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, p. 224.

under the control of, the institutions characteristic of representative nation-states. The process of progressive governmentalisation, then, is the historical process by which the restrictive practices of government – representative government – have come to maturity and predominance, tending to bring most forms of government under their auspices in practice and also in theory (what might be called the owl of Minerva effect).

Using David Held's classification of historical forms of globalisation into early modern (14th–18th century), modern (19th–20th century) and contemporary (1945–21st century), my thesis is that one feature of contemporary political globalisation is a new trend towards the dispersion of practices of government and democracy.[16] It has two major aspects. The first and more familiar is the dispersion of standard practices of representative government so they are no longer centralised in nation-states and a Westphalian system of sovereign nation-states. It is this aspect Held refers to when he speaks of 'political globalisation', 'multilayered governance and the diffusion of political authority' and 'cosmopolitan democracy'.[17] Moreover, the dispersion of political authority in these ways does not displace the long-term trend of governmentalisation across all three periods but coexists with it. It can be seen as a *modification* of governmentalisation in the restrictive sense, since many of the characteristics of representative government remain, while others, such as centralisation, sovereignty and uniformity, are amended and qualified by the dispersion. For example, the global human rights regime qualifies rather than displaces the regime of sovereign nation-states and is itself a development out of the juridical practices of representative nation-states. The modification of sovereignty in the contemporary period has also enabled us to see that the actual history of representative governments has been much less centralised and uniform than the prevailing political theories presume.[18] Accordingly, this aspect of dispersion can be understood by modifying the mature and dominant traditions of representative government from within, as long as one takes a 'critical' (raven-like) rather than 'regulative' (owl-like) attitude to some characteristics of these

[16] David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, eds., *Global Transformations: Politics, Economics and Culture* (Cambridge: Polity Press, 1999), pp. 78–81. Although I have serious objections, I am nonetheless indebted to the scholarly work of David Held and his fellow researchers on historical forms of globalisation and the trends towards cosmopolitan democracy.

[17] Held *et al.*, *Global Transformations*, pp. 32–86. For 'cosmopolitan democracy', see Held, *Democracy and the Global Order* and Daniele Archibugi, David Held and Martin Köhler, eds., *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge: Polity Press, 1998).

[18] See Michael Keating, 'So Many Nations, So Few States', in *Multinational Democracies*, eds. Alain-G. Gagnon and James Tully (Cambridge: Cambridge University Press, 2001).

traditions while holding the others firm. Call this the modified owlish or Hegelian aspect of contemporary political globalisation (section 4).

The second aspect of this trend is the dispersion of *extensive* practices of government within and across representative nation-states. This is not a separate trend, but one that criss-crosses with the former, often forming two aspects of the same institutions: to recollect, 'they are superimposed, they cross, impose their own limits, sometimes cancel one another out, sometimes reinforce one another'. Moreover, this global process of *non-restrictive* governmentalisation also can be seen as a *modification* of an early-modern and modern set of processes: namely, the persistence and proliferation of non-representative practices of government since the Reformation and the Dutch army reforms. Recall that the contribution to the understanding of modernity offered by Marx, Nietzsche, Weber, Merleau-Ponty, Heidegger, Dreyfus, Bourdieu, Giddens, Foucault, Wittgenstein, Connolly and Taylor has been to draw our attention to a multiplicity of practices of government which shape our identities and modes of interaction in ways that cannot be understood in the predominant traditions of political thought because they are different from and obscured by the more prominent practices of representative government (or by the more prominent features of these practices).[19] Accordingly, the second aspect of contemporary political globalisation can be elucidated by comparison with this body of work, and by contrast with the great theories of representative governments and their prominent institutions. Call this the modified raven aspect of contemporary political globalisation (section 5).

Most of the dispersed practices of government are not democratic. Many are bureaucratic, authoritarian or systemic. They coordinate the interaction of the participants predominantly 'behind their backs', without their say, through the market, bureaucracy or the functional intermeshing of the unintended consequences of their actions. They are on the face of it 'systems' rather than 'practices' in so far as the participants are more 'patients' or 'subjects' than 'agents' or 'citizens'.[20] Furthermore, despite the evidence for an uneven and forward-and-backward trend to 'democratisation' (formal representative democracy), the spread of institutions of representative democracy to many decolonising peoples after 1960 and 1989, the development of supranational regimes such as the North American Free Trade

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[19] For an introduction to these philosophers of practices, see Theodore R. Schatzki, *Social Practices: A Wittgensteinian Approach to Human Activity and the Social* (Cambridge: Cambridge University Press, 1996).

[20] For Habermas' useful distinction between a practice and a system, or, rather, the practical and systemic *aspects* of an organised form of human cooperation, see Schatzki, *Social Practices*, pp. 89–90.

Agreement (NAFTA) and the EU, the increase in power of transnational corporations, the weakening of representative governments and social democratic practices under neo-liberalism, and the underfunding and bypassing of the democratic institutions of the United Nations have been accompanied by the distribution of decision-making and implementation powers to non-democratic local, regional and global institutions, 'indirect infrastructural' rule, and an emergent system of 'nodes in a global network', for what appears to be a net global democratic deficit.[21]

Nevertheless, the dispersion of practices of government has been met by popular struggles that seek to alter them. The second half of my thesis is that these struggles are of two types, corresponding to the two types of practices of government. The first type are struggles of and for democracy in the restrictive, representative sense: to make non-representative practices of government democratic in the representative sense (or make practices of representative government more representative), or to bring them under the control of dispersed representative-democratic government institutions (local, regional, national, global and the UN) in traditional ways. The second type are struggles of and for democracy in the extensive sense: to bring extensive practices of government under some new form of democratic control by the participants or to link them up in novel ways with representative institutions. These struggles are 'democratic' in the extensive sense just in so far as the participants in any practice of government strive to be heard and to negotiate to some extent the relations of power that govern their conduct. The forms of this second type of democratic struggle in non-representative practices are closely related to the specific and diverse character of the practices of government in which the contests occur and so do not conform to the dominant models of representative-democratic activity.

To illustrate with an example taken up in section 5, citizens struggle to bring global forest companies under the democratic control of representatives in provincial and federal parliaments, the democratic institutions of their customers in Europe, Asia and the UN. At the same time, local and global concerned citizens and NGOs confront these multinationals on

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[21] David Potter, David Goldblatt, Margaret Kiloh, and Paul Lewis, eds., *Democratization* (Cambridge: Polity Press, 1997). For a brief summary, see Held *et al.*, *Global Transformations*, pp. 46–9, and 39–45 for the shift from direct imperial to indirect 'infrastructural' rule in the twentieth century. For the metaphor of 'nodes [of mostly non-democratic power and authority] in a global network', rather than representative nation-states in an international system, see Manuel Castells, *The Information Age: Economy, Society and Culture*, 3 Vols., especially Vol. III, *End of Millennium* (Malden, MA: Blackwell, 1998), pp. 335–60. For Castells, see Chapter 6, this volume.

specific logging sites: to negotiate face to face, to challenge their immediate forest practices, hiring practices and ecological claims, the way gender is governed in their company, their responsibility to local and the global communities, to value-added industries, their stance towards Indigenous peoples, their shareholders and the like. This also illustrates the point that these two distinct types of democratic activity are not separate but often occur in the same nexus of dispersed practices of government.

These two types of democratic struggle are internally related to the multiplication and dispersion of practices of government definitive of contemporary political globalisation. The struggles over how employees are governed in dispersed practices, how they relate to the environment broadly defined, and their effects on local and global communities are internal to the logic of the organisation and dispersion of these practices of government. They cannot be understood or analysed without taking into account the *agonism* between the attempts to govern the participants in a specific way and the responses to that mode of governance. Just as the development of capitalism and representative democracy are not autonomous historical processes but involve and are shaped by the extensive struggles of workers and consumers over the practices of production and the restrictive struggles of citizens and representatives over the practices of government, so too contemporary political globalisation is not composed of processes in which humans are powerless. The processes are partly constituted by the two types of democratic contestation. Therefore, the dispersion of practices of government and the democratic struggles over them have to be understood together. Foucault summarises the general methodological point in the following way:

This leads to the study of what could be called 'practical systems' [practices of government and struggles of democratic freedom]. Here we are taking as a homogeneous domain of reference … what they [participants] do and how they do it. That is, the forms of rationality that organize their ways of doing things (this might be called the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, modifying the rules of the game, up to a certain point (this might be called the strategic side of these practices).[22]

These two types of struggle also can be seen as modifications of early-modern and modern forms of struggle. The first is a continuation of struggles for representative democracy, suitably modified to fit the dispersed character of practices of government in political globalisation. They are

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[22] Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, p. 317.

struggles for 'democratisation' as it is standardly defined in the literature. These in turn can be understood in the suitably modified owlish terms of comparison with the dominant theories of representative democracy over the last two hundred years, as Held has shown.[23] The second is a continuation and modification of the more specific contests for democratic control in extensive practices of government since the early-modern period. These struggles are heterogeneous because they are tailored to the specifics of the practice they challenge and seek to modify. Light can be shed on the dawning, non-representative democratic activities involved in contemporary globalisation by means of raven-inspired analogies and disanalogies with accounts of modern, non-representative democratic struggles.[24]

Although this two-path approach to political globalisation from the perspectives of both the owl and the raven may seem obvious, Hegel's Preface forewarns us that it is seldom followed. Firstly, processes of globalisation are often analysed systemically, as if they unfold independently of contingent human action. Secondly, even when the exercise of democratic freedom vis-à-vis dispersed practices of government is taken into account, it tends to be construed in the categories of representative democracy and its traditions of interpretation, or as 'movements' that are on their way to becoming familiar forms of representative democratic politics (parties, interest groups, labour organisations, struggles for rights and so on). This modified Hegelian mode of understanding is accurate for one aspect of contemporary political globalisation, but it has a tendency to overreach its limits and claim to comprehend both aspects of political globalisation, thus doing 'fatal injury' to the other. When the limitation is noticed, the auspices of restrictive governmentalisation remain so hegemonic that the response is either to ignore what the dominant representative theories fail to explain or to treat the extensive practices of government and democracy as not really democratic at all, and to dismiss their traditions of interpretation as illegitimate or incoherent (as the response to Foucault's research amply illustrates), as if there could be nothing new under the sun. To see how this limited understanding of our present has come to be definitive of political

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[23] Held's work on 'cosmopolitan democracy' is the best example of this extension and modification of traditional representative democratic theory to understand and evaluate the first type of democratic struggles and the way in which they may be shaping dispersed practices of representative government. For a complementary analysis, see Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity Press, 1998).

[24] Characteristics of non-representative democratic struggles are discussed by Foucault in 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, pp. 211–12 and Foucault, 'What is Critique?', in *What is Enlightenment?: Eighteenth-Century Answers to Twentieth-Century Questions*, ed. James Schmidt (Berkeley: University of California Press, 1996).

reason itself – as if this resting place is as far as we could fly – we need to review how the concepts and practices of government and democracy have come to be restricted to representative government and democracy.

2 PRACTICES OF REPRESENTATIVE GOVERNMENT AND DEMOCRACY

The prevailing practices of representative government and democracy in capitalist societies developed in the early-modern and modern periods. They include some combination of the following types of institution: institutions of formal legislators or representatives elected by citizens in a multi-party competition, the rule of law and public procedures, a system of administrative bureaucracies to execute the laws uniformly, a judicial system to interpret, review and apply them, a distinction between public and private, a public sphere of free speech, assembly and dissent, a military accountable to the representative institutions, and a constitution that lays down the division of powers among institutions and federal units and the political, civil and social rights and duties of citizens and groups.[25]

Representative government and democracy in turn is seen as the system of government appropriate to, and the most legitimate form of, a modern nation-state. The process of governmentalisation in the restrictive sense refers to the gradual colonisation of early-modern absolutist states by the practices of representative government and democracy. The modern nation-state is defined in terms of a national democratic community of citizens and a geographical and bounded territory. The community of citizens has the capacity to elect and hold accountable their representatives, and the representatives have the capacity to make law and policy to govern their constituents' major affairs within their geographically bounded territory. Each nation-state is in turn sovereign. The political world consists of a system of sovereign representative nation-states, the Westphalian system, named after the Treaty of Westphalia in 1648 even though several of its features did not come into widespread practice until the modern period.[26]

Prior to the eighteenth century, 'democracy' was used extensively as a term of abuse to refer to the 'people' assembling together and demanding a direct voice in the specific manner in which they were governed in any

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[25] See David Held, *Models of Democracy*, 3rd edition (Cambridge: Polity Press, 2006).
[26] Held *et al.*, *Global Transformations*, pp. 35–9, 78–80. The development of the system of sovereign states and representative governments is treated in more historical detail in Held, *Democracy and the Global Order*.

practice of government. Athenian democracy and early-modern local 'revolts' stood as exemplars of this disruptive form of popular activity. Most of the canonical political theorists of the early-modern period, as Bernard Manin reminds us, saw representative government as directly opposed to democracy. They condemned democracy as popular, contentious, headless, licentious and ill-suited to large modern states. By the early nineteenth century, the struggles between defenders of democracy and representative government were over and 'democracy' as a term of approval came to be routinely predicated on 'representative' government as the modern form of government appropriate to large commercial societies, thereby covering over the earlier struggles.[27]

'Democracy', as Kant puts it in his distinctive manner of presenting his side of an argument as the universal and necessary truth, 'in the proper sense of the term, is necessarily a *despotism*', and every 'form of government that is not *representative* is properly speaking *without form*'.[28] The restriction of 'democracy' to 'representative democracy' and representative democracy as the only legitimate form of government is perhaps best codified by Thomas Paine. In his influential *Rights of Man*, he states: 'Simple democracy was society governing itself without the aid of secondary means. By ingrafting representation upon democracy, we arrive at a system of government capable of embracing and confederating all the various interests and every extent of territory and population.'[29] With Benjamin Constant's famous speech of 1819, 'The Liberty of the Ancients Compared with that of the Moderns', the semantic restriction was completed. Representative democracy is not only presented as the sole legitimate form of government appropriate to the sociological conditions of large capitalist states, but any unsatisfied longing for other extensive forms of democracy is depicted as romantic nostalgia for Athenian democracy or utopian speculation and is said to lead in practice to the Terror.[30]

A complementary restriction of the term 'government' occurred during the processes of governmentalisation of the early-modern and modern periods. In the sixteenth century, 'government' was widely used to characterise any relation of power and authority in which the conduct or action of

[27] Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).
[28] Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, pp. 113–14.
[29] Thomas Paine, *Rights of Man*, ed. Gregory Claeys (Indianapolis: Hackett Publishing Company, 1992), p. 142. Compare Held, *Democracy and the Global Order*, p. 119.
[30] Benjamin Constant, 'The Liberty of the Ancients Compared with that of the Moderns', in *Political Writings*.

a person or group was guided by the conduct or action of another, whether this involved the practice of caring for children, educating pupils, mastering servants and apprentices, governing wives, caring for souls or the poor, or governing subjects and representatives in parochial, royal, county, regional and national practices of government. That is, government in the extensive sense refers to any form of guiding the conduct of others and the range of possible actions the others may take up in response:

Basically power is less a confrontation between two adversaries [the strategic model] or the linking of one to the other [the contractual model] than a question of government. This word must be allowed the very broad meaning which it had in the sixteenth century. 'Government' did not refer only to political structures or to the management of states; rather it designated the way in which the conduct of individuals or of groups might be directed: the government of children, of souls, of communities, of families, of the sick. It did not only cover the legitimately constituted forms of political or economic subjection, but also modes of action more or less considered and calculated, which were destined to act upon the possibilities of action of other people. To govern, in this sense, is to structure the possible field of action of others.[31]

Consequently, a central concern of political writers was to sort out the various practices of government; not to confuse them or to purposely collapse them into one canonical form, as Locke typically reminds his readers in 1689:

That the power of a Magistrate over a Subject, may be distinguished from that of a Father over his Children, a Master over his Servant, a Husband over his Wife, and a Lord over his Slave. All which distinct Powers happening sometimes altogether in the same Man, if he be considered under these different Relations, it may help us to distinguish these Powers from one another, and shew the difference betwixt a Ruler of a Commonwealth, a Father of a Family, and a Captain of a Galley.[32]

Although the equipment employed in practices of government, the purposes for which human activity is coordinated in diverse associations, and the modes of comportment or identities the governed and governors bear in the multiplicity of overlapping games of government are various, as Locke illustrates, what they have in common is that the conduct of the governed is not determined but 'free'. As Foucault puts it, by 'this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments

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[31] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, p. 221.
[32] John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1970), §2, p. 286.

may be realized'.[33] The range of possible action, between 'domination' at one extreme (where movement is determined) and direct 'confrontation' between adversaries at the other (where a relation of governance gives way to a relation of revolt), is what Foucault referred to earlier as the strategic 'freedom' with which participants act within any practice of government. This freedom is 'democracy' in the extensive sense: the exercise of the abilities of the governed to negotiate the way their conduct is guided.

Throughout the modern period, 'government' gradually came to be restricted to the formal institutions of representative government in the so-called 'public' sector, and the broader use of 'government' fell into disuse. The modern disciplines of political science and political philosophy, with their restrictive focus on the public institutions of representative government and democracy, augmented this trend. Moreover, as Weber and Foucault have shown, the range of democratic free play in the multiplicity of practices of government came to be restricted as forms of control and reflexive monitoring of thought and behaviour were introduced to train, coordinate and predict activity in detail.[34] These techniques of control changed the character of practices of government, as Hubert Dreyfus explains:

Once machine tools took over … the dominant Western style changed from governing to controlling. No one governs a car. People control their cars, or they are in trouble. People control electric saws, power plants, chemical reactions, and so on. Rather than govern their sexual desires, people now control birth and the transmission of disease. Controlling manifests a different stance towards things and people and amounts to a different way of seeing them. It is a different style. We can see this in the difference between managers who try to govern their employees by having them join in the process of determining how goals will be met, and those who try to control them by simply setting work schedules and output requirements.[35]

Practices of control became integrated into larger systems of markets and bureaucracies. For reasons of efficiency and time constraints, attempts to negotiate their organisation were seen to be inappropriate, both in the form of unsuccessful large-scale planning in socialist countries and in the more moderate form of social democracy and welfare liberalism, at least among neo-liberals. Finally, when moderns challenged the ways their conduct is regulated in extensive practices, they too expressed their demands in the language of control, speaking of participants' 'self-management' and

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[33] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, p. 221.

[34] The classic studies are Foucault, *Discipline and Punish* and Taylor, *Sources of the Self*, especially pp. 159–76.

[35] Hubert Dreyfus, Charles Spinosa and Fernando Flores, *Disclosing New Worlds: Entrepreneurship, Democratic Action, and the Cultivation of Solidarity* (Cambridge, MA: MIT Press, 1997), p. 26.

'self-control' more than 'self-government' and 'democracy'. To paraphrase Hegel, with this final semantic shift the process of formation of government and democracy exclusively *as representative* government and democracy has been completed.

The singular and contingent historical assemblage of modern representative government and democracy is the political world painted by the owl of Minerva in grey as universal and necessary, from the *Philosophy of Right* to the latest modern political theory. It is now being challenged and modified in the course of contemporary political globalisation in two distinct ways.

3 CONTEMPORARY POLITICAL GLOBALISATION AND GLOBAL GOVERNANCE

Following Held, globalisation can be thought of as:

a process (or set of processes) which embodies a transformation in the spatial organization of social relations and transactions   assessed in terms of their extensity, intensity, velocity and impact   generating transcontinental or inter regional flows and networks of activity, interaction, and the exercise of power … [F]lows refer to the movement of physical artefacts, people, symbols, tokens and information across space and time, while networks refer to regularized or patterned interactions between independent agents, nodes of activity, or sites of power.[36]

This means, firstly, that globalisation is a cluster of uneven, hierarchical and unpredictable processes of interregional networks and systems of inter-action and exchange, not a singular condition or a process of global integration. Secondly, global interconnectedness weaves networks of relations between communities, states, international institutions, NGOs and multinational corporations. The networks form processes of 'structuration' – the product of both individual and group actions and the cumulative interactions among agencies and institutions. Globalisation, thirdly, occurs across all domains of social life. Fourthly, global processes deterritorialise and reterritorialise socioeconomic and political space so it is no longer co-terminus with established legal and territorial boundaries. The twentieth century has experienced a shift from the direct, territorial forms of control characteristic of the long age of European and American imperialism to new forms of non-territorial imperialism based on control of peoples and mar-kets by indirect, infrastructural control. Finally, the organisation and reach of power is expanded so the concentrated sites and exercise of power are

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[36] Held *et al.*, *Global Transformations*, p. 16.

increasingly at a distance from the subjects and locales that experience the consequences. The major domains of social life enmeshed in contemporary globalisation are politics, organised violence, global trade and markets, global finance, corporations and global production networks, the movement of peoples, cultures and nations, and the environment.[37]

Contemporary globalisation is altering modern representative politics by the globalisation of politics, or, as Held terms it, 'global politics'. These are forms of politics that do not fit neatly into the modern categories of either national or international politics:

Global politics is a term which usefully captures the stretching of political relations across space and time; the extension of political power and political activity across the boundaries of the modern nation state. Political decisions and actions in one part of the world can rapidly acquire worldwide ramifications … [S]ites of political action and/or decision making can become linked through rapid communications into complex networks of decision making and interaction. [Furthermore] 'action at a distance' permeates with greater intensity the social conditions and cognitive worlds of specific places or policy communities … [D]evelopments at the global level frequently acquire almost instantaneous local consequences and vice versa.[38]

Global politics disaggregates the central feature of modern representative government: that the national representative government governs the affairs of a territorially bounded community of fate and that community holds its representatives accountable for the power exercised over them. Peoples are dispersed in overlapping communities of fate, and political power is shared, dispersed, overlapping, contested and battered by a range of forces and agencies.

Global politics has given rise to 'global governance'. Global governance is not the institutions of modern representative governments or of the international system of nation-states but is, nonetheless, a modification and expansion of them to govern global politics. The UN, the World Trade Organization (WTO), NGOs, the political power of multinational corporations, social movements, local, regional, federal and supranational governments, international regimes, the global human rights regime, and global legal regimes are well-known examples. They embody the shift from

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[37] *Ibid.*, pp. 27–8, 430–1. A chapter is devoted to each of the domains of globalisation. I have also drawn on the work of Ankie Hoogvelt, *Globalisation and the Postcolonial World: The New Political Economy of Development* (London: Macmillan, 1997) and Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (London: Zed, 1997).

[38] Held *et al.*, *Global Transformations*, pp. 49–50. Held's analysis draws on the groundbreaking work of R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).

'territorially based politics' of the modern era to the 'emerging era of global politics and multilayered global and regional governance'.[39] In several respects, global politics and global governance can be compared to the messy overlapping of practices of government in the late medieval period prior to the early-modern consolidation of centralised European states.

4 UNMODIFIED AND MODIFIED REPRESENTATIVE PRACTICES OF GOVERNMENT AND DEMOCRACY

I will now sketch how the problematisation of the present by global politics can be understood from the perspective of the two approaches laid out in sections 1 and 2: unmodified and modified representative government and democracy, and unmodified and modified extensive government and democracy. Evidently, as Held stresses, modern representative government and democracy persist into the contemporary era despite their decentring by global politics and the uneven emergence of multilayered global governance. The clichés of the 'end of sovereignty' and the impotence of representative national government in an era of globalisation, fashionable among many neo-liberals and post-moderns, underestimate the resilience of practices of modern politics.[40]

For example, it is true that countries such as Canada lost considerable control over macro-economic policy because they became publicly indebted to and dependent on global capital during the period of welfare liberalism. Nonetheless, the irony of neo-liberal deficit and debt reduction is that North Atlantic countries are now less dependent on global capital and thus more able to exercise the democratic powers over economic policy that neo-liberals and hyper-globalisers claim they no longer hold. There is little in global economic processes that now impede, say, job creation policies. Only traditional constraints on representative will-formation impede such policies, and the rise of social-democratic governments in Europe has shown that these can be overcome.[41]

Similarly, processes of globalisation in the various domains affect different regions, sectors and peoples differently. The increased ability of capital

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[39] Held *et al.*, *Global Transformations*, pp. 49–77, 80–1, 442–4. See also the Report of the Commission on Global Governance, *Our Global Neighbourhood* (Oxford: Oxford University Press, 1995); Held, 'Democracy and Globalization'; and James Rosenau, 'Governance and Democracy in a Globalizing World', in *Re-imagining Political Community*.

[40] Held *et al.*, *Global Transformations*, p. 444.

[41] For these examples, see Will Kymlicka, 'Citizenship in an Era of Globalization: Commentary on Held', in *Democracy's Edges*, eds. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999).

to exit in response to economic policy, for example, only holds for certain areas of the economy. It is difficult to see how services, agriculture, education, fisheries, tourism, healthcare, retirement industries and the like can move. However, these uneven processes do not determine public policy. They are, or can be, mediated through representative democratic discussion and debate, and this explains many of the differences in policy across OECD countries. Even the uncontrolled flow of global financial capital could be governed by traditional coordination of nation-states to implement a Tobin tax.

Moreover, as Castells in particular underscores, cultural and migratory processes of globalisation involve the multiplication of identities and loyalties, and these engender demands for policies of multiculturalism and multinationalism throughout the multilayered governments in response. It 'appears that our [contemporary] societies are constituted by the interaction between the "net" and the "self", between the network society and the power of identity'.[42] Nevertheless, the globalisation of individual and collective identities has not diminished loyalty to the (multicultural and multinational) representative nation-state except in the cases of outright secession (which are also cases of unmodified modern politics). In Canada, 80 per cent of Quebecers continue to value and care about their Canadian identity alongside their Quebec identity. The proliferation of supranational political associations such as the EU and NAFTA Agreement have not generated supranational political communities of fate that replace or even seriously challenge the traditional national communities within. In most cases, citizens see whatever representation they have in these larger associations as the representation of their national community. Canadians do not see themselves as part of a larger North American 'community of fate' but, rather, as members of the federal community of Canada which in turn is in this larger non-communal association.[43]

The widespread dissatisfaction with and cynicism towards the potency of representative government does not seem to be the effect of globalisation. Rather, it appears to be caused by the traditional faults in the practices of modern representative government themselves. The high cost of running for office; the failure to represent women adequately and to represent the growing cultural diversity of the electorate; the inequities of the 'first past the post' system of elections; the lack of proportional representation and the representation of territorial (riding) identity to the exclusion of all other

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[42] Castells, *End of Millennium*, p. 352.
[43] For Canadian and European examples, see Gagnon and Tully, eds., *Multinational Democracies*.

identities; the impotence of backbenchers and parliamentary committees as decision-making power becomes concentrated in tiny elites; the abuse of party discipline and orders in council; and the absence of open democratic deliberation in parliaments are faults that have been well documented by countless studies and royal commissions. Such faults render representative government unresponsive to democratic will-formation and so open to manipulation by the elites who serve to gain by disempowering representative institutions under the rhetoric of globalisation as a process that does not allow for democratic negotiation. Whether modern representative governments remain effective and retain the allegiance of their citizens will depend more on the successes of traditional reform movements in correcting these imperfections than on contemporary globalisation.

If we turn to the institutions of global governance that are emerging in response to global politics, many of them can be seen either as modified versions of the practices of modern representative government (such as global human and environmental rights, the EU and the proposed peoples' chamber of the UN) or as non-democratic concentrations of power that are sites of struggle for democratisation in the representative sense (such as multinational corporations and NGOs). These are instances of the aspect of contemporary political globalisation described in section 1 as 'the dispersion of standard practices of representative government so they are no longer centralised in nation-states and a Westphalian system of sovereign nation-states'. Held's global project of cosmopolitan democracy is perhaps the best-known and most promising example of this modified owlish orientation towards contemporary political globalisation. In addition, he mentions two other approaches that are extensions and modifications of the traditions of interpretation of modern politics, 'liberal internationalism' and 'radical republicanism'.[44]

The projection of three traditions of modern political thought onto global politics and governance discloses aspects of them and the struggles to democratise them. Nevertheless, it is important not to treat them as if they constitute a *comprehensive* way of understanding global politics, for this would be to misunderstand and do fatal injury to other forms of global governance and democratic activity. There are two distinct types of limitation of these three schools of modern political thought. The first limitation is that they do not modify their own traditions enough in reflecting on global representative politics. They tend to project contingent features of modern representative government and democracy onto contemporary global politics and so misunderstand what is new in global practices of representative

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[44] Held *et al.*, *Global Transformations*, p. 448.

government. Recall that two equal principles underlie all the mature practices of modern representative government and democracy and give them their legitimacy: representative popular sovereignty and the rule of law. The tension distinctive of modern politics is the permanent difficulty of preserving the equality of these two principles: of ensuring that the people rule themselves through their representatives and so subject themselves to laws of their own authorship, and, at the same time, that these practices of representative democracy are carried out in accord with the rule of law.[45] As a result, there is always a reciprocal, back-and-forth movement between a provisional rule of law and a continuous process of its democratic discussion and reform.

Cosmopolitan democracy does not treat both principles equally, but gives priority to the rule of law. It 'attempts to specify the principles and the institutional arrangements for making accountable those sites and forms of power which presently operate beyond the scope of democratic control'.[46] Cosmopolitan theorists work out, by a process of solitary reflection on the European history of representative government and democracy, and then project globally, prior to any exercise of representative popular sovereignty in forums of democratic dialogue, a cosmopolitan public law that lays down the preconditions of global practices of democracy. This overrides the equality of the principle of representative popular sovereignty, which requires that any cosmopolitan public law needs to be democratically discussed and agreed to by those subject to it, or their representatives, if it is to be legitimate.[47]

If the two principles are treated equally, then the extension of the rule of law and representative democracy to global politics will necessarily involve democratic discussion of the forms that the rule of law and democracy should take in the multiplicity of practices of governance, not once and for all, but over all time. In virtue of cultural diversity, a host of contextual factors, and the overlapping of communities, governments and identities, the legitimate processes of contemporary global constitutionalism and democratisation are not predictable and cannot be specified or

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[45] These two equal principles are articulated and discussed by Jürgen Habermas, 'On the Internal Relation between the Rule of Law and Democracy', in *The Inclusion of the Other: Studies in Political Theory*, eds. Ciaran Cronin and Pablo De Greif (Cambridge, MA: MIT Press, 1998), and Rawls, 'Reply to Habermas'. They are accepted by Held, *Democracy and the Global Order*, p. 147.

[46] Held, *Democracy and the Global Order*, pp. 190–201. The justification for the unilateral imposition of a cosmopolitan public law is that its rights and duties are the preconditions of the exercise of popular sovereignty, of democratic deliberation. But, for a law to be a legitimate precondition of modern politics it must itself be subject to democratic deliberation, or else the principle of popular sovereignty is not given equal weight.

[47] Held, *Democracy and the Global Order*, pp. 159–218. Liberal internationalism and radical republicanism also project specific features of their traditions of representative government onto global governance.

comprehended beforehand. There is always a range of possible free actions available to the participants. Thus, even in the attempts to understand political globalisation in the modified terms of representative government and democracy, only the underlying principles, and not the more specific institutional forms these principles have taken in the early-modern and modern periods in the West, should be projected onto global politics if what is really going on is to be understood.[48]

The second limitation of the modified owlish approach is that it does not help us to understand what was described in section 1 as the second aspect of contemporary political globalisation: the dispersion of extensive practices of government within and across representative nation-states. This is the subject of the following section.

5 UNMODIFIED AND MODIFIED EXTENSIVE PRACTICES OF GOVERNMENT AND DEMOCRACY

Gathering together the features introduced in sections 1 and 2, any coordinated form of human interaction is a practice of government because it involves reciprocal, multiple and overlapping relations of power and authority in which the actions of some agents guide the actions of others. A relation of governance does not act directly on the agents, unmediated by their own thought and action, as does a relation of force or violence, but on their action. As a consequence, those over whom power is exercised are recognised and guided to the very end as agents who are free: that is, for whom a whole field of possible actions is available in the course of being guided. At the two limits of this field of freedom *in* relations of governance are sedimented structures of domination, in which freedom is reduced to a minimum by force or habituation (as in a prison system), and the background possibility of confronting the relation of governance as a whole and seeking to overthrow it (as in a revolution). No one in a practice of government stands outside relations of governance: the mode of conduct by which one agent guides another is itself the product of being guided by others. For example, the professors who guide pupils in the practice of education are themselves professors on account of being educated by others; by the ways in which they acted freely in that relationship; by their interaction

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[48] I have discussed this approach to contemporary constitutionalism and democratisation in *Strange Multiplicity*. For a brilliant analysis of European Union constitutionalism along similar lines, see Jo Shaw, 'Postnational Constitutionalism in the European Union', *Journal of European Public Policy* 6 (4), 1999: 579–97.

with the freedom of their pupils; and so on across the many relational identities the participants bear.

Any practice of government, then, involves three complex elements: techniques of government, strategies of freedom and modes of conduct. 'Government' in the extensive sense refers primarily to the first or technological side. It comprises, Mitchell Dean enumerates,

any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through our desires, aspirations, interests and beliefs, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects and outcomes. An analysis of government, then, is concerned with the means of calculation, both qualitative and quantitative, the type of governing authority or agency, the forms of knowledge, techniques and other means employed, the entity to be governed and how it is conceived, the ends sought and the outcomes and consequences.[49]

The second element, strategies of freedom or 'democracy' in the extensive sense, refers to the ways in which the participants question, negotiate and modify *en passant* the specific techniques of government: that is, the forms of knowledge, systems of communication, organisation of roles and tasks, and modes of production, distribution and consumption of goods and services and their effects. The third element, modes of conduct, comprises the coordinated interaction that results from the interplay of the first two elements: what the participants do and the way they do it.[50]

Modern theorists of extensive practices have exposed and examined whole areas of government and democratic freedom in modern societies that the dominant traditions have bypassed. These practices of government and democracy take place outside the public boundaries of representative government and democracy, either in the private realm or beneath the features of representative practices that standardly figure in modern political theories. Marx's specific analysis of struggles over the length and organisation of the working day in nineteenth-century British factories is a classic example of the former.[51] This type of struggle commonly has been understood in two generalised ways in the modern period. Either they are struggles for socialism (direct confrontations over the relations of production by means of revolution) or struggles for social democracy (labour-management

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[49] Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999), p. 11. Dean provides an excellent analysis of the governmentality approach.

[50] The analysis of practices in terms of these three complex elements and its critics is discussed in *Volume I*, Chapter 3.

[51] Karl Marx, *Capital: A Critique of Political Economy*, Vol. I (New York: Vintage, 1977), Chapter 10.

negotiations over unionisation, the conditions of work, and entrenchment of social and economic rights by means of strikes and the formation of social-democratic parties). The social-democratic understanding of such struggles has become predominant, especially with the decline of socialism after 1989 and the rise of social-democratic parties in the 1990s. As a result, the rise of new social movements in the contemporary period, in response to both modern and global politics, has tended to be conceptualised and analysed in terms of the social-democratic struggles and their tradition of interpretation.[52] While this unmodified form of general analysis does capture aspects of contemporary democratic struggles over extensive practices of government, it tends to construe them as all of one kind, as a social-democratic variation on familiar struggles for representative government and democracy (unmodified or modified), and so to overlook and misunderstand their three distinctive features.

Firstly, the terms 'conduct' and 'comportment' are meant to draw attention to a broad range of human action and interaction. Extensive democratic struggles are not only over the explicit rules, norms, the exchange of public reasons or the deliberate means of gaining consent in a practice of government. They are at least as much over the pre-reflective yet non-mechanical modes of comportment that constitute the forms of subjectivity (identities and roles) of the participants in their circumspective coping and that make up the vast majority of the coordinated interaction of any practice of government, from a family to a multinational.[53] Similarly, 'techniques of government' refer just as much to the background 'processes of subjectivisation' and infrastructural governance at a distance by which participants acquire the dispositions or abilities manifested in their specific modes of conduct. By focusing on abstract principles and deliberative reasoning, modern theories of representative government overlook these processes that occur, not only in market and bureaucratic practices but also in public practices, beneath the threshold of the formal features of law and democracy. Here, conduct is often governed by immanent norms of efficient interaction and reflexive monitoring rather than laws and representatives. For example, the pre-reflective orientation to nature, each other and

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[52] For an excellent overview and defence, see Edward Broadbent, 'Social Democracy or Liberalism in the New Millennium', in *The Future of Social Democracy: Views of Leaders from Around the World*, ed. Peter Russell (Toronto: University of Toronto Press, 1999). The rights that Held builds into the cosmopolitan democratic public law are an extension to global governance of the three classes of rights of the social-democratic tradition (*Democracy and the Global Order*, pp. 192–3).

[53] See Hubert Dreyfus, *Being-in-the-World: A Commentary on Heidegger's Being and Time, Division 1* (Cambridge, MA: MIT Press, 1992), pp. 60–87; Schatzki, *Social Practices*, pp. 133–67; and Connolly, *Why I am not a Secularist*, pp. 19–47, 137–62, 163–88.

themselves that the participants are guided to acquire by participation is often one of the 'resources to be enhanced, transformed and ordered simply for the sake of greater and greater efficiency', yet all this occurs beyond the reach of modern representative government and democracy.[54]

An illustration of this phenomenon is the widespread politics of identity and struggles over recognition. Struggles over recognition began in the modern period, but they have become intensified and dispersed in the contemporary period by the globalisation of cultures and migration.[55] These struggles are over legal, political and constitutional recognition, either in institutions of representative governments or modified institutions of multi-layered global governance. Notwithstanding, they are also struggles over racist, heterosexist, xenophobic and other non-recognising and misrecognising modes of comportment that hold enormous structures of social and economic inequality in place despite the formal workings of law and democracy. Such pre-reflective modes of interactive conduct can continue even after the formal recognition of cultural, ethnic, gender and other differences is achieved through group rights, federal structures, equity policies and non-discrimination laws. The effective strategies of democratic freedom in such cases are counter-practices such as diversity training in the practices of government in which racist and sexist conduct is learned and internalised. Here, as David Owen argues, the specific 'politics of voice' of the participants, rather than the abstract politics of principles, is indispensable to calling into question, addressing and altering unjust practices of social cooperation.[56]

Unless the practical activity is addressed, the recourse to the remedies of representative government and democracy often further entrenches structures of domination as they regulate and alter them. As Taiaiake Alfred argues, a particularly tragic example is the struggle of Indigenous peoples in Canada to free themselves from the practice of internal colonisation by legal, political and constitutional means. Instead of freeing Indigenous peoples from this long-standing structure, the struggle for recognition has tended to reproduce it in an altered and ameliorated form without effectively challenging, negotiating and modifying the forms of deeply sedimented colonial conduct of both non-Indigenous and Indigenous peoples that

[54] Dreyfus, *Being-in-the-World*, p. 338 and Dreyfus, Spinosa and Flores, *Disclosing New Worlds*, pp. 1–15. For 'processes of subjectivisation' see *Volume I*, Chapter 3.
[55] Held *et al.*, *Global Transformations*, pp. 283–375. See also Anthony H. Richmond, *Global Apartheid: Refugees, Racism and the New World Order* (Toronto: Oxford University Press, 1994).
[56] David Owen, 'Cultural Diversity and the Conversation of Justice: Reading Cavell on Political Voice and the Expression of Consent', *Political Theory* 27(5), 1999: 579–96. See also, Susan Bickford, *The Dissonance of Democracy: Listening, Conflict and Citizenship* (Ithaca, NY: Cornell University Press, 1996), pp. 141–75.

sustain it. If Indigenous peoples are to foster and manifest an Indigenous way of being in the world, then the appropriate strategy of freedom is not only formal self-government. It must also be the concrete counter-practice of 'self-conscious traditionalism' to modify and pass beyond the colonial modes of conduct in both representative and extensive practices of government.[57]

The second distinctive feature of extended practices of government and democracy is the specific strategies of democratic freedom – of questioning, negotiating and modifying relations of governance. These disputation strategies take a multitude of forms. Some aim to move the dispute to courts and parliaments, in either institutions of modern or global governance, and others conform to the model of labour-management negotiations. However, as practices of government are dispersed in processes of political globalisation and neo-liberal policies of downsizing and contracting-out, many disputes do not conform to these prototypes and are not brought under the control of representative governments in familiar ways.[58] Rather, they are taken up and resolved on site, in a manner that conforms to the specific practice in question. An entire field of activity comprising all these more or less autonomous disputes has come into being in the contemporary era and is now called 'dispute resolution'. In addition, a new discipline has arisen to study disputes and their resolutions and to educate specialists to facilitate, mediate and arbitrate, or to educate those engaged in the negotiations to resolve it themselves. The rapidly expanding practices of dispute resolution and their accompanying academic discipline are separate from the practices of representative government and their accompanying disciplines of political science and political theory.

These activities of disputation and resolution are new forms of democracy in conditions of political globalisation. They are unique in the following respects. The disputation is over a practice-specific relation of governance. Consequently, the way the existing relation is called into question, the forms of participation and argumentation involved in negotiation and resolution, and the amendment agreed upon, implemented and monitored are all grounded in and tied to the conditions of intelligibility of the practice of government in dispute. That is, the agents involved are embedded in the world of the relations of power and authority of the practice; they exercise, appeal to and present their pros and cons in the forms of practical reason and expertise of the practice from which they speak; it is their very identities

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[57] Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Toronto: Oxford University Press, 1999), pp. 55–73, 80–8.

[58] For example, the new 'partnerships' among public, volunteer and private sector institutions.

as participants in the practice that are at risk; and the resolution is always defeasible (open to future challenge). In all these respects, Dreyfus, Spinosa and Flores point out, democratic disputation and resolution in extensive practices of government contrasts with the models of democratic deliberation in the public sphere in modern political theory. In these models, negotiation is supposed to be free of power, based on public reasons and abstract principles and restricted to disengaged argumentation over a generalisable norm, and resolved by an impartial consensus. The result is a 'disengaged discussion' of 'an array of principles' divorced from practice; whereas actual learning and resolution emerge from 'rootedness in particular problems' and 'the expertise acquired by risking action from a particular perspective and learning from one's successes and failures' in the context of 'power, partisanship and local issues'.[59]

The third and final distinctive feature of extensive practices of government and democracy is their location as nodes enmeshed in local and global networks. As we have seen in section 3, contemporary practices of government are linked through the global politics of communications and information to complex networks:

This is the new social structure of the Information Age, which I [Castells] call *the network society* because it is made up of networks of production, power, and experience, which construct a culture of virtuality in the global flows that transcend time and space … The network society, as any other social structure, is not absent of contradictions, social conflicts, and challenges from alternative forms of social organization. But these challenges are induced by the characteristics of the network society, and thus, they are sharply distinct from those of the industrial era. The understanding of our world requires the simultaneous analysis of the network society, and of its conflictive challenges.[60]

Taking up this challenge for Canada, Steven Rosell argues that the 'methods of organizing and governing that were developed for a world of clearer boundaries and more limited flows of information' in the modern period are being transformed by the emergence of networks and the resulting 'restructuring of corporate and public bureaucracies; shifting boundaries between different sectors of society and levels of government; a growing interest in direct participation in decision-making; and new challenges to the legitimacy of many traditional institutions'.[61]

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[59] Dreyfus, Spinosa and Flores, *Disclosing New Worlds*, pp. 77, 86–8.
[60] Castells, *End of Millennium*, pp. 350–1.
[61] Steven A. Rosell, *Renewing Governance: Governing by Learning in the Information Age* (Toronto: Oxford University Press, 1999). Quotation is from the back cover.

Just as extensive practices of government are in global networks, so too are the strategies of democratic freedom that challenge them. The conduct of everyone in a network is affected directly or indirectly by the nodal practice of government, from suppliers of capital, goods, services and information to consumers and all those affected by the practice, its products and 'externalities', and thus they are 'participants' directly or indirectly. The ability to organise a disputation strategy across this governing network is essential to challenging the infrastructural practices of government at a distance that operate along the technological side of the network. Consequently, the organisation of strategies of freedom in practices of government enmeshed in contemporary global networks is different from modern forms of representative and extensive democratic organisations. These three distinctive features of democratic freedom in contemporary political globalisation – conduct, dispute resolution and networking – can be illustrated by a brief sketch drawn from environmental politics.[62]

An environmental dispute often begins when a specific practice of coordinated interaction is called into question by some of the participants. What they challenge is the way in which their activity is organised to act on the environment, either directly, in production, distribution and consumption, or indirectly, in the ways services obliquely affect the environment. For example, a multinational forestry company is confronted on one of its sites by employees or people affected by its practices. Their argument is that the way their action is governed leads them to relate to and act on the environment in a destructive manner, and thus needs to be changed.

The initial response to such a challenge is to deny that the way private sector corporations are organised to act on the environment is a legitimate issue of discussion. The time and efficiency constraints of the global market and the autonomous development of technology do not allow for a range of possible relations to the environment. These global processes determine the relation beyond negotiation. The practices of the company can be limited from the outside by the institutions of modern representative governments and international agreements, but not modified by the participants from the inside. To overcome this reply, the activists have to present plausible arguments that the challenge is itself a legitimate (extensive) democratic action, that the present relation to the environment is really destructive and could be otherwise, that local communities would not be adversely affected by the change, and a host of other legitimate concerns. This involves networking with a wide range of persons with specific expertise in the company, local

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[62] I discuss the following example in more detail in Chapter 3, this volume.

communities affected, global economics, academic communities and global communities of concerned specialists. Moreover, they need to organise another local and global network of people who are able to force the company to the negotiating table and to keep them there, from workers who want a clean environment for their children to consumers in distant countries who want environmentally benign products and investment portfolios.

The on-site negotiations are similarly complex and global, involving a range of stakeholders with a wide variety of concerns and modes of argumentation: non-unionised and unionised workers, the local Indigenous peoples with their land claims, the local community, tourist industries, logging companies and their suppliers and investors, environmental activists, various academic specialists, local and national political representatives, and experts in dispute resolution and implementation. The negotiations are in turn connected almost instantaneously to other similar negotiations across the globe at other sites and in various legal and political institutions. These negotiations are not free of power or disengaged. They are complex, strategic-communicative dialogues involving a wide range of knowledge and forms of argumentation, enmeshed in the very relations of power and identity formation that are at issue, and shot through with constraints of time, knowledge, partiality, inequality and conflicting interests.[63]

One of the aims of such negotiations is to bring the forest practice under the control of representative institutions and international laws.[64] This strategy is necessary and laudable in the long term, but it is insufficient. The general laws and regulations do not change the environmentally destructive form of conduct and identity formation from the inside; only the participants themselves, engaging in the democratic activity of disputing and modifying their modes of conduct, can do this. Environmental legislation can be watered down in distant representative institutions and manipulated, ignored and rolled back in practice by powerful economic interests. Finally, the contemporary trend to the global regulation of the environment appears to be ineffective and to go along with the disempowerment of local participants and their practices of democratic disputation and monitoring of the implementation of specific resolutions.[65] Therefore, for such

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[63] For the dilemmas of these complex forms of negotiation in contrast to the standard models, see Iris Marion Young, *Intersecting Voices: Dilemmas of Gender, Political Philosophy, and Policy* (Princeton: Princeton University Press, 1997), pp. 38–74.

[64] Cosmopolitan democracy is a good example of this long-term strategy to entrench environmental regulation at the local, national and global levels of governance.

[65] See Ralph Nader and L. Wallach, 'GATT, NAFTA and the Subversion of the Democratic Process', in *The Case Against the Global Economy: And for a Turn Toward the Local*, eds. Jerry Mander and

strategies of freedom to be effective, the participants must not only develop unique forms of networking for the phases of initiation, negotiation and resolution of disputes. They must also develop permanent networks to bind the immediate company and infrastructural agents to the implementation and review process of any resolution.

CONCLUSION

This chapter is a defeasible sketch of some forms of democracy in the context of contemporary globalisation. Much of it will have to be revised as humans exercise their strategies of freedom in these circumstances over the twenty-first century. Other political philosophers 'will fly farther'. Still, it has been possible to go some distance in adumbrating features of democratic practices that the owl and raven have in store for the twenty-first century. In deference to Hegel, the principle underlying the new and puzzling ones remains unclear, yet it appears to be an unsatisfied longing for a certain kind of democratic freedom of self-government. It seems to be a longing for concrete freedom within the diverse practices of government in which we find ourselves; a freedom to question and modify them *en passant*. From the perspective of my limited vantage point, the freedom of modern politics, defined in relation to representative popular sovereignty and the rule of law, appears in retrospect to be one particular form that this concrete democratic freedom of self-government can take, rather than the comprehensive understanding of human freedom, as it has been painted throughout the modern period. If freedom is indeed an always unsatisfied longing, then we can reasonably expect democracy to be widely practised in more diverse forms in the contemporary period.

If there is to be a distinctive political philosophy in the twenty-first century, it may well be a philosophy in motion, a philosophy that plays a mediating role in networking the cautious experiments with modifying our forms of conduct in practice with the constructive criticism of forms of knowledge and expertise in the academy. This would be a philosophy that combines the wisdom of the owl, who seeks to understand who we are and where we have come from, with the transformative ways of the raven, who is endlessly curious about where we are heading.[66]

CHAPTER 3

An ecological ethics for the present

I THREE APPROACHES TO THE CENTRAL QUESTION

In his address to the conference on environmental justice and global ethics from which this chapter derives, Arne Naess stated that the 'central question' is, 'how can the fact of cultural and philosophical difference on justice and nature be reconciled with the urgent need to deliver fair judgments in cases of conflict between development and the environment, exploitation and conservation?' I agree that this is one of the central questions of the present. The importance of the question is that it orients critical reflection not towards some abstract question of world-views or of an imaginary world beyond conflict, but towards what is happening here and now: to the conflicts over our relation to the environment and how they are to be addressed. In response, I would like to sketch an ethics, a way of thinking and acting, appropriate to this situation of environmental conflict in which we are engaged. By an 'ethics', I mean a public philosophy that enables people to analyse critically cases of environmental conflict on the one hand, and to act ethically and effectively to bring about fair judgments on the other.[1] I will begin by introducing this type of ecological ethics as a response to the limitations of two better-known alternative and complementary approaches.

(1) *Universal rights.* The most prominent approach is to try to work out very general principles of environmental justice that should apply to any situation of conflict. These principles are usually articulated in terms of universal rights and duties, and their global institutionalisation. David Held's theory of cosmopolitan democracy is an excellent example.[2] Notwithstanding its great strengths, cosmopolitan democracy has two limitations relative to Naess' central question.

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[1] See *Volume I*, Chapter 1 for this approach. I integrate the account of ecological ethics in this chapter into a broad characterisation of the civic practice of global/local citizenship in Chapter 9, this volume.
[2] Held, *Democracy and the Global Order* and Held, 'Democracy and Globalization'.

Its perspective is the long term, not 'the urgent need to deliver fair judgments' in immediate 'cases of conflict'. Also, it does not start from the present 'cultural and philosophical difference on justice and nature'. Rather, it takes 'autonomy' to be the supreme value and derives universal environmental rights, duties and institutions from it. Democratic discussions of conflicts over the environment take place within this framework of the accepted priority of autonomy and the rights and duties derived from it. This raises three objections. Firstly, as Charles Taylor argues, the very idea of deriving a system of justice from a single value is dubious. There are always several values, principles and goods brought to bear by participants in conflicts, whose ordering, interpretation and application are open to disagreement and which vary to some extent from case to case.[3] Secondly, most ecologists would not rank autonomy as highly as Held does, let alone exclusively, and thus the thought experiment by which he tries to establish it would fail. For example, Fritjof Capra suggests that the relevant ecological values are not autonomy, but 'interdependence, recycling, partnership, flexibility, diversity, and as a consequence of all those, sustainability'.[4] Thirdly, as we have seen in Chapter 9 of *Volume I*, if environmental justice is to be democratic, then the principles, values and goods that are brought to bear in a conflict must themselves be open to democratic discussion and debate. They cannot be decided monologically by a theorist but must be agreed to by the people affected by the conflict through democratic dialogue.

(2) *Discourse morality.* The other approach takes the 'democratic' objection seriously and leaves it to citizens themselves to reach agreements on the norms of environmental justice in processes and institutions of deliberation over cases of conflict. The aim of this dialogical or deliberative approach, accordingly, is to work out the conditions of fair and just deliberation among all those affected by a conflict over the environment. John Rawls' conception of an 'overlapping consensus' and Jürgen Habermas' theory of 'discourse ethics' are two well-known examples of this approach.[5] The basic idea is the rule of democratic legitimacy, *quod omnes tangit* – what affects all must be agreed to by all. In Habermas' formulation, the democratic principle D is that

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[3] Charles Taylor, 'Reply and Re-Articulation', in *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question*, ed. James Tully (Cambridge: Cambridge University Press, 1994), pp. 246–9.

[4] Fritjof Capra, *The Web of Life: A New Scientific Understanding of Living Systems* (New York: Anchor Books, 1997), p. 304.

[5] Rawls, *Political Liberalism* and 'Political Liberalism: Reply to Habermas'; Habermas, *Moral Consciousness and Communicative Action*, and Habermas, 'Reconciliation Through the Public Use of Reason'.

only 'those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse'.[6] However, as many commentators have pointed out, there are limitations to this approach as well. Both Rawls and Habermas screen out rather than allow for deep cultural and philosophical differences,[7] although a modified version of Rawls' theory has been advanced in response to this objection.[8] Yet, as Low and Gleeson persuasively argue, any reasonable and practicable global ecological ethics and politics 'should be specifically designed to reinforce and constitute' cultural diversity.[9]

A necessary condition of resolving disputes over the environment is that people's background conceptions of justice and nature are brought into the discussion and criticised through the exchange of reasons. This is, for example, the democratic way to bring about what many ecologists see as a paradigm shift from a mechanistic to an ecological view of nature.[10] However, in Rawls' theory, and models of dispute resolution based on it, a reasonable pluralism of conceptions of nature is accepted as the given background on the basis of which citizens enter into discussions to reach an overlapping consensus on principles of justice. Although this conservative approach may occasionally yield agreements on relatively shallow conflicts, it does not enable the participants to call into question the deeply sedimented background conceptions of nature that block fundamental change, such as the dominant view that environmental damage is an externality or that nature can sustain unlimited growth.

Although Habermas' theory allows for a wider range of critical questioning, it excludes from discussion the very form of ethical reasoning that ecological conflicts require according to the vast majority of ecologists. Habermas draws a sharp distinction between dialogical moral reasoning (where deontological questions of justice for each and every individual obtain) and dialogical ethical reasoning (where evaluative questions of the common good for the members of a community obtain) and holds that only the former has the capacity for universal and unconditional agreement.[11] For him, this differentiation of justice from ethics has to be accepted as an inescapable feature of modernisation.[12] However, for many ecologists it is precisely the attempt to differentiate the just from the good and to treat

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[6] Habermas, *Moral Consciousness and Communicative Action*, p. 66.
[7] See Tully, *Strange Multiplicity*; and Chapter 4, this volume.   [8] Laden, *Reasonably Radical*.
[9] Low and Gleeson, *Justice, Society and Nature*, p. 194.   [10] Capra, *The Web of Life*.
[11] Habermas, *Moral Consciousness and Communicative Action*, p. 108; William Rehg, *Insight and Solidarity: The Discourse Ethics of Jürgen Habermas* (Berkeley: University of California Press, 1994), pp. 92–150.
[12] Habermas, *Moral Consciousness and Communicative Action*, pp. 17–20.

humans as autonomous entities that is the basis of the conflict. For ethical ecologists, humans exist within, are dependent upon and are members of the web of life, the innumerable ecosystems that make up the living world, Gaia, which westerners call the 'environment'.[13] As Low and Gleeson conclude, 'the relationship between humanity and nature is best described as asymmetrically co-dependent. We can appreciate today that the survival of the natural world is dependent upon what humanity does. At the same time, humanity remains completely dependent for survival upon non-human nature, that is to say upon our planetary biosphere and all its inhabitants.'[14]

(3) *Ecological ethics*. This 'ecocentric' as opposed to 'egocentric' view of humanity's place in the world is the basis of the deep ecology, social ecology, ecofeminism and spiritual ecology.[15] In addition, it is the emerging vision of the interconnected network of all forms of life in the life sciences and systems theories.[16] Moreover, as Capra points out, it accords with the cultural and spiritual wisdom of the ages:

Ultimately, deep ecological awareness is spiritual or religious awareness. When the concept of the human spirit is understood as the mode of consciousness in which the individual feels a sense of belonging, of connectedness, to the cosmos as a whole, it becomes clear that ecological awareness is spiritual in its deepest essence. It is, there fore, not surprising that the emerging new vision of reality based on deep ecological awareness is consistent with the so called perennial philosophy of spiritual traditions, whether we talk about the spirituality of Christian mystics, that of Buddhists, or the philosophy and cosmology underlying Native American traditions.[17]

If a basic aspect of the human condition is an interdependent relation in the environmental network or web or life, then the question arises as to what ethical comportment should humans take to this relationship of interdependency within the larger eco-communities or ecosystems? The answer is that we should take up the appropriate attitude of care, concern, respect, responsibility and perhaps awe for the value of all living things which compose the larger web of life.[18] This ethical orientation to the common good of the eco-community will be an inseparable dimension, therefore, of any democratic discussion aimed at reaching fair judgments in conflicts over the environment. Of course, deontological questions of justice remain, but these cannot be discussed in isolation from the ethical questions of our relation to nature.[19] For example, the six 'principles of

[13] Capra, *The Web of Life*, pp. 3–16.   [14] Low and Gleeson, *Justice, Society and Nature*, pp. 155–6.
[15] Carolyn Merchant, *Radical Ecology: The Search for a Livable World* (London: Routledge, 1992), pp. 61–156.
[16] Capra, *The Web of Life*, pp. 157–285.   [17] *Ibid.*, p. 7.
[18] Low and Gleeson, *Justice, Society and Nature*, pp. 133–55; Capra, *The Web of Life*, p. 12.
[19] Low and Gleeson, *Justice, Society and Nature*, pp. 156–7.

ecological sustainability' presented by Mark Diesendorf and Clive Hamilton in *Human Ecology, Human Economy* illustrate the inseparability of ethical, moral and ecological considerations: the conservation of bio-diversity and ecological integrity, the conservation of cultural diversity, the improvement of individual and community wellbeing, intergenerational equity, the precautionary principle and community participation in decision-making.[20] If this analysis of humanity's relation to nature and an ethical orientation to that relation is correct, then Habermas has the relation between morality and ethics the wrong way round. It is ecological ethics that is global and universal whereas deontological morality is one limited, species-centric, or egocentric, perspective. This reaffirmation of the priority of ethico-political reasoning is one of the many lessons of the classic text on ecological political economy by Herman Daly and John Cobb, tellingly entitled *For the Common Good*.[21]

Accordingly, any ethical approach to ecology, including the one presented here, will address the central concerns of ethics: What ethical orientation should we take to our relationship of interdependency with other members of the web or community of life (care, stewardship, respect)? Why should we adopt this orientation (scientific, spiritual, pragmatic)? What practices of self and group formation should we engage in to constitute ourselves as fit members? What is the *telos* or good of this way of being in the world?[22] There is a plurality of answers to these concerns and so a plurality of ways of acting ethically in relation to the environment today, as there has been historically even within European societies.[23]

These considerations also lead to the reformulation of the democratic principle D. 'All affected' must include not just humans but all living things, and not just this generation but future generations. Since all cannot be actual 'participants in a practical discourse' over a case of conflict, they must be represented in some form. Hence, a realistic principle of democratic legitimacy will be a principle of representative democracy, under which at least some representatives will take up the responsibility for presenting the ethical considerations of care for all members in the web of life affected by the conflict in question.

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[20] Mark Diesendorf and Clive Hamilton, eds., *Human Ecology, Human Economy: Ideas for an Ecologically Sustainable Future* (St Leonards, Australia: Allen and Unwin, 1997), pp. 64–98.
[21] Herman Daly and John B. Cobb, *For the Common Good: Redirecting the Economy Toward Community, the Environment, and a Sustainable Future* (Boston: Beacon Press, 1994).
[22] Foucault, *The Use of Pleasure*, pp. 28–32.
[23] Clarence J. Glacken, *Traces on the Rhodian Shore: Nature and Culture in Western Thought from Ancient Times to the End of the Eighteenth Century* (Berkeley: University of California Press, 1967).

Finally, Habermas makes the highly idealised assumption that the practical discourse over how to resolve a conflict over the environment is free of relations of power. He does this in order to develop a normative form of argumentation which can be employed as a regulative ideal to judge the validity of any actual negotiation. However, rather than throwing critical light on actual cases of conflict and their resolution, this approach tends to lead to abstract and utopian theory.[24] If we are to develop a form of analysis that is enlightening and enabling with respect to actual cases of conflict, then it has to take the form of an immanent critique of, rather than an abstraction from, the existing relations of power in any process of democratic negotiation over an environmental conflict. I agree with Michel Foucault's objection to this feature of Habermas' discourse ethics and his alternative to it:

The idea that there could exist a state of communication that would allow games of truth to circulate freely, without any constraints or coercive effects, seems utopian to me. This is precisely a failure to see that power relations are not something that is bad in itself, that we have to break free of. I do not think that society can exist without power relations, if by that one means the strategies by which individuals try to direct and control the conduct of others. The problem, then, is not to try to dissolve them in the utopia of completely transparent communication but to acquire the rules of law, the management techniques, and also the morality, the *ethos*, the practice of the self, that will allow us to play these games of power with as little domination as possible.[25]

In summary, an appropriate ecological ethics for the conflictual world we inhabit will seek to overcome the limitations of these two better-known approaches in responding to Naess' central question. It will start from actual contests over ecologically damaging forms of conduct in relation to nature and the modes of dispute resolution that arise from them. It will accept value pluralism, cultural diversity and the principle of representative democracy, and allow for the critical discussion of cultural and philosophical differences over justice and nature, including egocentric and ecocentric orientations, in the process of reaching fair judgments. It will also analyse what lies at the centre of the conflict – the existing power relations that direct and control the disputed relations to nature – and this with an aim of changing these relations in accord with a more appropriate ethical mode of care for the network of living beings affected. It also will be an experimental

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[24] Ricardo Blaug, 'Between Fear and Disappointment: Critical, Empirical and Political Uses of Habermas', *Political Studies* 45(1), 1997: 100–17.

[25] Michel Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom', in *The Essential Works*, Vol. I, p. 298; and see *Volume I*, Chapter 3 for the basis of my adaptation of Foucault's approach in this chapter.

and prudential *ethos*, rather than a universal solution, in the sense that critical reflection on one experiment in modifying our relation to nature will provide the basis for the next.

The main aspects of this ecological ethics are presented in the following three sections: 'practical systems': the context in which conflicts over the environment arise; 'negotiations over the central question': the ethical and strategic activity of reaching fair judgments in cases of conflict democratically; and 'implementation and review': the responsibility of critically monitoring environmental agreements and their institutionalisation. A brief defence of this approach concludes the chapter.

2 PRACTICAL SYSTEMS

The first step in this ecological ethics is to examine the practical context in which the central question arises. The context is, as we have seen, a conflict between development and the environment or exploitation and conservation. That is, the way a specific form of organised activity or practice affects the environment is called into question and challenged, and a conflict arises over how to settle it between (schematically) those who support development and those who support sustainability. Before turning to the procedures of democratic negotiation, let us analyse the form of organised activity in which we are constituted as agents acting on nature and over which the dispute irrupts. This can be anything from the recycling of waste paper in an office to activities of resource extraction and production, that is, any coordinated human activity that affects the environment. I would like to adapt the form of analysis Michel Foucault and his students have developed for the critical study of conflicts or struggles to challenge and modify various practices of human activity. He calls the organised forms of human activity he studied throughout his career 'practical systems' and analyses them in the following way:

Here we are taking as a homogeneous domain of reference not the representations that men give of themselves, not the conditions that determine them without their knowledge, but rather what they do and the way they do it. That is, the forms of rationality that organize their ways of doing things (this might be called the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, modifying the rules of the game, up to a certain point (this might be called the strategic side of these practices). The homogeneity of these historico critical analyses is thus ensured by this realm of practices, with their technological side and their strategic side.

These practical systems stem from three broad areas: relations of control over things, relations of actions upon others, relations with oneself. This does not mean

that each of these three areas is completely foreign to the others. It is well known that control over things is mediated by relations with others; and relations with others in turn always entail relations with oneself, and vice versa. But we have three axes whose specificity and whose interconnections have to be analyzed: the axis of knowledge, the axis of power, the axis of ethics. In other words, the historical ontology of ourselves must answer an open series of questions; it must make an indefinite number of inquiries which may be multiplied and specified as much as we like, but which will all address the questions systematized as follows: How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own actions?[26]

The 'technological' side of a practical system is the context for ecological ethics and the 'strategic' side is the actual ethical activity in this context. Turning to the analysis of the four areas of the 'technological' aspect, a practical system will involve, firstly, relations of production and distribution that affect the environment. The participants in the system (such as workers, managers, distributors, consumers, investors) will be constrained to act in accordance with, to sustain and to develop these productive and distributive relations, or, from an ecological perspective, 'relations to the environment', as we can call them (roughly Foucault's 'relations of control over things'). Secondly, the conduct of the humans engaged in sustaining and developing these relations to the environment will be directed and controlled by two types of power relations, or, as Foucault calls them elsewhere, relations of 'governmentality' or simply 'government' in the broad sense of any mode of guiding the thought and action of others in a relatively stable and predictable way.[27] Their conduct will be governed more or less by the regulations and laws of the firm, sector, union, municipality, provincial and regional governments, nation-state, NAFTA, the General Agreement on Tariffs and Trade (GATT), WTO and international laws, treaties and agreements of various kinds. There will also be a complex system of governance, rarely democratic, of the specific practical system itself, involving the coordinated interaction of workers, unions, technicians, managers, directors, CEOs, shareholders, reflexive monitors and so on, through which the regulations and laws are operationalised or evaded.[28] Foucault's 'relations of action upon others' refers to both these types of power relations and the ways in which they constitute the forms of

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[26] Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, pp. 317–18.
[27] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, pp. 216–26; Dean, *Governmentality*, p. 42.
[28] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, pp. 217–19.

subjectivity of the practitioners of the system (that is, the mental and behavioural competencies characteristic of their roles).

Thirdly, members of a practical system will have distinctive ways of thinking and acting within the broad relations of governance of the system (what Foucault refers to as 'relations with oneself' or 'the axis of ethics'). Each of these three 'areas' involves forms of knowledge (scientific, technical, managerial, environmental, regulatory, administrative, economic, legal, political and psychological disciplines) that are employed in production and distribution, and in the governance of men and women. Fourthly, as Foucault mentions in another text, a practical system also involves 'relations of communication' through which the agents involved coordinate their various activities.[29]

As Mitchell Dean summarises, the analysis of the 'forms of rationality' of a practical system is a study of a system of governmentality:

Government [or governmentality] is any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through our desires, aspirations, interests and beliefs, for definite but shifting ends and has a diverse set of relatively unpredictable consequences, effects and outcomes. An analysis of government, then, is concerned with the means of calculation, both qualitative and quantitative, the type of governing authority or agency, the forms of knowledge, technique and other means employed, the entity to be governed and how it is conceived, the ends sought and the outcomes and consequences.[30]

Studies of four 'areas' of practical systems and their interconnections will be necessarily wide-ranging: examining both the local context and its global connections, what is happening right now and critical histories of the formation of the specific relations to nature.[31]

If the technological aspect of practical systems is the context in which humans are constituted as subjects acting on nature in a certain way, then the 'strategic side of the practices' is the freedom they have to call the practice into question, to enter into some form of 'conflict' and to seek to 'modify the rules of the game up to a certain point'. Any relation of power, no matter how strictly enforced, involves the possibility of freedom on the part of those over whom it is exercised. 'Power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be

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[29] *Ibid*., pp. 216–19.   [30] Dean, *Governmentality*, p. 42.
[31] Éric Darier, 'Foucault and the Environment: An Introduction', in *Discourses of the Environment*, ed. Éric Darier (Oxford: Blackwell, 1998); Paul Rutherford, 'The Entry of Life into History', in *Discourses of the Environment*.

realized.'[32] Hence, a case of conflict over some area of the technological organisation of a practical system is, in Foucault's terms, the strategic exercise of freedom by the members who call into question and challenge the prevailing 'rules of the game'. He characterises the permanent relation between power and freedom as an 'agonism', the permanent possibility of contesting, rather than acting in accord with, a relation of power:

At the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom. Rather than speaking of an essential freedom, it would be better to speak of an 'agonism'   of a relationship which is at the same time reciprocal incitation and struggle; less of a face to face confrontation which paralyzes both sides than a permanent provocation.[33]

An environmental conflict erupts, therefore, when some members of a practical system call into question and contest the degrading relation to the environment their organised activities sustain and develop. Applying the democratic principle that 'what affects all must be approved by all', any living member of the ecological web of life affected by the productive or distributive activities of a practical system, or their representative, may be considered a member with the democratic right to call the activities into question. Since the ecological effects of a local system are often global, there is a 'disjuncture', as Held puts it, between the traditional understanding of a democratic community bounded by a territorial nation-state and the global reach of environmental degradation.[34] For example, consumers or members of Greenpeace in distant countries organise democratically to boycott the products of Canadian forest companies in order to contest and modify their environmentally damaging forest practices, in concert with environmental activities at the local sites of forestry.

The emergence of local conflicts and democratic action throughout the affected network of life, independent of the country of origin of the environmental problem, may lead in the long run to the extension of the traditional legal and political institutions of Western representative democracy to the global level, as cosmopolitan democrats hope. However, this is not the case in the present. The emerging global institutions form an unacceptable and ineffective 'negotiated order' of global governance,[35] and the general trend of the institutions, such as NAFTA and WTO, is in the opposite direction: to disempower local democracies and deregulate production and

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[32] Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, p. 221.
[33] *Ibid.*, pp. 221–2.
[34] Held, *Democracy and the Global Order*, and Held, 'Democracy and Globalization', pp. 19–20.
[35] Low and Gleeson, *Justice, Society and Nature*, pp. 175–83.

distribution.[36] Rather, these forms of conflict, organised strategically in immediate response to the specific area of the practical system in which they are engaged, and coordinated with other site-specific struggles throughout the affected network of life, should be seen and studied carefully in their own right, as a quite distinct form of the 'relocalisation' or 'eco-networking' of democratic ecological politics.[37]

To call a specific relation to the environment into question, one needs of course to show how it adversely affects the environment, to be able to challenge the validity of the scientific knowledge that is employed to legitimate the practical system in its present form. It needs also to be shown that the relation could be otherwise, that this activity, or a suitable substitute, could be organised in a way that cares for and sustains the environment. It is easy enough to state this in general terms, as Herman Daly points out,[38] but, to be convincing in the negotiations leading to 'fair judgments', the case must always be made specifically; that is, for this locale and this ecoregion.[39] These changes in turn almost always entail modification in the four areas of the technological side of the practical system, even in the relations of communication, say, if only to get the proposed changes on the agenda. In order to be convincing, one needs to show that the prevailing form of organisation is historically contingent and could be otherwise, and indeed to be able to present an alternative that is ecologically sound and responsive to the legitimate concerns of those affected by the changes (workers, local groups, consumers and so on). Moreover, one needs knowledge of early attempts, or similar attempts elsewhere, to change the system in question, so that the strategic activity is not needlessly ineffective, easily co-opted or does not reinvent the wheel. This is why detailed studies of the technological side of the practical system are indispensable to an effective ecological ethics on the strategic side.

3 NEGOTIATIONS OVER THE CENTRAL QUESTION

Let us now imagine that some members of a practical system have been able to call its relation to the environment into question and those who exercise power have been constrained to respond by entering into negotiations of

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[36] Nader and Wallach, 'GATT, NAFTA and the Subversion of the Democratic Process'.

[37] Jerry Mander and Edward Goldsmith, eds., *The Case Against the Global Economy: And for a Turn Toward the Local* (San Francisco: Sierra Club Books, 1996), pp. 393–514; Foucault, 'The Subject and Power', in *Beyond Structuralism and Hermeneutics*, pp. 211–12.

[38] Herman E. Daly, 'Sustainable Growth? No Thank You', in *The Case Against the Global Economy*, pp. 195–6.

[39] Kirkpatrick Sale, 'Principles of Bioregionalism', in *The Case Against the Global Economy*.

some kind in order to resolve the conflict.[40] That is, it is a case of conflict in which Naess' central question arises. As we have seen, such a conflict can occur anywhere, from the traditional legal and political institutions of representative democracies, to negotiations over environmental amendments to NAFTA, to site-specific struggles of local democracy in the workplace, dump site, forests, stores and so on. More often than not, they occur across the two types of power relations that govern systems of production and distribution mentioned above: the negotiated order of local, regional, national and international governance, and the forms of governmentality of the practical system in question. Members of a practical system demand a say in the way in which they are directed to act on the environment, thereby democratising the system to that extent, and they coordinate these activities with traditional political and legal action.

The importance of the local action in the first instance is that it challenges an organised form of activity from the inside. Recall that a practical system constitutes to a considerable extent the characteristic ways of thinking and acting in regard to the environment of its members; that is, their forms of self-awareness and self-formation. The fact that they are able to challenge these powerful processes of subjectification shows that we are not completely determined by the systems in which we are engaged. Further, the challenge is not vague or abstract, unrelated to concrete practice, but a specific way of thinking and acting differently that emerges in the context of, and in an agonistic relation to, the sedimented structures of environmentally degrading activity it problematises. In this way, the practice of ecological ethics takes place on the ground of practical systems and the strategies of freedom to modify them from within.

In the first section, I enumerated the sorts of normative conditions that render such negotiations legitimate. The people and other living 'stakeholders' in the ecosystem affected by the contested form of activity, and so having a say directly or through representatives, will be various; they will have a variety of different concerns, and a variety of cultural and philosophical ways of seeing the situation and presenting their pros and cons.[41] The studies of the technological aspect of the practical system will equip ecologists to enter into the various specialised negotiations over the scientific, economic, legal and political ramifications of the current system and the proposed changes. In addition, the studies of the relations of power prepare participants to respond to fake negotiations, backsliding, bribes, threats to

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[40] For the background to this account of negotiation, see *Volume I*, Chapter 9.
[41] Young, 'Communication and the Other'.

close and relocate, and the like, as well as to organise their own networks of support both locally and globally.

One of the most difficult exercises in negotiating fair judgments is bringing the other side around from a perspective of unlimited growth and development to see the situation from an ecological point of view: that is, from our interdependency in the web of life and an ethical stance of care. The forms of practical reasoning in negotiations with others who have different perspectives are much more complex than simply taking a 'yes' or 'no' position on a proposed norm of action-coordination and giving one's reasons.[42] Those who wish to introduce an ecological orientation of sustainability need to show how it relates to the values, principles and goods the others already hold as well as showing how it answers their legitimate concerns about employment, efficiency, future generations and a host of other considerations. Furthermore, these discussions often take place across cultural, philosophical, class, gender, age, regional and other differences on the central issues.

At the heart of ecological ethics, therefore, is the principle of *audi alteram partem*, always listen to the other side. This is not simply a duty of respect to differently situated others who have an equally legitimate right to speak and be listened to. The way in which we listen to others who have different points of view, enter into multilogue to try to understand where they are coming from, then try to respond in a way that enables them to understand our point of view is also how we free ourselves from our own sedimented self-understanding of our relation to the environment. This difficult form of critical multilogue enables the participants to see the limited and partial character of their self-understandings; to begin to move around to a broader view of the relevant considerations; and so open the possibility of reaching a fair judgment. The negotiations are not simply a site of strategic bargaining. They are the intersubjective multilogues in which we come to acquire and appreciate the cultural and biological diversity of our interdependent relationship to all relevant aspects of the web of life.[43] This is a form of self-awareness and self-consciousness ('diversity' or 'aspect' awareness) appropriate to an ecological ethics.

Two examples will illustrate this point. As Naess suggests, negotiations are often characterised in such broad oppositions as 'development versus the environment' and 'exploitation versus conservation'. One of the advantages

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[42] David Walton, *The New Dialectic: Conversational Contexts of Argument* (Toronto: University of Toronto Press, 1998).

[43] Tully, *Strange Multiplicity*, pp. 183–212

of entering into complex negotiations with the kind of studies outlined above is that these broad oppositions tend to break down in the course of the discussions. The public negotiations over the forest system on the north-west coast of North America have been structured for many years around development versus care for the environment: development and employment were claimed to be dependent on respecting the imperatives of capitalist growth and the globalisation of the economy. By studying the local economy and the forest industry and its relations to the global economy, Michael M'Gonigle,[44] Patricia Marchak[45] and Jeremy Wilson[46] have shown that this is a misleading and disempowering way to structure the debate. They argue that present forest practices of extraction and export not only destroy the environment but also lead to a decrease in employment and the destruction of local communities and economies. Alternatively, M'Gonigle in particular has argued convincingly that ecologically sound forest practices organised on local and regional bases are compatible with, and the means to, an increase in local employment and a more diverse and self-reliant economy. Thus, by a careful analysis of the practical system and the possibility of modifying it, the way the discussions have been structured by the powers that be has been changed, and those concerned about jobs have been brought around to see their concern addressed persuasively from an ecological perspective.

The second example is negotiations involving land use with Indigenous peoples. As is now well known, Indigenous peoples bring to the negotiations quite distinctive practices in relation to nature.[47] If non-Indigenous people are to understand what they are saying and to learn from them, then they need to be able to free themselves from their own unreflective understanding of the environment and their relation to it, whatever it may be.[48] They can do this, as far as I know, only through the kind of critical dialogue of reciprocal elucidation sketched above, such as the 'two-way or *ganma* dialogue' developed by the Yolnga people of Arnhemland.[49]

[44] Michael M'Gonigle, *Forestopia* (Vancouver: Harbour Publishing, 1994).

[45] M. Patricia Marchak, *Logging the Globe* (Montreal: McGill Queen's University Press, 1995).

[46] Jeremy Wilson, *Talk and Log: Wilderness Politics in British Columbia* (Vancouver: University of British Columbia Press, 1998).

[47] Galarrwuy Yunupingu, ed., *Our Land is Our Life: Land Rights: Past, Present and Future* (St Lucia: University of Queensland Press, 1997).

[48] Peter Knudtson and David Suzuki, *Wisdom of the Elders: Honoring Sacred Native Visions of Nature* (Toronto: Stoddard Press, 1992).

[49] Helen Watson with the Yolnga community at Yirrkala and David Wade Chambers, *Singing the Land, Signing the Land: A Portfolio of Exhibits* (Geelong, Vic: Deakin University Press, 1989).

The objective of these discussions is not to exchange Western and Indigenous world-views on the environment, but to understand the different practices in which Western environmental knowledge and the traditional ecological knowledge of Indigenous peoples are embodied. The specific ecological practices of Indigenous peoples are analogous to the practices by which non-Indigenous peoples are led in their practical systems to recognise themselves under a specific relation to the environment. I do not see how we can understand what Indigenous peoples are trying to say about alternative ecological practices unless we have, by means of the analyses outlined above, grasped the ecological practices in which our own thought and action are shaped and formed. It puts us in a position to enter into a dialogue with them, to come around to see our relation to nature from their point of view, and so to begin the important and indispensable exercise of learning comparatively from each other's ecological practices through cross-cultural dialogue.

Historical studies of the formation of Western practices can also play an important critical role in these dialogues. In societies founded on the internal colonisation of Indigenous peoples, such as Canada, Australia, New Zealand and the United States, the destruction of the diversity of Indigenous cultures and the imposition of a dominant settler culture have gone along historically with the destruction of Indigenous biodiversity and the implantation of an 'imperial ecology'.[50] These two processes of subduing Indigenous peoples and Indigenous biodiversity, the strategies of freedom Indigenous and non-Indigenous peoples have exercised in resistance to them, and the long and uneven interaction between them are beginning to be studied historically. These historical studies enable us to think critically about our relation to nature in the present by showing that our current practices are neither necessary nor universal, but historically contingent and capable of being otherwise.[51]

Finally, any judgment reached by the negotiators, no matter how fair, will never be the definitive resolution of the central question or a consensus. There are several reasons for this. Asymmetries of power, knowledge, influence and resources will play their role in any negotiations. Real-time constraints entail that a judgment will be made before all those affected have been heard or have reached agreement. Unanticipated consequences in the

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[50] Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900* (New York: Cambridge University Press, 1986); and *Volume I*, Chapters 7 and 8.
[51] Carolyn Merchant, *Ecological Revolutions: Nature, Gender, and Science in New England* (London: University of North Carolina Press, 1989); William Cronon, *Changes in the Land: Indians, Colonists and the Ecology of New England* (New York: Hill and Wang, 1983).

implementation of the agreement may show that those who dissented were right after all. Moreover, in any complex discussion and agreement there is always room for reasonable disagreement.[52] As Foucault puts this rather obvious but often overlooked factor of indeterminacy:

With regard to the multiple games of truth, one can see that ever since the Greeks our society has been marked by the lack of a precise and peremptory definition of the games of truth which are permitted to the exclusion of all others. In a given game of truth, it is always possible to discover something different and to more or less modify this or that rule, and sometimes even the entire game of truth.[53]

The indeterminacy in games of truth holds in the specific case of the human and natural sciences of the environment as well (this is the example Foucault uses to illustrate his general point). It follows that in any agreement we reach on procedures, principles, ethics, scientific studies or policies with respect to the environment, including any ecological paradigm, there will always be an element of reasonable disagreement, and thus the possibility of raising a reasonable doubt and dissenting. Any judgment, whether global or local, will be a negotiated accommodation or reasonable compromise involving an element of non-consensus, not a definitive and peremptory consensus on the environment and our relation to it. Consequently, the agreement and its institutional implementation must themselves be seen as experimental and provisional: that is, open to review, question and challenge.

4 IMPLEMENTATION AND REVIEW

This form of ecological ethics, then, directs critical attention to the institutions of implementation of agreements on the environment just as much as to the principles and procedures for reaching agreements. There are two reasons for this. The first, as we have just seen, is the imperfection of any agreement. None will be the definitive resolution of the central question in a case of conflict. There will thus always be the need to review and often call into question its implementation, and so to begin all over again.

The second reason is that the agents come to the negotiations with an understanding of the practical system out of which the conflict has arisen and in which the agreement has to be implemented. So, their ethical concern will be to link, as closely as possible, the considerations of environmental

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[52] See *Volume I*, Chapter 9 for these factors.
[53] Foucault, 'The Ethics of the Concern for Self', p. 297.

principles, global ethics and policies embodied in the agreement with its institutionalisation and application in practice, where it modifies the way they act on the environment. Yet, there is a tenuous connection between local agreements, charters of environmental rights and duties, precautionary principles, laws and regulations on one side, and their interpretation and application in day-to-day and year-to-year practice on the other. The ways any rule can be followed are wide and divergent, not to mention the ability of powerful parties to drag their feet or dissimulate compliance. I am not saying that agreements and institutions across the negotiated order of governance from the local to the global are not important. Quite the opposite. Because there is neither a definitive form of them nor a self-guaranteeing mode of implementation, they are too important to be left beyond the bounds of ecological theory and practice, as if they were some sort of separate and merely supplementary field. Ecological ethics does not come to rest with an agreement or an institution. It is a permanent task.

CONCLUSION

In conclusion, I would like to respond to one objection to the form of ecological ethics I have outlined. As we have seen, this form of ethics is a response to the limitations of two better-known and more universal environmental approaches, cosmopolitan democracy and discourse ethics. In contrast to them, it tends to concentrate on the present and to ground ethical activity in local practices, networked with other similar activities; it also contemplates an ecologically sound global network of institutions and practices developing in due course and in unpredictable forms on this firm foundation. It is an ethics of thinking globally and acting locally. The objection is that there is a danger of being overwhelmed by global processes behind the backs and beyond the control of these fragile specific activities and their ad hoc networks.

One form of this objection is that the global system of capitalist production, distribution and finance is invulnerable to these specific struggles. Such an economic system requires a global and systemic response to counterbalance its environmentally damaging effects. In reply, I find this way of thinking about global capitalism misleading and disempowering. It is misleading because the capitalist economy is not a closed, well-defined, self-steering and boundary-maintaining system in the required sense implied by defenders of global capitalism on one side and ecosocialists on the other. Rather, as Theodore Schatzki argues, it is a complex network, or constellation of networks, of overlapping and criss-crossing heterogeneous

practical systems.[54] The systemic characterisation of global capitalism is disempowering because it makes it appear that ecologically concerned citizens are powerless to act where they live and work. If, conversely, the global system is a congeries of practical systems, then the most effective place to act is in the practical systems in which we find ourselves.

The second response is that this form of ecological ethics also looks forward to the long term, by promoting here and now the form of activity that will be constitutive of any ecological future. It consists in local democratic activity, and this democratic activity is oriented towards making the local, bioregional practices more ecologically benign and economically self-reliant. In this respect, it is in opposition to economic globalisation and the attempts to regulate the environment through global agencies, for, as was mentioned earlier, these tend to be ineffective and anti-democratic.[55]

The third response is that large-scale change in processes, structures and sedimented forms of thought that adversely affect the environment is brought about, I believe, by changing the practices in which they are embedded and reproduced. It is our routine acting that holds these seemingly autonomous systems in place. Acting differently, exercising our freedom here and now, can change them. This has been the teaching of the great philosophers of practice from Marx to Wittgenstein and Foucault, and I see no good reason to doubt it.

Finally, this practice-based approach has the potential of bringing together four areas of ecology that are currently fragmented: multidisciplinary studies of the practical systems in which we are constituted as subjects acting on nature; the local struggles and ecological movements that call these into question in practice; normative and empirical studies of the proliferating institutions and procedures of dispute resolution of conflicts over the environment; and critical, reflexive monitoring of the implementation of environmental accords. Analogous to the way Marx sought to reorient political economy around practical struggles over the relations of production in his day, this ethics could reorient political ecology around practical struggles over relations to the environment in our day.

Even if these responses have some validity, the risk of being determined by processes beyond our control remains. Our critical investigations and ethical activities are always limited, partly determined, humble, less than we hoped for. But this just means, as Foucault said in response to a similar objection, 'we are always in the position of beginning again'.[56]

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[54] Schatzki, *Social Practices*, pp. 221–5.
[55] Mander and Goldsmith, *The Case Against the Global Economy*.
[56] Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, p. 317.

The unfreedom of the moderns in comparison to their ideals of constitutional democracy

INTRODUCTION

This is a period of rapid constitutional and democratic change around the world. Old and new constitutions – local, national, supranational, regional, global – are in transition and so are old and new concepts of constitutionalism. One response of political philosophers has been to reflect critically on the prevailing principles of legitimacy of constitutional democracy in the light of these changes in practice, testing the adequacy of the principles in one direction and the legitimacy of the changes in the other. In this fourth chapter I would like to make a constructive contribution to this on-going European and North American debate over constitutional democracy by presenting and defending public philosophy and civic freedom as an effective way to criticise and democratise globalisation from above. I do this by starting within the debates over a range of dominant and agonistic approaches, and showing how, step by step, internal criticisms of their limitations lead to the more radical, practice-based and civic freedom-oriented public philosophy in a new key.

The first section provides a brief synopsis of work on the principles of legitimacy over the last ten years, laying out two principles of constitutional democracy and six main features of how they work together in testing the legitimacy of democratic constitutional practice. The second section sets out three large-scale trends of constitutional change in practice from the perspective worked up in section 1 and suggests that these trends threaten or diminish democratic freedom. The third section examines two major ways

in which political philosophers have responded to these trends by employing the principles of section 1. The fourth section examines a third response and uses it to sketch out a direction for further critical inquiry, one tied more tightly to the reciprocal elucidation of principles and democratic activity.[1] A short conclusion rounds off the discussion by comparing this interpretation of the present situation to Benjamin Constant's picture of the situation of constitutional democracy in Europe in 1819 in his famous speech at the Athénée Royal in Paris, 'The Liberty of the Ancients Compared with that of the Moderns'.[2]

I TWO PRINCIPLES AND SIX FEATURES OF CONSTITUTIONAL DEMOCRACY

From the exchange between Jürgen Habermas and John Rawls in 1995 to the present, two critical and abstract principles have been singled out as guiding norms for the critical discussion of the conditions of legitimacy of contemporary forms of political association.[3] These are (i) the principle of constitutionalism (or the rule of law) and (ii) the principle of democracy (or popular sovereignty). The principle of constitutionalism (or the rule of law) requires that the exercise of political power in the whole and in every part of any *constitutionally* legitimate system of political, social and economic cooperation should be exercised in accordance with and through a general system of principles, rules and procedures, including procedures for amending any principle, rule or procedure. The 'constitution' in the narrow sense is the cluster of supreme or 'essential' principles, rules and procedures to which other laws, institutions and governing authorities within the association are subject. In the broader sense 'constitution' includes 'the

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[1] This third response is the public philosophy set out in *Volume I*, Chapter 1.

[2] Constant, 'The Liberty of the Ancients Compared with that of the Moderns'.

[3] The exchange between Habermas and Rawls was first published in *The Journal of Philosophy* 92(3), 1995. Both authors republished their contributions with minor changes in collections with other works that help to explain the more technical terms of the debate: Habermas, 'Reconciliation Through the Public Use of Reason', in *The Inclusion of the Other*, and Rawls, 'Reply to Habermas', in *Political Liberalism*. My discussion of these two principles draws on Habermas and Rawls, but also on an important case by the Supreme Court of Canada in which the court's understanding of these two principles of legitimacy is explicated and then applied to the hypothetical case of the secession of a province from the Canadian federation, Supreme Court of Canada, *Reference re the Secession of Quebec*, pp. 14–72, particularly §§32–82. For my interpretation of the Reference case as an application of these two principles of legitimacy, subdivided into four principles for the particular context, see *Volume I*, Chapter 6. My formulation of the principle of constitutionalism in this paragraph follows the Supreme Court closely. The Supreme Court distinguishes between constitutionalism and the rule of law (§§70–8) but, like Habermas and Rawls, also uses 'constitutionalism' in the broad sense to cover both (§32).

rule of law' – the system of laws, rules, norms, conventions and procedures that govern the actions of all those subject to it.

The principle of democracy (or popular sovereignty) requires that, although the people or peoples who constitute a political association are subject to the constitutional system, they, or their entrusted representatives, must also impose the general system on themselves in order to be sovereign and free, and thus for the association to be *democratically* legitimate. The sovereign people or peoples 'impose' the constitutional system on themselves by means of having a say over the principles, rules and procedures through the exchange of public reasons in democratic practices of deliberation, either directly or indirectly through their representatives (in so far as they are trustworthy, accountable and revocable, and the deliberations are public). Such public acts usually occur in a piecemeal fashion by taking up some subset of the principles, rules and procedures of the system. These democratic practices of deliberation are themselves rule-governed (to be constitutionally legitimate), but the rules must also be open to democratic amendment (to be democratically legitimate).[4]

Habermas and Rawls follow Constant in calling the democratic principle the 'freedom of the ancients'. As Habermas writes, it is 'the political rights of participation and communication that make possible the citizens' exercise of self-determination'. I will call the freedom of popular sovereignty expressed by the principle of democracy 'democratic freedom', rather than 'ancient freedom', because it is 'the rule of the people'. If the rules by which the *demos* are governed are imposed by someone else, and even if they have a range of freedoms within this other-imposed regime, they are not self-governing, self-determining or sovereign, and are thus unfree. To be free democratically is not only to be able to participate in various ways in accordance with the principles, rules and procedures of the constitutional system, as important as this is, but also, and crucially, always to be able to take one step back, dissent and call

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[4] In some versions of the democratic principle, it is insufficient to have a say, directly or indirectly. It is also necessary to have a hand in the exercise of power over which one has a say: that is, to exercise public power together, rather than delegating it. I take this up in Chapter 9, this volume. I will take it as sufficient that the people or peoples of the association exercise public reasons together over public powers in negotiations that are tied to implementation. Although there is widespread agreement on these two principles of legitimation, there is disagreement on their formulation. Habermas formulates the principle of democracy in terms of two principles ('D' and 'U') and Rawls in terms of 'four stages' of the exchange of public reasons. Habermas, 'Discourse Ethics'; and Rawls, 'Reply to Habermas', in *Political Liberalism*, pp. 396–406. The Supreme Court of Canada prefers to work out case-specific formulations of the two principles.

into question the principles, rules or procedures by which one is governed and to enter into (rule-governed) deliberations over them, or usually over a subset of them, with those who govern. Habermas and Rawls also agree with Constant in holding that a modern constitutional democracy strives to 'combine' this democratic or 'political' freedom with the 'freedom of the moderns': in Habermas' formulation, the 'liberty of belief and conscience, the protection of life, personal liberty, and property – in sum, the core of subjective private rights'. These two types of freedom are often referred to as 'public autonomy' and 'private autonomy' respectively.[5]

In summary, a political association is legitimate if and only if it is equally constitutional and democratic: that is, the combination of *constitutional* democracy and *democratic* constitutionalism. The two principles are the basic law implicit in modern constitutions.

Critical discussion over the last decade has brought to our attention six features of these two norms of legitimation.

(1) The feature that has received the most attention is their critical and abstract character. They are 'critical and abstract' in the sense that they are not agreed to and applied directly in particular cases. Rather, they are background critical principles of judgment that *orient* participants in their critical discussion and contestation of the legitimacy or illegitimacy of a practice of governance. To put this another way, participants in political struggles bring very different and often conflicting traditions of interpretation, conceptions and weightings *of* constitutional and democratic considerations to bear on a case at hand. What is shared by neo-liberal democrats, social democrats, socialist democrats, feminist democrats, eco-democrats, pluralist democrats, communitarian democrats, agonistic democrats and cosmopolitan democrats is an abstract and critical democratic-constitutional *orientation* to the systems of cooperation in which they find themselves (see feature 3). They share, so to speak, a mode of problematisation of their political identity. Although the principles are 'abstract' in this sense,

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[5] Habermas, 'Reconciliation Through the Public Use of Reason', in *The Inclusion of the Other*, pp. 68–9, and compare Rawls, 'Reply to Habermas', in *Political Liberalism*, p. 396. Constant sometimes includes public autonomy or 'political liberty', the rights of democratic participation in representative democracies, within the 'freedoms of the moderns' (pp. 310–11), whereas at other times he separates the two in a manner similar to Habermas and Rawls and says they have to be 'combined' (pp. 323–8). In addition, Habermas often equates the principle of constitutionalism with the 'freedom of the moderns' on the assumption that the role of a modern constitution is to protect subjective rights or private autonomy. Although this is clearly one role of a modern constitution and it is often interpreted as *the* role, I, like Rawls and the Supreme Court of Canada, see it as one role among several and so will not equate the protection of the rights of private autonomy with the principle of constitutionalism.

they are not idle. They are norms immanent in the practices of political cooperation of late modernity, and thus they are the orientation of critical self-awareness and self-formation that one takes on in virtue of being a participant in these practices (see feature 6).[6]

(2) The two principles are 'equiprimordial'. They are equally basic. If the principle of constitutionalism gains priority over the principle of democracy, so the constitution is the foundation of democratic rights and institutions but is not itself subject to democratic deliberation, then the association is illegitimate. Politics is said to be reduced to 'juridification' and to suffer a 'democratic deficit', as, for example, in the European Union or in forms of liberalism that place the constitution prior to and independent of the practices of democratic dispute and amendment. If, conversely, the democratic principle gains priority, then the association is said to be illegitimate because it is 'a tyranny of the majority', without rules and procedures, or the licentious experience of 'empty willing'.[7]

(3) Coordination of the two principles involves an irreducible element of reasonable disagreement. There will always be disagreement among judges, representatives and citizens over the interpretation, procedures, application, institutionalisation and review in accordance with the orienting principles of constitutionalism and democracy in any instance; disagreements for which there will be good but non-decisive reasons on each side. This is

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[6] The immanence of the two principles in modern political culture, the plurality of rival yet reasonable traditions of interpretation and application of the principles, and the resulting critical orientation of participants are central to the approaches of Rawls and Habermas and to the contemporary theorists of other democratic-constitutional traditions mentioned in the text. Of course, it is possible to call into question this entire orientation from some other perspective. However, it is interesting to note, as Hegel did, how many of the attempts to do so are either caught up in the two principles in one way or another, and so involve a performative contradiction (as Habermas argues), or else border on idle speculation. For Hegel's argument, see Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000).

[7] See Habermas, 'Reconciliation Through the Public Use of Freedom', in *The Inclusion of the Other*, pp. 67–73; and Rawls, 'Reply to Habermas', in *Political Liberalism*, pp. 409–21. In 'Reconciliation', Habermas objected that Rawls subordinated the principle of popular sovereignty to the principle of the rule of law, as liberal democrats often do. Rawls replied that his 'political liberalism', in which the legitimacy of the basic structure of a political association rests on the exchange of public reasons among free and equal citizens, treats the two principles equally (see especially p. 407 and his reference to Frank Michelman: 'I take American constitutionalism … to rest on two premises regarding political freedom: first, that the American people are politically free insomuch as they are governed by themselves collectively, and second, that the American people are politically free in that they are governed by laws rather than men … I take them to be premises whose problematic relation to each other, and therefore whose meaning, are subject to an endless contestation.'). Rawls clarifies this further in 'The Idea of Public Reason Revisited', in *The Law of Peoples with the Idea of Public Reason Revisited* (Cambridge, MA: Harvard University Press, 1999). Habermas explores the co-equal status of the two principles further in 'On the Internal Relation Between the Rule of Law and Democracy'. (Sir Isaiah Berlin is an example of a liberal who grants priority, and sometimes exclusivity, to the principle of constitutionalism.)

obviously true in non-ideal circumstances of real-world politics, but it is also true in ideal theory, as Jeremy Waldron among others has argued. Reasonable disagreement and thus dissent are inevitable and go all the way down in theory and practice (including over the 'reasonable'). There thus will be democratic agreement and disagreement not only *within* the rules of law but also *over* the rules of law. This feature also explains why there are many rival conceptions and traditions of interpretation of democracy and constitutionalism (mentioned under feature 1).[8]

This third feature is called the 'agonistic' dimension of constitutional democracy because it entails that no rule of law, procedure or agreement is permanently insulated from disputation in practice in an open society. The democratic practices of disputation and contestation that were previously assumed to rest on permanent constitutional arrangements, to which the people were supposed to have agreed once and for all, are now seen to apply to those arrangements as well, and thus 'agonism' (the Greek word for contest) is seen to be a defining feature of democratic constitutionalism, one that partly explains and also reinforces the co-equal status of the two principles.[9]

(4) The next feature follows from the first three. Any democratic and constitutional political association, from a city to a multilayered global order, that seeks to legitimate its arrangements under these two co-equal principles will be a 'negotiated' constitutional order or a continuously 'conciliated' order. The constitution or the principles justifying it cannot be seen as a

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[8] See Jeremy Waldron, *Law and Disagreement* (Cambridge: Cambridge University Press, 1999), pp. 102–6; and *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999), pp. 153–4. Waldron argues that Rawls is committed to the earlier view that agreement is possible on constitutional essentials, but it is not clear that he is in *Political Liberalism*, pp. 54–8 and 'The Idea of Public Reason Revisited', where he suggests that there will always be a family of rival, reasonable political conceptions of justice. Habermas appears to continue to hold that there could be agreement on both the democratic procedures for testing a norm of action-coordination (a rule of law) and a proposed norm within the democratic procedures, in principle at least. However, it is not clear how we are to take these two types of consensus, given their ideal and quasi-transcendental status. If they are simply critical, rather than regulative, ideals (that is, ideals that are themselves open to criticism from another standpoint, and so always subject to the democratic exchange of reasons), then it is not clear that they are incompatible with the view that disagreement goes all the way down, over questions of the right as well as the good. This is, after all, the status of the two legitimacy principles as well, and it is the way his approach has been interpreted by some of his followers, such as Simone Chambers and Seyla Benhabib.

[9] For the agonistic dimensions of constitutional democracy, see Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993); Connolly, *The Ethos of Pluralization*; John Gray, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age* (London: 1995); and Chantal Mouffe, 'For an Agonistic Model of Democracy', in *The Democratic Paradox* (London: Verso, 2000). Mouffe argues that the disagreement and agonism result from the irreconcilability of the logics of the two fundamental principles of constitutionalism and democracy (pp. 1–35).

permanent foundation or framework which underlies democratic debate and legislation. They must be reciprocally subject to legitimation through practices of the democratic exchange of reasons by those subject to them over time. No sooner is a constitutional principle, rule or law laid down as the basis of democratic institutions, then it is itself open in principle to democratic challenge, deliberation and amendment. No particular negotiation and resolution will be definitive because there will always be the possibility of reasonable disagreement. Furthermore, particular negotiations will proceed in accord with some principles, rules and procedures whose constitutional legitimacy are not questioned in the course of the negotiations, on pain of infinite regress, but which must be open to democratic review in the future in order to be *democratically* legitimate.

In the earlier modern period, it was assumed that there was some definitive ordering of legitimate political associations towards which democratisation and constitutionalisation were tending. Consequently, the role of political philosophy was seen as working towards the definitive theory of justice or the definitive democratic procedures of legitimation in which citizens themselves could reach final agreements on the just ordering of their association. Now, as the result of two hundred years of constitution making and remaking, and of discussions of rival and changing theories of democratic-constitutional justice, we have a better understanding of how the two principles of legitimation work together in this open-ended and non-definitive manner. Democratic constitutionalism is an activity rather than an end-state. Its legitimacy does not rest on its approximation to some ideal consensus, but rather on the mutual relationship between the prevailing rules of law and the democratic and judicial practices of on-going disagreement, negotiation, amendment, implementation and review.[10]

The Supreme Court of Canada illustrates this feature in the *Reference re the Secession of Quebec*. While the clear and procedurally valid expression of the will of the majority of a member of a constitutional association for constitutional change cannot of itself effect that constitutional change unilaterally (such as secession of a province), it does constitute the exercise of the right to initiate constitutional change (the democratic principle) and

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[10] The 'negotiated', rather than 'foundational' character of democratic constitutionalism is the central theme of the Supreme Court of Canada, *Reference re the Secession of Quebec*, §§66–78. I have tried to show that reasonable disagreement and negotiation stem in part from the diversity of the members of contemporary constitutional associations and the complex relations among them, in *Volume I*, Chapter 6. Jo Shaw discusses constitutionalism in the EU in a similar manner in 'Postnational Constitutionalism', and 'Relating Constitutionalism and Flexibility in the EU', in *Constitutional Change in the EU: From Uniformity to Flexibility?*, eds. Gráinne de Búrca and Joanne Scott (Oxford: Hart, 2000).

thus does initiate constitutional negotiations over that change. The other members have a reciprocal constitutional duty to negotiate in good faith, but the negotiations must proceed in accord with the protection of individual rights, minority rights, the principle of federalism and so on (the constitutional principle).[11]

(5) The principles of constitutionalism and democracy are modified significantly by political globalisation. This is the most difficult feature to articulate briefly. In an earlier period it was thought that the sovereign people could act in a uniform and united way in the exercise of their public autonomy (for example, in a constituent assembly or civil society), over the constitution of one central representative government, and in a self-contained nation-state. These three assumptions were shared by both the Lockean and Rousseauian traditions. They are now seen to be untenable. Firstly, the people are diverse and dispersed: they exercise their democratic freedom in a multiplicity of sites. Secondly, the functions of government are not located in or controlled by a set of traditional representative institutions and their constitutional framework. There are as many 'practices of governance' as there are systems or practices of action coordination across the public, private and voluntary spheres, and in which individuals and groups have the right to have a say over the way their conduct is governed. This dispersion of practices of governance and of democratic freedom (often distantly related to the traditional institutions of representative government and the rule of law) is commonly called 'governance without government' or the spread of 'governmentality'. Thirdly, the diversification of peoples and governance is not contained within Westphalian, independent nation-states. The institutions and activities of constitutional democracies are increasingly a mixture of constitutional representative governments in nation-states and newer, overlapping and multilayered networks of governance that stretch from the local and regional through the national and federal to the supranational and global.[12]

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[11] Supreme Court of Canada, *Reference re the Secession of Quebec*, §§83–94 (see *Volume I*, Chapter 6). We can also see that the earlier understanding of constitutional democracy rests on the unrealisable assumption that the people could be, *simultaneously*, sovereign over the constitution (the democratic principle) and subject to it (the constitutional principle). Foucault argues that this sovereign and subject 'double' was one of the constitutive and unresolvable tensions of modern thought and practice in *The Order of Things*, pp. 312–28. The late-modern or post-modern 'negotiated' understanding of democracy and constitutionalism simply recognises that they cannot be resolved in any definitive way, thereby dissolving rather than overcoming the aporia, as Foucault suggests.

[12] The decentring of public autonomy and *loci* of governance is a central concern of Habermas in *Between Facts and Norms*. For an extension of his approach to global politics, see Linklater, *The Transformation of Political Community*. A slightly different view of these three global changes, called cosmopolitan democracy, is presented by David Held and his associates, summarised in Held,

This is not to say that every practice of governance is legitimate only if it operates in accordance with the principles of constitutionalism and democracy. Many forms of governance are often non-constitutional and non-democratic, coordinating the activity of the participants without their direct say: markets, property systems, administrative bureaucracies, families, corporations and regulatory regimes. However, it does mean that if a system of cooperation is not organised democratically and constitutionally, then it requires a public justification that can be made good to the people who are subject to it and its effects (justifications such as efficiency, competency, utility, a distinction between public and private tradition, and so on). And these justifications, for the reasons discussed under feature 3, must always be open to democratic disagreement and deliberation (by the types of citizen mentioned under feature 1).[13]

(6) The final feature is the pragmatic relationship of the principles of constitutionalism and democracy to practices of 'citizenisation'. Members of constitutional democracies become 'citizens' not only in virtue of a (amenable) set of constitutionally guaranteed rights and duties enabling them to participate in the institutions of their association. They also acquire their identity *as* citizens – a form of both self-awareness and self-formation – in virtue of exercising these rights: of participating in democratic-constitutional institutions and, more importantly, participating in the array of practices of deliberation over the existing institutions. Participation in these variegated activities (negotiations over the latest health and equity policy in the workplace, engagement in public debate over legal and political change, party politics and enacting legislation, interest groups, social movements, taking a law to court, deliberations over and voting in constitutional referendums, civil disobedience, and, at the extreme, the Lockean activity of overthrowing an unjust government and setting up a new one) creates the type of orientation mentioned in feature 1. A participant comes to acquire the identity of a citizen of a constitutional democracy; one who is aware that its institutions are

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'Democracy and Globalization'. The phrase 'governance without government' comes from Roseneau, 'Governance and Democracy in a Globalizing World'. The term 'governmentality' comes from Michel Foucault and his students: see Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999) and Dean, *Governmentality*. See the comprehensive synopsis of research in this area prepared by Neil Walker, 'The Idea of Constitutional Pluralism', *Modern Law Review* 65(3), 2002: 317–59. I have discussed some of these changes in *Strange Multiplicity*.

[13] The differences among the major schools of constitutional democracy (socialist, neo-liberal, ecological, etc.) consist in disagreements over the reasonableness of these justifications for shielding certain areas of contemporary societies from the exercise of public autonomy, standardly in the name of private autonomy. On the general requirement of a discursive justification that can be made good to all those affected, see Rainer Forst, 'Towards a Critical Theory of Transnational Justice', *Metaphilosophy* 32(1–2), 2001: 160–79.

legitimate to the extent that they stand the test of the principles of constitutionalism and democracy and who has formed the abilities of putting them to the test through practices of deliberation.

Participation in these practices of reason-exchanging citizenisation also confers legitimacy on the two principles and on the political association in which the democratic deliberation takes place, even though disputation is over the legitimacy of the association and disagreement is permanent. Citizens develop a sense of identification with the principles and the association to which they are applied not because a consensus is reached, or is on the horizon, but precisely because they become aware that, despite its current imperfections and injustices, the association is nonetheless not closed but open to this form of democratic freedom. It is a free association. This legitimacy-conferring aspect of citizen participation generates the unique kind of solidarity characteristic of constitutional democracies in the face of disagreement, diversity and negotiation.[14]

Let this stand as an incomplete and no doubt controversial summary of the recent critical discussion of conditions of legitimacy of contemporary constitutional democracies undergoing rapid change. The next section turns to three general trends in practice that have played a part in stimulating the critical discussion and so the elaboration of the six features. These are trends that appear illegitimate in the light of the principle of democracy. This sets the stage for the third and fourth sections, which attempt to show how the discussion of the six features has developed in three main phases in response to these trends. Elucidating the discussion in this reciprocal way to practice provides the equipment for a more appropriate critical approach to the study of constitutional democracies.[15]

2 THREE ILLEGITIMATE TRENDS IN COMPARISON TO THE PRINCIPLE OF DEMOCRACY

Three general trends in constitutional-democratic practice can be seen as illegitimate relative to the basic equality of the principles of constitutionalism

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[14] I am indebted to Anthony Laden, who, in a work inspired by Rawls, has rebuilt liberal political philosophy in response to the critical discussions of these six features, especially the last. See Laden, *Reasonably Radical*. For a different approach to identity formation in contemporary constitutional democracies, see *Volume I*, Chapter 5.

[15] These three constitutional trends are not the only trends that have stimulated reflection on constitutional and democratic legitimacy. They are, however, three trends that have been seen to be of questionable legitimacy under the principle of democracy, and so have helped to stimulate discussion of that principle and its relevance today. They may violate the principle of constitutionalism as well, but this important question must be set aside for now.

and democracy. These trends have become the sites of legal and political struggles in practice and critical reflection in theory.

The first trend is the processes of global juridification that are accompanying the economic processes of the globalisation of capital. The proliferation of hundreds of global regulatory regimes, such as NAFTA and the WTO, constitutes complex processes of global constitutionalisation. These constitutions lay down the basic rights and duties of individuals, peoples, states and private corporations that provide the conditions for the expansion of global, corporate capitalism. These constitutional regimes have the capacity to override domestic and national constitutions, forcing them to conform, and to free the economy from the democratic control of existing nation-states.

In view of the principle of democracy, this trend is of questionable legitimacy for two reasons. Firstly, the regimes of juridification do not establish new or renewed local and global representative democratic institutions to govern the economic processes for which they provide the constitutional underpinning. Even emerging global human rights regimes tend to favour the rights of private autonomy over public autonomy. This is unlike the historical development of nation-states and national economies, in which the constitutionalisation of market relations was confronted with the representative democratisation of the basic social and economic structure of these political associations, at least to some extent. Supranational and global regulatory regimes are non-democratic and often anti-democratic. Secondly, and more fundamentally, the discussion, design, establishment and monitoring of these constitutional regimes, including human rights regimes, do not pass through and are not subject to the democratic deliberation of the humans who are subject to them. This is a trend, therefore, in which a specific type of constitutionalism has gained priority, and perhaps exclusivity, over the principle of democracy. It is illegitimate because it violates the equality condition (feature 2) and, as a domino effect, the four following features.[16]

The second trend is the devolution and dispersion of political power and forms of political association. This refers to the proliferation of nations,

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[16] In general, see Held, *et al.*, *Global Transformations*, pp. 32–86, 149–234. For a detailed legal analysis of one 'economic constitution', see Steven Shrybman, *The World Trade Organization: A Citizen's Guide*, 2nd edition (Toronto: James Larimer, 2001). In this regard note also that the emerging rights regimes in the EU neither pass through democratic deliberation nor establish practices of democratic deliberation over rights. See Richard Bellamy, 'The Right to Have Rights: Citizen Practice and the Political Constitution of the European Union', in *Citizenship and Governance in the European Union*, eds. Richard Bellamy and Alex Warleigh (London: Continuum, 2002).

states and city-states since the beginning of political decolonisation in the 1960s; the dismantling and devolution of powers within federal states such as India, Canada and the European Union to sub-units under the pressures of the politics of recognition (multinationalism, multiculturalism and regionalism); the emergence of multilayered functional governance locally and globally; and the contracting-out of dispute resolution to ad hoc nodes with network-like relations to the more traditional institutions of representative democracy. On the one hand, this global trend towards legal and political pluralism, federalism and subsidiarity can be seen as the expansion of opportunities for the exercise of democratic freedoms. On the other, it is also a trend towards weaker political units. The new states, autonomous units within complex federations, and global political networks tend to be weak relative to the power of transnational corporations and their complementary regulatory regimes, such as the World Bank.[17]

Except for the United States and a few other G8 states, political units often lack the power to enforce democratic procedures and outcomes that challenge global corporations and their ability to move elsewhere. The result is that the relatively weak polities become trapped in a 'race to the bottom'. They reduce constitutional democracy to elections and the security and private autonomy required for the expansion of global capitalism in order to attract the economic development they require to remain solvent. In the poorest and weakest states even the basic democratic rights of assembly, association and free speech are curtailed and sweat-shop work conditions imposed. These political associations are unable to enforce the local self-determination, survival of linguistic and cultural diversity, economic self-reliance, self-determination or environmental safeguards they were set up to protect and promote. The trend to devolution and dispersion thus tends, to a significant degree, to support rather than challenge the trend towards global juridification and so is of questionable legitimacy for the same reason.[18]

The third trend is the decline of democratic deliberation and decision-making within the traditional institutions of representative nation-states.

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[17] Decentralisation in Canada, for example, finds support from those in favour of local democratic control on the one hand, and from the major lobby groups for large corporations on the other. For an introduction to the complexities of this second trend in relation to democracy and constitutionalism, see Gagnon and Tully, eds., *Multinational Democracies*; and Will Kymlicka and Wayne Norman, eds., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000).

[18] Richard Barnett and John Cavanagh, *Global Dreams: Imperial Corporations and the New World Order* (New York: Simon and Shuster, 1994); William Greider, *One World, Ready or Not: The Manic Logic of Global Capitalism* (New York: Simon and Shuster, 1997); Richard Falk, *Predatory Globalization: A Critique* (Cambridge: Polity Press, 1999); Held, *Democracy and the Global Order*, pp. 239–66.

The policies and decisions of representative bodies are increasingly the outcome of unaccountable ministries on the one hand, and a small circle of representatives elected through non-deliberative advertising campaigns and controlled by wealthy lobbying interests and media corporations on the other. Constitutional reform tends to be crafted by unelected experts and ratified by referendums subject to mass advertising and spectacles rather than democratic deliberation. Political powers are abjured to the market or passed to global regulatory regimes by small groups of unelected and unaccountable negotiators in private meetings whose self-consciousness has been shaped by careers in ministries or large corporations, not in practices of citizenisation. Citizen participation decreases and democratic apathy and malaise increases. Once again, this trend violates the principle of democracy, by diminishing the capacities and opportunities for democratic freedom.[19]

Finally, these three trends work together to insulate the growing global social and economic inequalities from public democratic discussion and reform. The only way to struggle effectively against these enormous inequalities in wealth and wellbeing is through the exercise of democratic freedoms in the most effective forums and also, by these means, to fight for formal democratic freedoms for the worst-off (who can then exercise them as they see fit). Yet, the trends make this difficult in the best circumstances (where democratic freedoms are constitutionalised) and an offence punished by exclusion, disappearance or death in the worst (where democratic rights cannot even be discussed). As a result, the unchecked inequalities further erode the very basic prerequisites of diet, health, knowledge and organisation necessary to exercise democratic freedom for an increasing percentage of the world's population, even though their condition is the direct effect of a global constitutional system of property rights over which they, by the principle of democracy, should have a right to a say.[20]

[19] Rawls, 'Reply to Habermas', in *Political Liberalism*, p. 407 ('the present system woefully fails in public financing for political elections, leading to a grave imbalance in fair political liberties; it allows a widely disparate distribution of income and wealth that seriously undermines fair opportunities in education and employment, all of which undermine economic and social equality'); Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Touchstone, 2000); Henry Milner, 'Civic Literacy in Comparative Context', *Policy Matters* 2(2), 2001: 1–39; Guy Debord, *Society of the Spectacle* (New York: Zone Books, 1994).

[20] Thomas Pogge, 'Priorities of Global Justice', *Metaphilosophy* 32(1–2), 2001: 6–24; Noam Chomsky, 'Socioeconomic Sovereignty', in *Rogue States: The Rule of Force in World Affairs* (Cambridge, MA: South End Press, 2000); Falk, *Predatory Globalization*, pp. 153–66.

This is a 'negotiated' constitutional order, to be sure, but it is negotiated by powerful, non-democratic actors, not by the democratic citizens and representatives, as feature four requires for legitimacy.

3 CRITICAL DISCUSSION OF THE TWO PRINCIPLES IN THE LIGHT OF THE THREE TRENDS

What can be learned from the experience described in the previous two sections? This section and the next aim to answer the question. The answer is evaluative and constructive: to elucidate the critical discussion summarised in section 1 in relation to the three trends of section 2 with the aim of proposing guidelines for the future critical understanding and study of constitutionalism and democracy in the changed circumstances of the twenty-first century. The discussion of the two principles of legitimacy is divided into three types of response to the constitutional changes in practice. The first two types of response are analysed in this section and the third in section 4.

The first response has been to accept these trends, either in an attitude of defence and celebration or of resignation and melancholy. The most influential celebratory side of this first response is neo-liberalism, but certain reformulations of social democracy, such as the 'third way', have also been influential. Here the coordination and governance of human interaction and cooperation by global markets and regulatory regimes, behind the backs of the impotent participants, is said to be inevitable and without alternative. In any case, it is far too complex and fragile for the subjects to have a democratic voice over the processes that govern them without introducing destabilising incompetence and inefficiency, which, after all, given the levels of apathy, no one wants. Rather, the demands of democratic-constitutional legitimacy are now met in the space of 'lifestyle politics' opened up and made possible by globalisation and juridification. One may now turn one's individual or collective life into a democratic enterprise; deliberating about, taking on and revising a wide range of careers, work relationships, consumption patterns, lifestyles, identities and voluntary associations around gender, cultures, languages, hybridity and the environment, and being free to change these as one chooses. Citizens, individually and in groups, enjoy the market 'freedoms of the moderns', especially of mobility, consumption and change, and are free to invent themselves as they move from role to role, and thus to live life like an actor, as Nietzsche predicted. Finally, while it is acknowledged that these modern freedoms are not yet available to the majority of the world's population, these 'developing' peoples are nevertheless said to be, in virtue of

being brought into global markets and regulation, on the trajectory of 'democratisation' (a redescriptive term that eliminates the principle of democracy).[21]

The other side of this first type of response is one of resignation, rather than celebration, in the face of global processes that are said to be beyond democratic-constitutional control. The reason for this melancholy attitude is that the modern freedom of lifestyle politics is seen as superficial at best. Given the enormous global inequalities, the freedom of consuming lifestyles is available only to the few, and even for this elite the range of options is narrow and shallow. The vast majority of the world are condemned at best to watch and try to imitate the rich and famous minority in a kind of global 'synopticon' and, at worst, to work in sweat shops to produce the commodities the minority consume.[22] Moreover, while all those involved in lifestyle politics are free in a restricted sense, the diverse identities, modes of conduct and choices by which they construct and reconstruct themselves in their private autonomy are subject to new and diffuse forms of non-democratic modes of 'governance without government' or governmentality that lack immanent practices of democratic freedom. In Michel Foucault's famous phrase, they are governed through their modern freedoms. As regimes of governmentality proliferate globally, they tend to bring more areas of life under their governance (the phenomenon of 'biopower'), coordinating lifestyles in the North and local participation in the South with the three trends of the previous section. And, on one speculative account, consitutionalism and popular sovereignty are sublimated into modalities of a global empire of governmentality.[23]

[21] Among the 'celebrators', Anthony Giddens is widely seen as one of the most sophisticated proponents of this response and defender of it against its critics. See Anthony Giddens, *The Third Way and Its Critics* (Cambridge: Polity Press, 2000). For a range of views of celebration and resignation, see David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalization Debate*, 2nd edition (Cambridge: Polity Press, 2003). For Nietzsche's prediction and the concerns he had regarding the possibility of acting together for a future good, see Paul Patton, 'Nietzsche and the Problem of the Actor', in *Why Nietzsche Still?*, ed. Alan Schrift (Berkeley: University of California Press, 1999).

[22] Zygmunt Bauman, *Globalization: The Human Consequences* (Cambridge: Polity Press, 1998); Alex Callinicos, *Against the Third Way: An Anti-Capitalist Critique* (Cambridge: Polity Press, 2001). For a range of voices of resignation, see Held and McGrew, eds., *The Global Transformations Reader*.

[23] For the roles of governmentality and biopower, see note 12 above, especially the indispensable work by Nikolas Rose, and for their global reach, in addition to James Roseneau, see Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), pp. 3–42, 219–350. Hardt and Negri are not resigned to these processes but argue that they create the possibility of democratic action (see below). For the co-optation of local participation and local knowledge in developing countries into global governance and Western development, see Peter Traintafillou and Mikkel Risbjerg Nielson, 'Policing Empowerment: The Making of Capable Subjects', *History of the Human Sciences* 14(2), 2001: 63–86.

Both the second and third types of response are critical of the three trends and of the celebratory and melancholy justifications of them. They reassert the co-equal importance of the principle of democracy and propose ways in which practices of democratic deliberation can be adapted to, and made good in, these circumstances. It is this critical research in North America and Europe that has spearheaded the discussion and elaboration of the two principles and six features summarised in section 1. The major difference between these critical responses is that the third response (the second critical response) is less abstract than the second and more closely and reciprocally related to practice. The second response is critical and 'theoretical' whereas the third response is critical and 'practical'.[24]

Both the second and the third responses can be characterised by three contrasts with the first response above. (i) To deliberate alone or in a private group as opposed to in public with fellow citizens; (ii) to deliberate about lifestyle politics as opposed to matters of common concern and public goods; and (iii) to deliberate in order to act within relations of governance over which one has no say as opposed to deliberating to act together in exercising political power over those relations. All this is not freedom but only a certain form of 'private' freedom. It is the disappearance of democratic freedom, standardly on the presumption that present neo-liberal constitutional democracy is the just and definitive end of political history, requiring only global diffusion and internal adjustments. In contrast to this complacent orthodoxy, the proponents of the two critical responses hold that democratic freedom makes its appearance only when subjects take up the task of acting as citizens in the three contrastive ways above. That is, they act in public with fellow citizens, about matters of common concern and public goods, and they exercise political power in and over the given relations of governance.

The second response is associated with Habermas and Rawls and the more theoretical elaboration of deliberative democracy and democratic constitutionalism. According to Habermas, the politics of Western societies has 'lost its orientation and self-confidence'. The triumphant neo-liberal parties have no interest in bringing these trends under democratic control, and they have no 'sensibility' for the human resource that is most endangered, 'the social solidarity preserved in legal structures and in continual need of continual regeneration'. Consequently, 'behind the hackneyed rhetoric, timidity reigns'. Notwithstanding this dominant discourse, he claims there is an underlying 'unrest' for democratic self-determination:

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[24] For the differences between these two Enlightenment traditions of legal and political philosophy, see *Volume I*, Chapter 3.

the unrest has a still deeper source, namely, the sense that … the rule of law cannot be had or maintained without radical democracy. In the final analysis, private legal subjects cannot come to enjoy equal individual liberties if they do not *themselves*, in the common exercise of their political autonomy, achieve clarity about justified interests and standards. They themselves must agree on the relevant aspects under which equals should be treated equally and unequals unequally.

His philosophical task, accordingly, is to turn his 'hunch' of an unrest for democratic freedom into a theoretical 'insight'.[25]

Similarly for Rawls, in conditions of injustice reasonable citizens will strive to exercise their democratic freedom. When Habermas claimed that Rawls accepts the subordination of the principle of democracy to the principle of consitutionalism, Rawls replied:

[I]t is not clear what is meant by [Habermas] saying that citizens in a just society cannot 'reignite the radical democratic embers of the original position in civic life.' We are bound to ask: Why not? For we have seen above in considering the four stage sequence that citizens continually discuss questions of political principles and social policy. Moreover, we may assume that any actual society is more or less unjust usually gravely so and such debates are all the more necessary. No (human) theory could possibly anticipate all the requisite considerations bearing on these problems under existing circumstances, nor could the needed reforms have already been foreseen for improving present arrangements. The ideal of a just constitution is always something to be worked towards. [W]henever the constitution and laws are in various ways unjust and imperfect, citizens with reason strive to become more [publicly] autonomous by doing what, in their historical and social circumstances, can be reasonably and rationally seen to advance their full autonomy.[26]

The primary focus of the second response has been to clarify the two principles of legitimacy and their co-equality, the practices of deliberation and the exchange of public reasons among free, equal and diverse citizens, the critical and abstract character of the two principles, the role of the courts in balancing the principles and exemplifying the exchange of public reasons, and how practices of citizen deliberation might be engendered in practice. It has been responsible for getting various approaches of deliberative democracy and cosmopolitan democracy on the research agenda and clarifying the first two features of the principles.

In its early phase (as was briefly introduced in section 1), this response tended to assume that the exercise of public autonomy within and over the

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[25] Habermas, *Between Facts and Norms*, p. xlii.
[26] Rawls, 'Reply to Habermas', in *Political Liberalism*, pp. 401–2. Even if a constitution were perfect, Rawls stresses (following Rousseau), the exercise of public autonomy would be necessary for legitimacy and the creation of citizens (pp. 402–3).

rules of constitutionalism is oriented towards a definitive consensus or agreement; the exchange of public reasons applies only or primarily to constitutional essentials and the basic structure of constitutional democracy; and democratic deliberation takes place within self-contained nation-states. Correspondingly, the role of political philosophy was assumed to be to develop a comprehensive theory of justice or of procedures of public reasoning within which citizens themselves could reach agreement on definitive constitutional principles.

   These assumptions were called into question and shown to be untenable by reflection on practice and by the sorts of considerations that led to the last three features discussed in section 1. But they were also undermined by reflection on the principle of democracy itself. If citizens are to be free, then the procedures by which they deliberate, the reasons they accept as public reasons and the practices of governance they are permitted to test by these democratic means must not be imposed from the outside (that is, legislated by theoretical reason or a constitution beyond amendment), but must themselves be open to deliberation and amendment *en passant* (not all at once) – in the course of the exchange of reasons – as the equality of the principle of democracy requires. The entire exercise of democratic freedom in relation to the existing rule of law must be intersubjective and open-ended practical reasoning.

4   THE THIRD RESPONSE: A CRITICAL AND PRACTICAL APPROACH

This transition to the equality of democratic practices relative to the principles, rules and procedures of constitutionalism, which marks the transition to the third response, also transformed the role of political and legal philosophy. The role of philosophy could no longer be to reflect on practices of democratic deliberation from the allegedly higher-order perspective of theoretical reason and to legislate the procedures and limits of public reasons from outside the democratic exchange of reasons: that is, it should be 'political not metaphysical'.[27] When philosophers and theorists work on the best procedures for democratic deliberation and what count as

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[27] The phrase comes from John Rawls, 'Justice as Fairness: Political not Metaphysical', in *Collected Papers* (Cambridge, MA: Harvard University Press, 1999). As I mentioned in note 8, it is a matter of debate whether Rawls and Habermas accepted the full force of these arguments, and thus if their later work should be seen as making the transition to the third stage. For a sample of deliberative democracy representative of the second response, see James Bohman and William Rehg, eds., *Deliberative Democracy: Essay on Reason and Politics* (Cambridge, MA: MIT Press, 1997).

public reasons, and when they propose their rival conceptions of justice, they are on a level playing field with fellow citizens, representatives and judges. They are dialogue partners with them. They start from and exercise the same types of reflective practical reasoning as other participants, aiming to bring critical clarification to existing or possible practices of deliberation by presenting their (contestable) reasons to their fellow citizens, rather than prescribing the bounds of reason to them. They too learn to exchange practical reasons about this matter through practice.[28]

This transition to a critical and practice-oriented philosophy is the first and defining characteristic of the third response. These scholars have built on the earlier work of the second response, exposed its shortcomings and elaborated features 3 to 6. They have shifted from an abstract and prescriptive stance to a contextual and dialogical approach to the democratic practices in which citizens come to acquire the abilities to exchange public reasons in the complex circumstances of our times. This is, so to speak, a transition from the more metaphysical orientation of the Kantian and neo-Kantian Enlightenment to the practical orientation of the rival Enlightenment – of Rousseau, Constant, Hegel, Marx, Dewey and Foucault, who insisted that philosophical inquiry be reciprocally related to practice through mutually enlightening dialogues and aimed at enhancing democratic freedom.[29]

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[28] This transition to seeing political philosophy as a species of 'practical philosophy' is often associated with the work of Richard Rorty and especially his article, 'The Priority of Democracy to Philosophy', in *Philosophical Papers*, Vol. I, *Objectivity, Relativism and Truth* (Cambridge: Cambridge University Press, 1991), without accepting the particular inferences he draws from it, and the work of Charles Taylor, *Philosophical Arguments*. For this transition and Rorty's contribution, see *Volume I*, Chapter 4; and Matthew Festenstein, 'Pragmatism, Social Democracy and Politics', in *Richard Rorty: Critical Dialogues*, eds. Matthew Festenstein and Simon Thompson (Cambridge: Polity Press, 2001). For an account of the transition and its implications for liberal political philosophy, see Laden, *Reasonably Radical*, pp. 14–16. For an agonistic account, see Mouffe, *The Democratic Paradox*, pp. 60–107. For a broader historical account of this way of thinking about constitutional democracy, see Tully, *Strange Multiplicity*, pp. 103–16, 209–12, and *Volume I*.

[29] For a more detailed and internal account of this transition, to which I am indebted, see James Bohman, 'The Coming of Age of Deliberative Democracy', *Journal of Political Philosophy* 6(4), 1998: 399–423; and John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000). For the case for seeing this transition in terms of Rousseau and Hegel, see Laden, *Reasonably Radical*, pp. 1–73. For the relevance of Dewey, see Matthew Festenstein, 'Inquiry as Critique: On the Legacy of Deweyan Pragmatism for Political Theory', *Political Studies* 49(4), 2001: 730–48. Several authors of the third response remain neo-Kantians, but their Kantianism has been tempered by the practical objections of Hegel, Marx, Dewey and Rorty. For an example, see Simone Chambers, *Reasonable Democracy: Jürgen Habermas and the Politics of Discourse* (Ithaca, NY: Cornell University Press, 1996). For the formulation of the critical and practical Enlightenment to which my analysis is indebted, see Foucault, 'What is Enlightenment?'.

The next maxim of this critical and practical approach is feature three: the acceptance of reasonable disagreement all the way down (in theory as well as practice), not only over different conceptions of the good within a framework of fundamental principles of justice, procedures of deliberation or constitutional essentials, but over any such framework as well. If this is true, then 'dissent is inevitable' among citizens, representatives, lawyers and supreme court justices, as well as theorists.[30] As a consequence, the orientation of practical philosophy should not be to reaching final agreements on universal principles or procedures, but to ensuring that constitutional democracies are always open to the democratic freedom of calling into question and presenting reasons for the renegotiation of the prevailing rules of law, principles of justice and practices of deliberation. Hence, the first and perhaps only universalisable principle of democratic deliberation is *audi alteram partem*, 'always listen to the other side', for there is always something to be learned from the other side.[31]

The contestable character of constitutional democracy should not be seen as a flaw that has to be overcome. The democratic freedom to disagree and enter into agonistic negotiations over the prevailing constitutional arrangements (or some subset of them) and the dominant theory of justice that justifies them (such as the first response) is precisely the practice of thought and action that keeps them from becoming sedimented – either taken for granted or taken as *the* universal, necessary and obligatory arrangements. At the beginning of Western constitutionalism, Socrates, in the *Apology*, argued that this freedom of constantly questioning in dialogues what we think we already know about democracy, for which he was willing to die, is the very activity that improves it.

Accordingly, the major contribution of agonistic democrats has been to stress the manifest reality of partisanship, dissent, disagreement, contestation and adversarial reasoning in the history and present of democratic societies and the positive role it plays in exposing and overcoming structures of inequality and injustice, fostering a critical democratic ethos and, *eo ipso*, creating autonomous citizens with bonds of solidarity across real differences (feature 6). They have argued this against the non-adversarial, classless ideology of constitutional democratisation of the neo-liberal and third-way defenders of the three trends (of the first response) and against the

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[30] Supreme Court of Canada, *Reference re the Secession of Quebec*, §68.
[31] For the reasons supporting this claim, see *Volume I*, Chapter 9. Flexible institutions of adversarial negotiation and the correlative principle of *audi alteram partem* in response to the fact of reasonable disagreement constitute the main proposal of Stuart Hampshire, *Justice is Conflict* (Princeton: Princeton University Press, 2000).

exclusionary and assimilative dangers of the consensus models of deliberation and the abstract and universal conception of public reason (of the second response).[32] By exchanging pros and cons in dialogues with partners who see the constitutional arrangement of a shared political association differently and who can give reasons for their views, citizens are empowered to free themselves from their partial and limited views to some extent (often assumed to be universal), reflect critically together on them and negotiate the modification of the relations of meaning and power that bear them: that is, to think and act differently.[33] After all is said and done, the democratic-constitutional citizens are not Lenin. They do not aim for the end of politics and the administration of things. They are more akin to young Olympian athletes who greet the dawn's early light with a smile, rise, dust themselves off, survey their gains and losses of the previous days, thank their gods for such a challenging game and such worthy opponents, and engage in the communicative-strategic agon anew.

As we have seen, this approach is committed to bringing these philosophical discussions into the closest possible relationship with practices of democratic struggle on the ground. For otherwise there is at best a tenuous link between abstract discussion of principles and concrete practice, and legal and political philosophy tends to promote a kind of idle, talk-show chatter about public reason in some mythical public sphere, overlooking the situated knowledge, local skills and passionate partisanship of real democratic deliberation.[34] However, when scholars turned to practice, rather than seeing only the traditional, discrete institutions of constitutional-representative democracy, which set the framework for critical reflection for the last two hundred years, they discovered the much more complex negotiated political associations of feature 5 and the three dominant trends outlined in sections 1 and 2. The study of practices of democratic deliberation could not be restricted to constitutional essentials and constitutional referendums nor to the genres of adversarial reasoning in the traditional legal and political institutions. To test the constitutional and democratic

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[32] See the references to this literature at note 9. Disagreement and contestation have been accepted also by neo-republicans such as Philip Pettit (*Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997)) and Richard Bellamy (*Liberalism and Pluralism: Towards a Politics of Compromise* (London: Routledge, 1999)); liberals such as Anthony Laden (*Reasonably Radical*, pp. 194–9); and deliberative democrats such as John S. Dryzek (*Deliberative Democracy and Beyond*).

[33] For an attempt to reformulate this Socratic insight into critical dialogue in the terms of hermeneutics, critical theory and genealogy, see Herbert Kogler, *The Power of Dialogue* (Cambridge, MA: The MIT Press, 1999).

[34] These are standard objections to the second response. For an excellent example from a practice-based perspective of 'civic activism', see Dreyfus, Spinosa and Flores, *Disclosing New Worlds*, pp. 69–89.

legitimacy of dispersed, overlapping and multilayered regimes of constitutional democracy, it is necessary to study the practices of democratic freedom – the modes of dispute conciliation – in any practice of governance in which those subject to, or affected by it, seek to reignite the embers of public autonomy and have an effective say over how their conduct is governed.

The methodological implication of feature 5 is to shift to the study of the motley of practices of democratic freedom vis-à-vis practices of governance, of which the traditional courts, representative institutions, public sphere and constituent assemblies are now seen as an important regulative subset rather than the constitutive set. Furthermore, this requires a broader and more fitting language of description of the object domain of legal and political philosophy, namely the emerging language of 'nodes' (of governance and practices of democratic freedom) in negotiated 'networks'. Again, this redescription does not displace the traditional language of description of constitutional representative democracy, as the hyper-globalisers advocate, but relocates this familiar vocabulary as one important and enduring family in larger and more complex languages of networks of rule and democratic freedom.[35]

From this broadened horizon, the critical study of democratic freedom includes research on the multiple forms of democratic activism and negotiation in practice that the legal scholar Richard Falk calls 'globalisation from below', in contrast to the 'globalisation from above' of the first trend and the 'race to the bottom' side of the second trend (section 2).[36] By 'globalisation from below', Falk does not mean that the exercise of popular sovereignty occurs uniquely in the lowest stratum of some new, overarching global hierarchy.[37] This would be to miss what the metaphor of a network is meant to convey, namely that hierarchies of money, power, discourse and violence exist within shifting networks of direct and indirect communication, rule and insubordination. Rather, as Jeremy Brecher, Tim Costello and Brendan Smith explain (adapting the work of Michael Mann to Falk's

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[35] I owe this general way of putting the transformation of the language of description from a 'Westphalian' to a 'global' perspective, without downplaying the continuing importance of the traditional institutions of representative democracies, to David Held. See Held *et al.*, *Global Transformations*. See Chapter 2, this volume. For the corresponding transformation in the orientation of deliberative democracy to concrete practices of governance in networks, see Dryzek, *Deliberative Democracy and Beyond*, pp. 115–40, Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), pp. 236–76.

[36] Richard Falk's approach of 'globalisation from below' is set out in *Predatory Globalization*.

[37] For example, Hardt and Negri locate democratic activity in the lowest stratum of a traditional, three-tiered global hierarchy. See *Empire*, pp. 309–14.

insight), globalisation from below refers to the irruption of public autonomy in 'interstitial locations' or the:

> nooks and crannies in and around the dominant institutions. Those who were initially marginal then link together in ways that allow them to outflank those institutions and force a reorganization of the status quo … At certain points, people see existing power institutions as blocking goals that could be obtained by coop eration that transcends existing institutions. So people develop new networks that outrun them. Such movements create subversive 'invisible connections' across state boundaries and the established channels between them. These interstitial networks translate human goals into organizational means.[38]

While this form of interstitial democratic freedom is exemplified by NGOs, globalisation from below can refer as well to the wider range of actors who, through a variety of ways of having a say and renegotiating the rules of the game anywhere in the network of regimes of governance, aim to approximate feature 4 (a democratically negotiated constitutional order), as Falk and Brecher *et alii* illustrate. For example, one side of the second trend comprises attempts to increase democratic legitimacy and self-determination through subsidiarity, devolution and federalisation of traditional institutions of government, not through bypassing traditional representative institutions. For another, attempts to make representative institutions more representative of the culturally diverse electorate through proportional representation, whether within nation-states or a second chamber at the UN, seek to strengthen rather than go beyond traditional institutions of constitutional and democratic association.[39]

In sum, these are struggles *of* and *for* democratic freedom, practices of freedom in which democratic actors seek, by means of traditional and new forms of deliberation and negotiation, to challenge and modify the non-democratic ways they are governed. By relating the theoretical discussion of the principles of constitutionalism and democracy to research on these concrete practices of democratic freedom and reworking the languages of description and evaluation accordingly, the third response answers the objections of activists to the abstractness and irrelevance of the second response and establishes a new working relationship between philosophers and democratic activists in which they learn from each other.[40]

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[38] Jeremy Brecher, Tim Costello and Brendan Smith, *Globalization from Below: The Power of Solidarity* (Cambridge, MA: South End Press, 2000).

[39] For these examples, see Gagnon and Tully, eds., *Multinational Democracies*.

[40] For these objections and the kind of response I have laid out here, see Iris Marion Young, 'Activist Challenges to Deliberative Democracy', *Political Theory* 29(5), 2001: 670–90. Both Falk, *Predatory*

The results of this kind of critical and practical inquiry by means of reciprocal elucidation so far provisionally suggest that there are two major types of relations of meaning and power that render contemporary citizens unfree. These are relations of communication and governance that arbitrarily or unnecessarily constrain citizens from exercising their democratic freedom to engage in effective practices of deliberation and negotiation of the rules by which they are governed. They constrain the major democratic struggles today, such as those over recognition, distribution or the environment, because the exercise of democratic freedom is the condition of possibility of these kinds of democratic struggle, or of any other kind.[41] These comprise the major means by which the trends of section 2 are able to dominate present constitutional change, unchecked and unbalanced by those subject to them. For the purposes of brief exposition, these two categories of unfreedom can be classified as *relations of exclusion* and *relations of assimilation*.[42]

Relations of exclusion refer to the various ways in which citizens are excluded from initiating and entering into practices of democratic negotiation. In many cases, subjects are formally excluded, by modern slavery, the denial of democratic rights of association and organisation, and military intervention to crush movements of popular sovereignty and impose rule from the outside, either directly or mediated through the post-colonial forms of indirect control exercised by transnational corporations and global regulatory agencies.[43] There is also a variety of forms of exclusion where democratic rights are formally guaranteed. As Noam Chomsky has documented many times, powerful states such as the United States and its allies profess support for democratic rights and the United Nations Universal Declaration of Human Rights while pursuing foreign policies that ignore, support or instigate their abuse and subvert international human rights

Globalization, pp. 125–85, and Brecher, Costello and Smith, *Globalization from Below*, set out detailed proposals for uniting normative theory and democratic activism. For an important reformulation of feminist philosophy around practices of democratic activity, to which I am indebted, see Cressida Heyes, *Line Drawings: Defining Women Through Feminist Practice* (Ithaca, NY: Cornell University Press, 2000).

41 For a more detailed account of 'practices of freedom', adapted from Foucault's initial use of this concept, and the points that follow, see Chapters 2 and 3, this volume. For a similar account of freedom as forms of democratic activity, see Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), pp. 3–29.

42 For an introduction to the analysis of specific types of exclusion and assimilation in practices of deliberation, see Laden, *Reasonably Radical*, pp. 131–85; Young, *Inclusion and Democracy*, pp. 16–153; James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge, MA: MIT Press, 1997); Brown, *States of Injury*.

43 See references at notes 18 and 20. For modern slavery, see Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 1999).

institutions when it suits their economic and geopolitical interests.[44] In more subtle types of cases, subjects with formal democratic rights are unable to exercise them due to lack of money, time and knowledge, because their voices are not taken seriously due to deep-seated class, racist and sexist stereotypes, or because their job hangs on their silence.[45] Another common form of exclusion in the face of democratic rights occurs when the actors responsible for the exclusion are not accountable to the local rights regime (the problem of the third trend in section 2).

The most outstanding form of exclusion remains the one Dewey identified as paramount: the exclusion of those subject to national and transnational corporations from having a democratic say over them. As we have seen in section 2, many of these corporations are now more powerful than many constitutional democracies and govern the conduct of more subjects. They also exercise non-democratic control over the decision-making of constitutional democracies (as Rawls stressed). For over a century corporations have excluded employees and those affected by their operations from having a democratic say on the constitutional grounds that they are private persons and so possess the right of non-interference (the freedom of the moderns), and are not subject to democratic control (the freedom of the ancients). Under this mode of legitimation they have grown to surpass and control the representative nation-state, the type of corporation that has been sovereign for the last four hundred years. Just as the principles of constitutionalism and democracy were originally designed to bring the absolutist form of the modern state under democratic control, by establishing democratic institutions within it, the task today is to apply the same principles to these new sovereign corporations and bring them under democratic control, by establishing practices of democratic freedom within them, as well as governing them from the outside by means of new and effective international representative bodies. For, despite the attempts to keep this form of exclusion from public scrutiny in the dominant neo-liberal and third-way ideologies (by eliminating the principle of democracy as a condition of legitimacy), there appears to be no unquestionable reason for this exemption from the exercise of the principle of democracy.[46]

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[44] The research by Chomsky on this form of exclusion is voluminous. See, for example, *Rogue States*, pp. 108–73, and references.

[45] Laden, *Reasonably Radical*, pp. 131–58.

[46] For Dewey, democracy and corporations, see Robert B. Westbrook, *John Dewey and American Democracy* (Ithaca, NY: Cornell University Press, 1991). This form of exclusion is a central theme of Falk, *Predatory Globalization*; Held, *Democracy and the Global Order*; and Chomsky, *Rogue States*, among others. Despite the formal exemption this is where many struggles of democratic freedom

The second category of unfreedom is brought about by relations of inclusion and assimilation. Subjects are permitted and often encouraged to participate in democratic practices of deliberation yet are constrained to deliberate in a particular way, in a particular type of institution and over a particular range of issues. Their agreements and disagreements therefore serve to reinforce rather than challenge the status quo. Through participation in these assimilative practices, they gradually come to relinquish their dissonant customs and ways and acquire the consonant forms of subjectivity. Although they are governed through their freedom to some extent, they nevertheless deliberate within the rules rather than over the rules, as the principle of democracy requires.[47]

Different practices of reasoning-with-others are grounded in distinctive customary local knowledges, repertoires of practical skills, genres of argumentation and tacit ways of relating to one another. These culturally and historically diverse genres of practical know-how or savoir-faire (*metis* in Greek) are the intersubjective bases of culturally diverse practices of deliberation – of raising questions and listening to others, of presenting a reason, a story, an example, a comparison, a gesture or a parable for consideration, showing rather than saying, expressing disagreement, deferring or challenging, taking a point, informing another, advising and taking advice, speaking for another and being spoken for, stonewalling, feet-dragging and feigning, dissenting through silence, breaking off talks, working towards a compromise, agreeing conditionally or unconditionally, following the agreement reached in toward and untoward ways, reviewing the agreements reached, restarting the deliberations, and countless other discursive and non-discursive activities that make up deliberative language games. When formerly excluded people are 'included' in practices of democratic deliberation, they often find that the practical knowledge of the practice is different from the ones to which they are accustomed. This is often overlooked by the dominant groups, for it is their customary way of reasoning together; or if it is noticed, it is often presented as canonical, as universal or the uniquely reasonable, modern or 'free and equal' way of deliberating, as if there were only one way of exercising democratic freedom. If one wishes to be heard, then, it is necessary to act in accordance

have been ignited over the last 170 years. For the rise and fall of the nation-state as the dominant corporation of governance, see Martin L. Van Creveld, *The Rise and Decline of the State* (Cambridge: Cambridge University Press, 1999).

[47] Rose, *Powers of Freedom*. See also Clarissa Hayward, *De-facing Power* (Cambridge: Cambridge University Press, 2000), for a complementary analysis of this form of unfreedom. These approaches (and mine) are indebted to the work of Foucault on the agonistic interaction between imposed forms of subjectification and practices of freedom. See Foucault, 'The Subject and Power', in *The Essential Works*, Vol. III, and Foucault, 'The Ethics of the Concern for Self'.

with the dominant practice of reasoning together and resolving differences, and, as a result, to gradually develop the form of identity and comportment characteristic of participants of this kind of practice. This is the unfreedom of assimilation, for one is not free to challenge the implicit and explicit rules of the dominant practice of deliberation, but must conform to them and so be shaped by them.[48]

There is a remarkably wide range of relations of communication and power which serve to assimilate through inclusion in unfree practices of deliberation, adversarial reasoning and dispute resolution. Iris Marion Young has shown that the exchange of reasons cannot be abstracted from different modes of speaking and listening, such as greeting, rhetoric and narrative, without silencing legitimate voices. The attempt to impose certain allegedly abstract and universal rules often just privileges dominant forms of reasoning, often of a simplified and aggressive kind, typical of many Western institutions of dispute resolution, oriented to winning an exchange with opponents rather than promoting the kind of mutual understanding necessary for progress among partners who disagree but nonetheless need to cooperate freely.[49] The exchange of public reasons also cannot be separated from the cultural, linguistic, ethnic and gendered identities of those participating or from their substantive conceptions of the good, as the earlier theorists of deliberation sometimes assumed.[50] Just as deeply ingrained sexist, racist and diversity-blind attitudes can operate to exclude oppressed and subordinated people, they can also operate to discount and ignore their modes of argumentation once they are included, both in practice and in theories of deliberation.[51] If deliberation is oriented to a consensus, then, given reasonable disagreement, this will ensure that some minority voices will be silenced along the way. Moreover, deliberation

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[48] For this account of practical reasoning, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), pp. 309–41; Stephen Toulmin, *Return to Reason* (Cambridge, MA: Harvard University Press, 2001); Dreyfus, Spinosa and Flores, *Disclosing New Worlds*. As this paragraph is meant to convey, there is nothing specifically 'Western' about democratic freedom, of having a say over the way one is governed and often struggling not to be governed in such and such a way, nor is it necessarily related to Western institutions of representative government. On the contrary, three leading trends and their discourses of legitimation in Western societies are opposed to it. Democratic freedom in the sense I am using it seems to be a fairly general human activity, which takes different forms in different times and cultures.

[49] Young, *Inclusion and Democracy*, pp. 52–80, and her *Intersecting Voices*, pp. 38–94.

[50] Laden, *Reasonably Radical*, pp. 159–85; and David Owen, 'The Avoidance of Cruelty: Joshing Rorty on Liberalism, Scepticism and Ironism', in *Richard Rorty: Critical Dialogues*, eds. Matthew Festenstein and Simon Thompson (Cambridge: Polity Press, 2001). For some types of argumentation typical of practical deliberation, see Walton, *The New Dialectic*.

[51] Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).

involves a visceral or passionate dimension that was ignored in the more abstract accounts.[52]

The devolution of democratic practices to groups and peoples within multinational associations to solve problems of assimilation in the institutions of the larger society often overlooks assimilation of weak minorities within the devolved institutions. In addition, the recent repatriation of limited self-governing powers by Indigenous peoples from the states that have taken their lands, destroyed their customary practices of governance and reduced their populations to a fraction of pre-contact levels perpetuates a powerful form of assimilation called domestication or internal colonisation (an example of the second trend).[53] The ways in which local residents in poor countries are induced to participate in deliberations associated with development projects and employ their local knowledge in these settings often have the effect of gradually creating a Western identity and outlook and commodifying their traditional knowledge.[54]

The most persuasive form of assimilation, as we have seen in section 2, is assimilation to the dominant identity of a consumer of lifestyles celebrated in the first response. Most members of contemporary societies are subject to these processes of subjectification most of the time, not only in practices of deliberation, but in virtue of participating in the practices of work and leisure.[55] Furthermore, this kind of assimilation in developed countries is often coordinated with complementary forms of exclusion and assimilation for those in developing countries who make the consumer products that define the various lifestyles, as Naomi Klein's research discloses.[56] The danger of assimilation to this form of subjectivity, as the proponents of responses two and three argue, is twofold. It tends to eliminate the self-awareness of the possibility of and reason for democratic freedom itself, by reducing freedom to the freedom of the moderns. And, in virtue of performing most of one's activities in practices which disallow or discourage collective reflection and deliberation over the rules of the practice in a diversity of ways, participants do not acquire the self-formation of democratic freedom, and so they have neither the experience of nor subjective interest in democratic participation.

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[52] Connolly, *Why I am not a Secularist*, pp. 19–46.
[53] Duncan Ivison, Paul Patton and Will Sanders, 'Introduction', in *Political Theory and the Rights of Indigenous Peoples*.
[54] Traintafillou and Nielson, 'Policing Empowerment', and Chapters 7 and 9, this volume.
[55] For an overview of this literature, see Bauman, *Globalization*; and John Tomlinson, *Globalization and Culture* (Chicago: University of Chicago Press, 1999).
[56] Naomi Klein, *No Logo: Taking Aim at the Brand Bullies* (Toronto: Knopf, 2000).

Relations of exclusion and assimilation, finally, work together to block processes of citizenisation: that is, the processes of identity formation among diverse citizens who deliberate freely together over their shared and contested rules of recognition, distribution and coordination, and so conciliate their differences over generations (feature 6). The unique kind of solidarity that has the capacity to hold together the diverse contemporary political associations is not generated. In Habermas' phrase, it remains an unfulfilled promise. Subjects are excluded and assimilated from the practical basis of solidarity's 'continual regeneration': namely, forms of life that embody the principle of democracy in endlessly different ways. If this analysis is partially correct, then contemporary constitutional democracies will continue to experience a dominant tendency not only to democratic deficits and illegitimacy but, as a result, also towards a lack of overall cohesion.[57] Without the experience of democratic freedom, citizens tend in the extreme to cohere instead around the protection of their capitalist patterns of consumption at one end ('McWorld') and the protection of their excluded religious and cultural identities at the other ('Jihad').[58]

CONCLUSION

Despite the great differences between constitutional democracy in 1819 and today, there is one striking similarity. At the end of 'The Liberty of the Ancients Compared with that of the Moderns', Constant warned that the 'danger of modern liberty is that, absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily'. This, as I have sought to show, is our danger as well. Like the contributors to the critical discussion today, Constant argued that, 'far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together'. This is a difficult lesson to learn because, as Constant reasoned, and as we have seen in our times, the relations of communication and power in the practices in which moderns find themselves tend to exclude them from ancient freedom

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[57] Both these trends are widely noted and studied, but they are normally not seen to derive from the lack of democratic freedom. Indeed, the standard account is that increased democratic freedom over the rules of recognition and distribution is the cause of disunity. See Catriona McKinnon and Iain Hampsher-Monk, 'Introduction', in *The Demands of Citizenship* (London: Continuum, 2000).

[58] This is the chilling diagnosis of Benjamin Barber, *Jihad vs. McWorld: How Globalism and Tribalism are Reshaping the World* (New York: Ballantine Books, 1996), all the more relevant after September 11, 2001. His response is that 'democracy may now have become our first and only hope', p. 292.

and to assimilate them to modern freedom alone. The solution Constant proposed was to petition the legislator to create practices of citizenisation and encourage citizens to participate, thereby acquiring the identity formation and desire to continue to exercise and uphold their democratic freedom on a par with their private freedoms:

> The work of the legislator is not complete when he has simply brought peace to the people. Institutions must achieve the moral education of the citizens. By respecting their individual rights, securing their independence, refraining from troubling their work, they must nevertheless consecrate their influence over public affairs, call them to contribute by their votes to the exercise of power, grant them a right of control and supervision by expressing their opinions; and by forming them through practice for these elevated functions, give them both the desire and the right to discharge these.[59]

While Constant's advice to look to practices of freedom is as pertinent now as then, the suggestion that representative governments and their administrative bureaucracies might play the primary or exclusive role in initiating new democratic practices should be viewed with some scepticism for the host of reasons discussed above.[60] Rather, despite the powerful trends to the exclusion and assimilation of democratic freedom and the dominant discourses that legitimate them, practices of and for democratic freedom irrupt in opposition to them in a multiplicity of nodes and networks, and around a multiplicity of issues. Democratic freedom fighters find ways to organise their unrest and reignite the embers of public autonomy through the vast array of traditional and non-traditional avenues and institutions that make up globalisation from below.[61]

A public philosophy in a new key and oriented to testing the constitutional and democratic legitimacy of contemporary polities could do worse than to take these practices of freedom as its field of study and investigate them in the manner canvassed in the last section. The primary difference from the more traditional second response is that the field of study is not the analysis of the idealised exchange of public reasons among free and equal citizens in the traditionally conceived institutions of constitutional democracy, or a projection of these to a utopian cosmopolis. Rather, it starts from

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[59] Constant, 'The Liberty of the Ancients Compared to that of the Moderns', pp. 326, 327, 328.
[60] For a sustained analysis of the dangers of the turn, or return, to representative governments and their administrative bureaucracies in order to reignite and guide the embers of public autonomy, see Brown, *States of Injury*.
[61] For an instructive example of this kind of research, see Sonia E. Alvarez, 'Translating the Global: Effects of Transnational Organizing on Local Feminist Discourses and Practices in Latin America', *Meridians: Feminism, Race, Transnationalism* 1(1), 2000: 29–67.

here and now – '*hic Rhodus, hic saltus*' – and it involves broader research enterprises of working back and forth in a dialogue between actual networks of practices of democratic negotiation and critical clarification under the principles of constitutionalism and democracy. In a time when the legal and political order is constituted by open-ended networks of negotiated conciliation rather than rigid foundations, this kind of research must itself be a continuous activity of reciprocal reflection involving a variety of relations of communication between philosophy and the public affairs it studies. To draw together the threads of the four previous sections, this critical and practical research consists of a permanent activity of four main steps.[62]

Firstly, given the density of relations of exclusion and assimilation, one cannot begin from the formalised institutions of deliberation once under way, as theorists have tended to do. Rather, one must begin one step back, from the many ways in which democrats are somehow able to organise and initiate practices of freedom that seek to expose, criticise and overcome local relations of exclusion and to enter prevailing institutions or invent ad hoc practices of deliberation. This step of initiation is itself the first and primary exercise of democratic freedom, the step Rawls and Habermas call reignition and regeneration of public autonomy.[63]

If initiation is successful and negotiations take place, then the second step of study is the practices of negotiation. This classic domain of practice-oriented deliberative democratic theory includes the study of procedures and exchanges of reasons in reciprocal relations to context-sensitive applications of the norms of constitutionalism and democracy. It should also encompass similar studies of the content of the agreement reached and of the reasons for and against. In addition, close attention should be given to the Socratic type of democratic freedom in actual deliberations: the way in

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[62] For an exposition of this kind of critical and practical activity in the context of feminist philosophy, see Heyes, *Line Drawings*, and in anthropology see Clifford Geertz, 'The World in Pieces: Culture and Politics at the End of the Century', in *Available Light: Anthropological Reflections on Philosophical Topics* (Princeton: Princeton University Press, 2000). I discuss the four steps and the mutual relationship between philosophical inquiry and practical activities in more detail in *Volume I*, Chapter 1.

[63] This first stage of initiating deliberation by problematising the forms of exclusion and assimilation in prevailing relations of communication and power, by speaking truth to power, has been the domain of agonistic democratic theorists. However, there has been a tendency among some to treat this as the only stage of critical reflection, and this has led to the objection that agonistic approaches are as abstracted and disengaged from democratic politics as the first phase of deliberative democrats. To overcome this objection (whatever its merits), the suggestion here is to link the analysis of forms of problematisation to the next steps, the negotiations and reforms that follow or fail to follow, as Michel Foucault recommended (Foucault, 'What is Enlightenment?', in *The Essential Works*, Vol. I, p. 316). For an overview of discourse analysis from this perspective, see David Howarth, *Discourse* (Philadelphia: Open University Press, 2000).

which participants are able to call into question and remove the habitual and strategic relations of assimilation that govern the practice of deliberation, or fail to do so, thereby democraticising the deliberations and the deliberators as they proceed.[64]

Thirdly, studies of deliberative democracy often end with the agreement reached, on the assumption that normative clarification ends with testing an agreement against the ideal agreement. Critical analysis should proceed beyond the agreement because the agreement and the normative models of its assessment will always be less than perfect, partial, subject to reasonable disagreement, and dissent will likely break out in practice and theory, reigniting the process. Any normative model of procedures or agreements will harbour elements of exclusion and assimilation and so will have to be continually tested against its capacity to shed light on deliberations in practice and in comparison to other models in theory.

Fourthly, this traditional end-point of normative analysis, even when it is related to practical case studies, leaves the entire field of implementation and review to empirical social sciences, often under the false assumption that implementation is different in kind from justification, simply a technical question of applying rigid rules correctly. There are many ways in which actors can agree to a settlement (an equity policy in the workplace, an environmental accord, a constitutional amendment, a self-government agreement, an international human rights document) and either avoid or subvert implementation while appearing to follow norms of legitimation. Moreover, there are numerous ways actors can interpret and act in accord with an agreement once it is implemented. Disputes inevitably break out over these rival interpretations, giving rise to institutions of review that are themselves new practices of deliberation. Relations of exclusion and assimilation appear in the implementation that were not foreseen in the agreement. Hence, implementation and review raise similar issues of legitimacy under the principles of constitutionalism and democracy as the phases of

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[64] These two steps distinguish the critical and practical approach from the important work of scholars in the Governmentality school. Their focus is on the ways in which moderns are governed through their freedoms within practices of governmentality. The critical and practical approach learns from these important studies and sees them as preliminary to its concern with the practice-relative abilities of humans to exercise democratic freedom of thought and action: to call into question and have say over the ways in which they are governed through their freedoms, whatever these freedoms may be. Nikolas Rose discusses the difference between the two research projects in *Powers of Freedom*, p. 281. These non-transcendental abilities to go on differently in various practices are explored in Owen, 'Orientation and Enlightenment'. From the perspective of communications theory, see John Shotter, *Conversational Realities: Constructing Life Through Language* (London: Sage, 1993).

initiation, deliberation and agreement, and thereby reinitiate practices of freedom and forms of critical reflection.

When legitimacy rests on the mutual relationship between norms and practices of constitutionalism and democracy, we are always in the position of beginning again the permanent task of testing the limits of our freedom by means of our freedom.[65]

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[65] This brief sketch of public philosophy and civic freedom is deepened in Part 2 of this volume, in the light of imperialism, and then reformulated more comprehensively in Chapters 8 and 9.

On imperialism

On law, democracy and imperialism

INTRODUCTION: THE FIELD OF POLITICAL THEORY AND PUBLIC LAW

In the course of my research on globalisation and freedom in Part 1, I came to see that the languages in which the global order was disclosed, studied and criticised were useful and necessary, yet ultimately limited and inadequate to expose fully the deep-seated global relationships of oppression – of inequality, dependency, domination, exploitation and environmental damage. I gradually realised that many of the global relationships that govern the conduct of people and peoples are imperial relationships. These oppressive relationships were built up during the age of formal Western imperialism and they have survived decolonisation and intensified in the current period. I thus had to shift my focus to the imperial dimensions of the present global order. In this chapter I investigate how our dominant languages of disclosure and research conceal and overlook the imperialism of the present, each in different ways, and in so doing gradually bring the contemporary mode of imperialism (informal imperialism) into view as an object of critique in theory and transformation in practice.[1]

Since formal decolonisation in the middle of the twentieth century most theories of public law and political formations begin from the presupposition that the field of law and politics is one of sovereign, constitutional states bound together by public international law.[2] Yet, over the last fifteen years,

[1] The practices of transformation are presented in *Volume I*, Chapters 8 and 9.

[2] I follow Martin Loughlin in using 'public' law and 'constitutional' law interchangeably. I also follow him in taking public law to be the basic laws that juridicalise or legalise the distribution, institutionalisation and exercise of the political powers of governing, including governing the economy, in any

this widely shared presupposition has been challenged as simply one way of characterising the field of constitutional law and political association among others, and the broader issue of how to characterise the field of law and politics has become a central question to which rival answers have been presented and debated.[3]

Over the last six or seven years, the oldest answer to this central question has been reintroduced into the mainstream debate: namely, that the world legal and political order is best characterised as an imperial order of some kind or another. Several scholars since decolonisation continued to study state and international law and politics as an imperial field, but their work remained on the margins of the mainstream debate. However, since 2000, and especially after 2001, imperialism has returned to the mainstream. There is now a large body of literature arguing that the field of public law and political organisation is characterised better as some form of 'new imperialism' or 'empire' than as any of the other rival answers to the central question of the nature of the field we are trying to study.

Roughly speaking, the 'new imperialism' is said to comprise the United States as the primary, but not necessarily exclusive or unilateral, imperial hegemon, working with or against an informal league of cooperating and competing sovereign, constitutional, representative states or 'great powers' (the G8) and transnational corporations; operating through, or in tension with, the International Monetary Fund (IMF), the World Bank (WB), the World Trade Organization (WTO), unequal or manipulable international or transnational legal regimes since the original General Agreement on Tariffs and Trade (GATT 1947); and backed up by the full spectrum global dominance of the US military and its coalition of willing and unwilling allies, proxies and dependencies. This imperial view of the field, in one variation or another, is advanced and praised by a large number of realists, neo-conservatives and neo-liberal and traditional liberal imperialists;[4] and it

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form of legal and political association. Like Loughlin, who follows Foucault on this, I call the basic legal and political institutions 'practices of governance'; Martin Loughlin, *The Idea of Public Law* (Oxford: Oxford University Press, 2003), pp. 5–31, especially pp. 29–31. Whether public law 'constitutes' the basic forms of political and economic power (liberalism) or is constituted by them (Marxism), or some more complicated relationship (my view) is not a question we need to answer for the analysis that follows. See the important discussion in Martin Loughlin, 'Constitutional Theory: A 25th Anniversary Essay', *Oxford Journal of Legal Studies* 25(2), 2005: 183–202.

[3] See, for example, Held and McGrew, eds., *The Global Transformations Reader*.

[4] See David Armstrong, 'Dick Cheney's Song of America: Drafting a Plan for Global Dominance', *Harper's Magazine* 305(1829), 2002: 76–83; William Finnegan, 'The Economics of Empire: Notes on the Washington Consensus', *Harper's Magazine* 306(1836), 2003: 41–54; and Nichols Guyatt, *Another American Century?: The United States and the World Since 9/11* (London: Zed Books, 2003) for the rise of the neo-conservative Project for a New American Century since 1997. For the proponents of US empire, Robert Kagan, 'The Benevolent Empire', *Foreign Policy* 111 (Summer), 1998: 24–35; see

is advanced and condemned by a large number of anti-imperial scholars on the left and on the so-called 'isolationist' right.[5]

The introduction of imperialism into the mainstream debate over the central question was closely associated with the foreign policy of the United States under the George W. Bush administrations (2000–2008) and the expansion of the 'War on Terror' that began earlier under Presidents Reagan and George Bush senior. As a result, 'imperialism' in general has tended to be equated with this specific form of 'new imperialism' in both theory and practice. Consequently, those who deny that the field is imperial, and those critics who agree that the field is imperial but criticise it and claim to advance a non-imperial alternative to work towards, both tend to take the new imperialism as the exemplar of imperialism in general. By focusing on the specific definition of the new imperialism as the object of contrast, these presumptively or allegedly non-imperial theories of what the nature of the field is or should be, I will argue, tend not to notice the features of both the shared languages of description they employ and the practices of governance (legal and political institutions) they refer to that are imperial in a broader sense of the term. The opportunity to subject our leading theories of public law and politics to a deeper self-examination of their persisting imperial features is thus bypassed. Fortunately, these unexamined imperial features can be exposed by referring to the broader history of imperialism and the work of anti-imperial scholars who have studied its persistence throughout

Richard H. Haass, 'Imperial America' (11 November 2000), available at: www.brook.edu/views/articles/haass/19990909primacy FA.htm [Accessed 25 October 2006]; Sebastian Mallaby, 'The Reluctant Imperialist: Terrorism, Failed States, and the Case for American Empire', *Foreign Affairs* 81(2), 2002: 6–25; Robert D. Kaplan, *Warrior Politics: Why Leadership Demands a Pagan Ethos* (New York: Random House, 2002); and *Imperial Grunts: The American Military on the Ground* (New York: Random House, 2005). For the new liberal imperialists, see Robert Cooper, 'Why We Still Need Empires', *Observer Worldwide* (7 April 2002), available at: http://observer.guardian.co.uk/worldview/story/0,,680117,00.html [Accessed 25 October 2006]; Robert Cooper, 'The Post-Modern State', *Observer Worldwide* (7 April 2002), available at: http://observer.guardian.co.uk/worldview/story/0,11581,680095,00.html [Accessed 25 October 2006]; Michael Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo, Afghanistan* (London: Vintage, 2003); Fareed Zakari, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: Norton, 2003); Niall Ferguson, *Colossus: The Price of America's Empire* (New York: Penguin, 2004); Deepak Lal, *In Praise of Empires: Globalization and Order* (New York: Palgrave Macmillan, 2004). For a critical assessment of them, see Michael Cox, 'The Empire's Back in Town: Or America's Imperial Temptation – Again', *Millennium* 32(1), 2003: 1–27; Clyde Prestowitz, *Rogue Nation: American Unilateralism and the Failure of Good Intentions* (New York: Basic Books, 2003); Rahul Rao, 'The Empire Writes Back (to Michael Ignatieff)', *Millennium* 33(1), 2004: 145–66. For the continuity between the new liberal imperialists and the earlier liberal international law imperialists of the interwar period, see Jeanne Morefield, *Covenants Without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton: Princeton University Press, 2005).

[5] I discuss the critics of contemporary imperialism, in its narrow and broad definitions, below. For a representative collection, see John Bellamy Foster and Robert McChesney, eds., *Pox Americana: Exposing the American Empire* (New York: Monthly Review Press, 2004).

the twentieth century, yet whose work has not been part of the recent mainstream debate over the character of the global field of law and politics.[6]

Accordingly, I proceed in the following manner. Each of the five sets of presumptively or allegedly anti-imperial theorists I examine in the following sections foregrounds and criticises a range of political and legal phenomena they take to be imperial. They then present an alternative based on languages and practices that they take to be non-imperial in contrast. However, in each case, I argue that the presumptively or allegedly non-imperial languages and practices on which their criticism and alternative are based are neither outside of contemporary imperialism nor the means of liberating us from imperialism. Rather, in each case, features of both the languages and the practices they presume to be external to imperialism (non-imperial) turn out on closer examination to be internal to, or play a role in, contemporary imperialism.[7]

Another way of putting this point is that the range of phenomena that each set of writers foregrounds as 'imperial' is not the entire imperial field, but only specific aspects of it. So, what they present as an alternative is often another aspect of imperialism they did not foreground in their criticism but left unexamined in the background. So, what we see by the end of the examination is that certain features of many allegedly or presumptively non-imperial languages of description and practices are internally related to imperialism in some way or another. The conclusion is that we are entangled in a more complex web of imperial relationships than the defenders and critics of imperialism suggest.[8]

I THE FIRST OR TRADITIONAL CRITICS: OVERLOOKING THE CONTINUITY OF INFORMAL IMPERIALISM

Before I turn to the writers who explicitly reject or accept and criticise the hypothesis that legal and political power is organised to some extent

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[6] There are exceptions to this generalisation. For example, Hardt and Negri, *Empire*, and Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan, 2003), are discussed to some extent in the mainstream debates and they have broader conceptions of empire and imperialism respectively.

[7] For a defence of this historical and critical approach, see *Volume I*, Chapter 1.

[8] I do not mean by this that there is no 'outside' or that everything is empire (as Hardt and Negri claim). As we will see, imperialism is more complex than its defenders and critics presume, but it is only 'features' of the hegemonic political and legal languages and practices that are implicated in it, not the languages and practices *simpliciter*, and these features are contingent and changeable (as Johan Galtung always insisted). Indeed, if my investigation is correct, imperialism is not as global and total as it appears, and alternative, non-imperial ways of living in the present are not only *possible*, but *actual* to some degree in the lived experience of millions of people.

imperially in the present, I would like to start with those writers who start from the presupposition that the legal and political field is non-imperial. This response is especially pronounced among traditional state-centred legal and political theorists. They argue, or more commonly presuppose, that there is not an imperial order today and carry on a traditional form of legal and political theory that takes for its horizon the system of sovereign, constitutional states and public international law, or, the modification of this 'Westphalian' framework by the United Nations Charter and Declaration of Human Rights and new forms of global governance. This well-established framework gains strength from the widely held assumption in the late twentieth century that a necessary criterion of imperialism is the possession of colonies. Since the world went through a period of decolonisation, independent state-building and democratisation in the middle of the twentieth century, and thus entered into a post-colonial period after the 1970s (or after 1989 in the case of the land-based Soviet empire), then the present post-colonial period of 1970–2009 must be, by definition, a post-imperial period.

The presumption that imperialism ends with decolonisation is reinforced by the fact that international law recognises formally equal and independent states, and this form of recognition seems to exclude the possibility of imperialism. Moreover, the global governance literature further entrenches the presumption by presenting global governance as the recent transformation of the pre-existing system of independent states, and thus as two steps away from imperialism.[9] Moreover, the system of independent states is often projected back to 1648 by characterising it as a Westphalian system of states, thereby overlooking the last four hundred years of European empires and colonies.[10]

However, the assumption that imperialism always entails colonies is false. One of the major forms of imperial rule in the West has been

[9] See, for example, Held *et al.*, *Global Transformations*; and Held, *Models of Democracy*, final chapter.

[10] Whereas the classic theories from Hobbes to Schmitt, on which the contemporary Westphalians construct their theories of national and international public law and representative government, always distinguish between the system of states within Europe and the system of imperial states and colonies between Europe and the rest of the world. That is, the European state was always considered to be an 'imperial state' or 'state empire' in competition with other imperial states over the resources of the non-European world until after the Second World War. See Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); John D. Kelly and Martha Kaplan, '"My Ambition is Much Higher than Independence": US Power, the UN World, the Nation-State, and their Critics', in *Decolonization: Perspectives from Now and Then*, ed. Prasenjut Duara (London: Routledge, 2004); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), and below.

non-colonial: that is, the tradition of 'informal' imperial rule over another people or peoples by means of military threats and military intervention, the imposition of global markets dominated by the great powers, a dependent local governing class, and a host of other informal techniques of indirect legal, political, educational and cultural rule, such as spheres of influence and protectorates, without or after the imposition of formal colonial rule. The rule of Britain over the Middle East in the early twentieth century and the informal rule of the United States over Latin America in the nineteenth and twentieth centuries are classic examples of informal imperialism prior to decolonisation.[11]

More importantly, when the United States turned to overseas economic expansion in 1898–1903 (into Latin America, South America and China), the policy debate was between those who favoured colonial imperialism (as in the Philippines, Puerto Rico and the Virgin Islands) and those who favoured non-colonial, informal imperialism by means of military bases (as with the Guantánamo Bay military base of 1901), economic power and military intervention whenever necessary to protect and extend US economic interests. Charles A. Conant summed up the options and put the case for informal imperialism in 1898:

Whether the United States shall actually acquire territorial possessions, shall set up captain generalships and garrisons, [or] whether they shall adopt the middle ground of protecting sovereignties nominally independent, or whether they shall content themselves with naval stations and diplomatic representations as the basis for asserting their rights to the free commerce of the East, is a matter of detail … The writer is not an advocate of 'imperialism' from sentiment, but does not fear the name if it means only that the United States shall assert their right to free markets in all the old countries which are being opened up to the surplus resources of capitalistic countries and thereby given the benefits of modern civilization.[12]

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[11] The classic text of informal or 'free trade' imperialism is Ronald Robinson and John Gallagher, 'The Imperialism of Free Trade', *Economic History Review* 6(1), 1953: 1–15. It is analysed by Wolfgang Mommsen, *Theories of Imperialism* (Chicago: Chicago University Press, 1980), pp. 86–93; Michael Doyle, *Empires* (Ithaca, NY: Cornell University Press, 1986); and Harry Magdoff, *Imperialism Without Colonies* (New York: Monthly Review Press, 2003). Stephen Howe summarises how it applies to US imperialism throughout the twentieth century in *Empire: A Very Short Introduction* (Oxford: Oxford University Press, 2002), and in 'American Empire: The History and Future of an Idea', *OpenDemocracy* (12 June 2003), available at: www.opendemocracy.net/conflict-americanpower/ article 1279.jspt [Accessed 25 October 2006]. Mommsen sees it as the most important development in the theory and practice of imperialism in the modern age and suggests that formal colonial rule is only the 'tip of the imperial iceberg'. The concept of informal imperialism is now used by the majority of scholars of US imperialism, whether they are defenders or critics.

[12] Charles A. Conant, 'The Economic Basis of Imperialism', *North American Review* 167(502), 1898: 339. Like all the great theorists of imperialism in the late nineteenth century, from Marx and Lenin to

After the US war against the Philippine nationalists who had supported them in their war against colonial Spain, and the colonisation of the Philippines, the defenders of non-colonial imperialism won the debate.[13] They justified it in the terms Conant presented, the 'Open Door' policy of Secretary of State John Hay, and a series of 'corollaries' to the Monroe Doctrine of 1823 by which the United States gave itself the right to intervene to open the doors of Latin American countries to 'free trade' dominated by US firms, against Indigenous movements that tried to protect their own resources and economies from foreign control on the one hand, and against the European imperial powers' claim to exclusive control of their formal or informal colonies on the other. This doctrine and language of informal imperialism, 'freedom' as the opening of doors to free trade dominated by US and European corporations, and so the spread of 'modern civilisation', was repeated by Theodore Roosevelt in the first decade of the twentieth century, Woodrow Wilson in the second and Franklin Roosevelt in the 1940s. As Andrew Bacevich, Chalmers Johnson and Neil Smith have shown in detail (expanding the earlier scholarship of Charles Beard, William A. Williams, and Robinson and Gallagher), this free trade 'imperialism without colonies' has been the acknowledged form of global rule exercised by the United States for over a century, and it is the form of informal imperialism that persisted through formal decolonisation and is exercised by the United States today according to both defenders and critics of the new imperialism.[14] Informal imperialism consists in, firstly, imposing a structure of domestic public law and political institutions, or 'structurally adjusting' an existing constitutional order, that opens the resources, labour and markets of the imperialised country to free trade dominated by the great powers; and, secondly, subjecting this legal and political order in turn to

Hobson and Kautsky, Conant sees the huge expansion of informal imperialism over the non-European world in the nineteenth century as driven by the transformation to 'corporation' capitalism in Europe and the United States.

[13] John Bellamy Foster, Harry Magdoff and Robert McCheney, 'Kipling, the "White Man's Burden", and US Imperialism', in *Pox Americana*.

[14] Andrew Bacevich, *American Empire: Realities and Consequences of US Diplomacy* (Cambridge, MA: Harvard University Press, 2002); Chalmers Johnson, *Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004); Neil Smith, *American Empire: Roosevelt's Geographer and the Prelude to Globalization* (Berkeley: University of California Press, 2004). The classic text of an earlier generation of US historians is William A. Williams, *Empire as a Way of Life: An Essay on the Causes and Character of America's Present Predicament, Along with a Few Thoughts About an Alternative* (New York: Oxford University Press, 1980). For a brief description of their account of informal imperialism today, see the Introduction above, and see the analysis of it in the following sections of this chapter. For the historical development of informal or 'free trade' imperialism in imperial Britain in the nineteenth century, see Bernard Semmel, *The Rise of Free Trade Imperialism: Classical Political Economy, the Empire of Free Trade and Imperialism 1750–1850* (Cambridge: Cambridge University Press, 1970).

regimes of public and private international laws, again constructed and dominated by the great powers.[15] Yet, it is unnoticed by current legal and political theorists, who continue to write as if imperialism is a thing of the distant past.

In summary, the traditional or Westphalian legal and political theorists, who probably compose a majority of mainstream legal and political theorists, presuppose that the present order is non-imperial, and thus overlook the persistence of informal imperialism.[16]

2 THE SECOND CRITICS: OVERLOOKING THE HISTORICAL LENGTH AND BREADTH OF INFORMAL IMPERIALISM

The second critics of imperialism acknowledge the existence of informal imperialism but claim that it is restricted to the President Bush administrations, or at least no older than the Reagan administration. It thus could be ended by the election of a new administration. For example, Michael Mann, one of the leading theorists of modern forms of power, argues that a Democratic administration would signal the end of empire.[17] This is to greatly underestimate the longevity and breadth of this form of imperialism. As we have seen, informal imperialism has been in operation, with varying degrees of success, since the nineteenth century and thus is not a recent phenomenon, as these critics assume.

Moreover, informal imperial rule has always had two 'faces' or 'wings'. One is the more unilateral and overtly militaristic face of the European 'new imperialism' over the 'scramble for Africa' in the 1880s, of the Theodore Roosevelt Administration in the early-twentieth-century United States, and the George W. Bush administrations today. The other is the more

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[15] For the history of these two main legal and political features of informal imperialism, see Anghie, *Imperialism*, and Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2001). For their operation today, see James Petras and Henry Veltmeyer, *Empire with Imperialism: The Globalizing Dynamics of Neo-Liberal Capitalism* (New York: Palgrave, 2005).

[16] While Martin Loughlin presents what is in many respects a classic Westphalian theory of public law and political theory, he does explicitly respond to the imperial hypothesis, but only in the specific form presented by Hardt and Negri in *Empire*, and only with respect to their challenge to the traditional state-centred account of sovereignty, which is very different from the histories of imperialism I am drawing on here. See Loughlin, *The Idea of Public Law*, pp. 96–8.

[17] Michael Mann, *Incoherent Empire* (London: Verso, 2003). For similar narrow (critical) interpretations of contemporary imperialism, see Stefan Harper and Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (New York: Cambridge University Press, 2004); John Newhouse, *Imperial America: The Bush Assault on the World Order* (New York: Vintage, 2004); George Soros, *The Bubble of American Supremacy: Correcting the Misuse of American Power* (New York: Public Affairs, 2004).

multilateral and covertly militaristic approach of Woodrow Wilson, John F. Kennedy and William Clinton. The latter is more inclined to work with allies, especially the great imperial powers (G8), through the League of Nations, UN and the Bretton Woods institutions set up after the Second World War (GATT, WB, IMF, WTO), and in accord with international law whenever possible. This wing employs economic pressure, sanctions and bribes, and turns to military intervention only as a last resort in order to 'open doors' to the 'surplus resources of the capitalistic countries', as Conant put it above.[18] Hence, these current critics do not notice the longevity and breadth of informal imperialism because they identify imperialism with only one of its wings – the unilateral – and thus see the multilateral wing as non-imperial in contrast.[19]

Moreover, the differences between these two wings within the broad, overall imperial strategy are often overemphasised by these narrow critics. For example, Woodrow Wilson invaded China, Haiti, Mexico and the Dominican Republic to protect American economic interests from local democratic control while he was proclaiming the right of self-determination of the same countries and saw no contradiction between them.[20] The defenders of the distinction often cannot agree on whether a particular administration, such as the Clinton administration, should be seen under one wing or the other.[21] Similarly, while the George W. Bush administration justified the invasion of Afghanistan and the second Iraq war in terms of an aggressively unilateral pre-emptive strike doctrine in the *National Security Strategy of the United States of America, 2002*, they went on to try to justify both in terms of UN resolutions and international law and to build a multilateral 'coalition of the willing'. Neither was presented as an 'exception to the norm', as Agamben suggests, nor as a 'moralized' non-juridical policy, as Habermas interprets it in

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[18] William K. Tabb, 'The Two Wings of the Eagle', in *Pox Americana*, is a short introduction. The two wings are discussed in detail by Bacevich, *American Empire*, and Johnson, *Sorrows of Empire*. For an interpretation of the domestic configuration of these two wings today, see Wendy Brown, 'American Nightmare: Neoliberalism, Neoconservatism, and De-Democratization', *Political Theory* 34(6), 2006: 690–714.

[19] The debate over the 'new imperialism' of the late nineteenth century is strikingly similar. The critics of imperialism focused on the unilateral and militaristic imperialism of Cecil Rhodes and tended to construe what Hobson and Kautsky called the 'hyper-imperialism' of the great powers cooperating informally over the exploitation of the non-European world as non-imperial. See Georgios Varouxakis, '"Patriotism", "Cosmopolitanism", and "Humanity" in Victorian Political Thought', *European Journal of Political Theory* 5(1), 2006: 100–18.

[20] See Bacevich, *American Empire*, pp. 115–16 and below.

[21] See the debate in *Foreign Affairs* between Robert Tucker and David Hendrickson, defenders of the multilateral wing as non-imperial, and Robert Kagan, defender of the unilateral wing as imperial. Robert Tucker and David Henderson, 'The Sources of American Legitimacy', *Foreign Affairs* 83(6), 2004: 18–32; Robert Kagan, 'A Matter of Record', *Foreign Affairs* 84(1), 2005: 170–3.

order to draw a categorical distinction between the Wilsonian and (Theodore) Rooseveltian faces of US policy.[22] The ease with which international laws and UN resolutions can be manipulated to legitimate the invasion and occupation, and used, conversely, to try to delegitimate it by the opponents of the war, suggests that the analyses of both Martti Koskenniemi and constructivists are correct in general terms. Koskenniemi argues that public international law is not a formal public law autonomous from geopolitical forces but, rather, an informal set of laws open to effective manipulation by the imperial Western powers of the day to justify imperialism in terms of 'civilising' the non-European peoples in the nineteenth century, military intervention against 'communists' during the Cold War, and 'terrorists' and 'rogue states' during the present War on Terror.[23] As Gerry Simpson concludes, international law can function as a form of 'legal hegemony' of the 'great powers' or, as he calls them after decolonisation, the 'unequal sovereigns'.[24]

Finally, both wings of this shared imperial strategy accept the presence and continuing expansion of the US global military empire of 'bases' or 'garrisons', which, according to the Pentagon, exercises 'full spectrum dominance' over the planet. Since the building of overseas garrisons and fuelling stations during the first imperial expansion of 1898–1917, itself based on the earlier military model of fortresses along the western 'frontier' of wars against the Native Americans from 1620 to 1890, there are now over 725 military bases outside of the United States. These military bases are literally the bases of informal imperialism. Built on the model of the earlier naval

[22] For the use of international law and UN resolutions, see Jutta Brunnée and Stephen Toope, 'Slouching Towards New "Just" Wars: The Hegemon After September 11th', *International Relations* 18(4), 2004: 405–23. The unilateral *National Security Strategy of the United States of America* of September 2002 is available at: www.whitehouse.gov/nsc/nss.pdf [Accessed 26 October 2006]. The new Security Strategy of May 2006 repeats the same argument. Some rights were partially extended to prisoners at Guantánamo Bay by the Supreme Court of the United States in *Rasul et al.* v. *Bush, President of the United States et al.* [2004] 542 U.S. 466, available at: www.supremecourtus.gov/opinions/03pdf/03–334.pdf [Accessed 26 October 2006]. See the discussion in relation to Agamben in Martin Puchner, 'Guantanamo Bay', *London Review of Books* 26(24), 2004: 7. For Jürgen Habermas' interpretation of US foreign policy as moralisation rather than juridification, see Jürgen Habermas, 'The Kantian Project of the Constitutionalization of International Law: Does It Still Have a Chance?', in *Multiculturalism and the Law: A Critical Debate*, ed. Omid Payrow Shabani (Cardiff: University of Wales Press, 2007).

[23] Koskenniemi, *The Gentle Civilizer*, pp. 480–509. Koskenniemi does not discuss the fact that the subaltern subjects of international law are also able to make public international law arguments in countering the claims of the hegemonic powers, and sometimes even win the debates, as in the Landmines Convention, as legal constructivists have shown. See below, section 7.

[24] Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

bases of the British empire, they enable an imperial power to intervene, or simply threaten to intervene, in any formally free and independent state at a moment's notice if its economic and geopolitical interests, or those of its allies, are threatened by demands for local control of resources and markets. The military bases are also supported by the continuous surveillance of the planet by the navy, air force, satellites and the recent plans for the weaponisation of space. The US military command divides the world into four zones or 'provinces' governed by four US Commanders-in-Chief (CINC) or 'pro-consuls'. This global system of full spectrum dominance is ready for military intervention, or the effective threat of military intervention, anywhere on the planet at a moment's notice, as the military's *Joint Vision 2020* explains.[25]

In summary, these critics of the narrow interpretation of the 'new imperialism' overlook the long and broad background of informal imperial rule, the cooperative imperialism of the multilateral wing and the global system of US military imperialism that protects and extends the persisting imperial order of domestic and international public laws and institutions.

3 THE THIRD CRITICS: OVERLOOKING THE IMPERIAL FEATURES OF THE STATE SYSTEM, DEVELOPMENT AND INSTITUTIONS OF GLOBAL GOVERNANCE

The third critical response is to recognise the length and breadth of informal imperialism, but not the global military empire, and then to argue that there is a European tradition of multilateralism, the rule of international law, respect for the UN and the post-Bretton Woods international regulatory regimes of global governance, now best exemplified by the EU. This alternative, they argue, is a genuinely non-imperial alternative to both wings of the US global strategy. This response comes in a number of different forms. David Held argues that his 'cosmopolitan democracy' offers

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[25] United States Department of Defense, Joint Chiefs of Staff, *Joint Vision 2020, An Evolving Joint Perspective: US Joint Warfare and Crisis Resolution in the 21st Century* (28 January 2003), available at: www.dtic.mil/jointvision/jwcr screen.pdf [Accessed 26 October 2006]. The rise of this global military empire is analysed by Johnson, *Sorrows of Empire*, and Bacevich, *American Empire*, both of whom served in the military. See also the endorsement of it by new imperialists such as Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Basic Books, 2003); and Kaplan, *Imperial Grunts*. For the effects on sovereignty and public law of the extension of global military dominance by means of the weaponisation of space, see Jonathan Havercroft and Rod Duvall, 'Taking Sovereignty out of this World: Space Weaponization and the Production of Late-Modern Political Subjects' (paper delivered at the annual meeting of the International Political Science Association, San Diego, 22–25 March 2006).

a 'social democratic alternative' to the 'Washington Consensus'.[26] Jürgen Habermas, following Bardo Fassbender, suggests that the constitutionalisation of the UN Charter, as the public law of the existing 'international community', and the empowerment of the UN to enforce compliance offer a clear alternative.[27] Even some authors on the left, who have written important works on the history and presence of Western imperialism, such as Samir Amin and David Harvey, suggest that a social-democratic EU offers the best hope, although both concede that it would still be a kind of imperialism, albeit a less-bad type.[28]

While the European and cosmopolitan critics arguably present an alternative to US informal imperialism, at least in its neo-liberal and neo-conservative forms, it is difficult to see how it is non-imperial. It fails to call into the space of questions the historically layered character of European and American imperialism over the last half millennium. As we have seen, these critics seem to present an alternative to the unilateral and neo-liberal wing of US imperialism while embracing a version of the multilateral and more social-democratic wing. Like the earlier deniers and critics, they take the existing system of independent, constitutional states, public international law, global markets and corporations, and processes of development for granted as the basis of their proposals (to constitutionalise, modify or transform it). While they acknowledge that the system of states is 'stratified', they do not enquire into the colonial origins of the system of stratified states to see if it is a persisting imperial system.[29] Similarly, because these critics disregard the depth and breadth of informal imperialism, they do not ask if the post-Second World War institutions on which their proposals for global governance and cosmopolitan democracy are built are not themselves institutions of continuing informal imperialism. I think that if we enquire into these questions, we will see that there is a yet deeper layer of imperial features of our legal and political institutions that these critics leave unexamined and so presume to be the foundation of a non-imperial future.

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[26] David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge: Polity Press, 2004).

[27] Habermas, 'The Kantian Project'; and Bardo Fassbender, 'The United Nations Charter as Constitution of the International Community', *Columbia Journal of Transnational Law* 36, 1998: 529–619.

[28] David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003); Samir Amin, *Liberal Virus: Permanent War and the Americanization of the World* (New York: Monthly Review Press, 2004).

[29] Habermas, 'The Kantian Project'; and Rawls, *The Law of Peoples*. See Simpson, *Great Powers and Outlaw States* for a criticism of both on these grounds. For a rejoinder to Habermas, see Frank Deppe, 'Habermas' Manifesto for a European Renaissance: A Critique', *Socialist Register*, 2005: 313–23, and below, section 5.

Firstly, the nominally sovereign and independent non-European states recognised by international law are in fact the former colonies, whose legal and political structures were constructed by the European powers to serve their interests over two periods of colonial imperialism: 1500–1776 and the second period of hyper-colonisation, 1800–1905, when 85 per cent of the non-European world was under formal or informal imperial rule.[30] Under the 'standard of civilisation' of nineteenth-century international law, these 'uncivilised' colonies were opened to free trade and structured accordingly by the imperial powers under the Mandate System of the League of Nations and the Trustee System of the United Nations.[31] During the period of decolonisation, state building, and the Cold War competition between the United States and the Soviet Union, the Indigenous, westernised elites wrested formal political power from their former masters, but this involved a 'transfer of power' and the 'continuation' of existing 'informal' imperial relationships.[32]

To survive in the imperial world system in which they found themselves, the national elites were both constrained and induced to modernise their ethnically diverse peoples and their hinterland, often with great violence to traditional legal and political formations, to define sharp boundaries of territory and unified nationhood where none existed, and to strengthen the Western-style legal, political and military institutions of the colonial period over Indigenous legal and political pluralism. They were also pressured to open their doors to a highly structured capitalist world economy over which they had no control (or to the socialist economy until 1989) at the expense of local control of their economic affairs, to subordinate their own legal and political sovereignty over their resources to international law, and to learn to call this imperial subalternisation 'freedom'. Moreover, they were led to take on enormous debt to survive in the developmental race, to enter into the escalating dependency and debt of the arms race, and as a result of these relations of dependency, to submit to the waves of modernisation programmes imposed by the new global institutions of post-colonial, informal imperialism.[33] The

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[30] For this legal and political history, see note 15 above.

[31] Anghie, *Imperialism*, pp. 32–196. For the expansion and intensification of Western imperialism to 85 per cent of the planet in the latter half of the nineteenth century, see Doyle, *Empires*, pp. 141–352.

[32] Wolfgang Mommsen, 'The End of Empire and the Continuity of Imperialism', in *Imperialism and After: Continuities and Discontinuities*, eds. Wolfgang Mommsen and Jürgen Osterhammel (London: Allen and Unwin, 1986), p. 350.

[33] For a recent overview of the research on decolonisation and informal imperialism, see Prasenjit Duara, ed., *Decolonization: Perspectives from Then and Now* (London: Routledge, 2004). For a restatement of this thesis for Latin America and neo-liberal imperialism, see Duncan Green, *Silent Revolution: The Rise and Crisis of Market Economies in Latin America* (New York: Monthly Review Press, 2003). For

assault on the multiplicity of local forms of economics, politics, 'customary' law and civility that informal imperialism and dependency entail tends to turn the people against their westernising elites, and this causes the elites to become even more dependent on military rule and repression of local democracy.[34] This entire process is what Frantz Fanon called, late in life, 'the apotheosis of independence … transformed into the curse of independence'.[35]

As Alexander Wendt and Michael Barnett have shown, the consequence is highly unstable and unrooted 'states' whose levels of inequality, dependency and foreign control have increased rather than decreased since decolonisation.[36] These subaltern states are now often called 'failed states' and this status justifies further informal military intervention and economic adjustment to the global economy. Very few neo-liberal imperialists mention that the 'failed state' is itself the product of waves of formal and informal imperial 'replication' nation-state building on one side, and the struggles of resistance by the peoples who dream of creating their own forms of political association and governing themselves in their own ways on the other.[37]

Thus, it is difficult to see how the existing state system and public international law can be taken as the unexamined constitutional basis for constructing a non-imperial alternative to contemporary imperialism.[38] The so-called 'Westphalian' system is actually an imperial system of hegemonic and subaltern states constructed in the course of 'interactions' between

the resulting unequal sovereignty of the former colonies under international law, 'global governance' and the War on Terror, see Anghie, *Imperialism*, pp. 196–310; for Africa, see Siba N'Zatioula Grovogui, *Sovereigns, Quasi-Sovereigns and Africans: Race and Self-Determination in International Law* (Minneapolis: University of Minnesota Press, 1996). For an introduction to the imperialising role of WTO trade agreements, see Shrybman, *The World Trade Organization*.

[34] The classic area study of this phenomenon is Barry Gills, Joel Rocamora and Richard Wilson, 'Low Intensity Democracy', in *Low Intensity Democracy: Political Power in the New World Order*, eds. Barry Gills, Joel Rocamora and Richard Wilson (London: Pluto Press, 1993).

[35] Fanon, *The Wretched of the Earth*, pp. 97–8.

[36] Alexander Wendt and Michael Barnett, 'Dependent State Formation and Third World Militarization', *Review of International Studies* 19(4), 1993: 321–47. For a forceful restatement, see Noam Chomsky, *Failed States: The Abuse of Power and the Assault on Democracy* (New York: Metropolitan Books, 2006).

[37] For this oversight among recent liberal imperialists, see Rao, 'The Empire Writes Back'. For the classic statement of the aspiration to draw on their own traditions and creativity rather than being forced into the Western state form, see Fanon, *The Wretched of the Earth*, pp. 312–13, and more recently, Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000).

[38] This point was raised of course by the former colonies as soon as they entered the United Nations, in their demand for a New International Economic Order and for permanent sovereignty over their resources. It was also raised by the Fourth World of Indigenous Peoples who still have no representation in international law. But these challenges were overridden by the great powers and the structured inequality of the United Nations constitution. It was raised within international law scholarship by Gerald Gong in 1984 before Koskenniemi, Simpson and Anghie in the early 2000s. See Gerrit Gong, *The Standard of 'Civilization' in International Society* (Oxford: Clarendon Press, 1984).

imperial actors and imperialised collaborators and resisters. It is the foundation of contemporary imperialism, laid in the colonial period and strengthened during decolonisation. Informal imperialism would scarcely work at all if these colonial foundations did not provide a historically sedimented background structure of institutions and relations of domination within which the more flexible relations of informal imperialism are exercised in the foreground.[39]

Secondly, the global governance critics place their hopes for the global rule of law and democracy on the international institutions and laws established after the Second World War to govern a post-colonial and post-sovereign world. However, it is difficult to see how these institutions and deformalised transnational legal regimes can be seen as an unproblematic basis for reforms that would lead to a non-imperial future. As I have suggested, these legal and political institutions were created by the European imperial powers and the United States at the end of the Second World War to end the destructive wars of imperial competition (the two world wars), to submit themselves to an international system of laws rather than separate systems of imperial law and military competition, and to continue opening the resources, labour and markets of the former colonies to free trade competition in the expanding global market dominated by them.[40]

In *American Empire*, Neil Smith gives one of the best recent histories of the rise to hegemony of the United States in this global field of public law and political institutions. For him, the resurgence of US global influence after 1945 is the second moment of the expansion of US informal imperialism (the first was the expansion from 1898 to the failure of the League of Nations). This second moment failed to become global because it was blocked by the socialist Second World and the defeat of the United States in Vietnam. The third moment began with the collapse of the Soviet Union in 1989, the resurgence of US 'global' power in the 1990s, and the successful extension of informal neo-liberal imperialism around the globe, precisely by means of these global institutions:

To the extent that the geography of the American century remains obscure, the origins, outlines, possibilities, and limits of what today is called globalization will remain obscure. There is no way to understand where the global shifts of the last

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[39] Mommsen, 'End of Empire'; and from the World Systems' perspective, Steven Sherman and Ganesh K. Trichur, 'Empire and the Multitude: A Review Essay', *Journal of World Systems Research* 10(3), 2004: 819–45.
[40] Anghie, *Imperialism*, pp. 196–235; Michel Chossudovsky, *The Globalization of Poverty and the New World Order*, 2nd edition (Toronto: Global Outlook, 2003); Shrybman, *The World Trade Organization*.

twenty years came from or where they will lead without understanding how, throughout the twentieth century, U.S. corporate, political, and military power mapped an emerging empire.[41]

The imperial character of the World Bank and the IMF can be seen in the unequal power of the G8 states and transnational corporations; the policies of 'structural adjustment' they impose on subaltern states; the scandalous increase in inequalities, debt and dependency of subaltern peoples in the post-colonial period; and the continual direct and indirect military intervention to prop up repressive regimes and topple those who support local democracy – all in the name of freedom. [42]

Alex Callinicos concludes from another perspective that it is 'naïve' to think that these global institutions could be the basis of a non-imperial alternative.[43] My point is somewhat similar. Several features of the legal and political institutions of the international system of states and the newer institutions of global governances are part of contemporary imperialism, not in any fleeting way, but, rather, the carefully designed instruments of the exercise of informal hegemony over subaltern actors. The public law and low-intensity democratic institutions of the non-European states were imposed by the former colonial powers and modified and continued by local, dependent elites during decolonisation and post-colonialism. They are thus 'imperial' in the traditional sense of being imposed on the people who are subject to them rather than under their shared, democratic authority. The various regimes of public international and transnational law and the corresponding 'global' institutions that now govern the access of post-colonial peoples to their own resources, as well as their subalternised forms

[41] See Smith, *American Empire*, pp. 4–25 (quote on p. 4). This is also roughly the chronology of Bacevich, *American Empire*, which was published a little earlier, from a conservative perspective.

[42] For a short introduction to these enduring features of the present world order, see James Petras and Henry Veltmeyer, *Globalization Unmasked: Imperialism in the 21st Century* (London: Zed Books, 2001); Jeremy Seabrook, *The No-Nonsense Guide to World Poverty* (Toronto: New Internationalist, 2003); and Joseph Stiglitz, *Globalization and Its Discontents* (London: Allen Lane, 2002). For the paramountcy of the great imperial powers in the WTO, which was introduced in 1995 as a form of 'global governance', see Amrita Narlikar, *The World Trade Organization: A Very Short Introduction* (Oxford: Oxford University Press, 2005). Robert Fisk, *The Great War for Civilization: The Conquest of the Middle East* (London: Fourth Estate, 2005), and Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (Oxford: Blackwell, 2004), show the seamless continuity between formal colonial imperialism over the Middle East in the first half of the twentieth century and informal imperialism in the second half, including the present Iraq and Afghanistan wars.

[43] Callinicos, *Against the Third Way*. See also the reply to David Held's recent formulation of cosmopolitan democracy in *Global Covenant*, by Patrick Bond, 'Top Down or Bottom Up? A Reply'; and Held's response, 'What are the Dangers and Answers?: Clashes over Globalization', both in *Debating Globalization*, eds. David Held, Anthony Barnett and Caspar Henderson (Cambridge: Polity Press, 2005).

of political and economic arrangements, are also imperial in that they have been developed without the former colonial peoples who are subject to them (and subjectified by them) having an authoritative and effective democratic say over them. These imperial features of existing public law and practices of governance should not be the accepted ground of criticism of imperialism, but the objects of sustained, democratic criticism by those who are oppressed and exploited by them.[44]

4 KANTIAN IMPERIALISM

I want to address the question of why the critics of the new imperialism do not bring the system of states and global institutions into question and examine them as constitutive features of contemporary imperialism. My answer is that the basic language of description of the global order they employ makes it very difficult to see these imperial features. Any language of disclosure of an object domain reveals certain aspects of the phenomena it brings to language at the expense of concealing other aspects. All languages are aspectival in this sense. The language they use tends to conceal, and to represent in non-imperial terms, precisely the imperial aspects of the present that I have been trying to uncover and call into question. This would not be so important if this language were just one among many used to discuss the world order and its historical trajectory. But this is not the case. It is a hegemonic language, not only of mainstream academic reflection on the world order, but also of much of the public discussion, whether the public work for or against the present world order, and whether their acceptance of it is normative, pragmatic, or habitual.

  This hegemonic language comprises three very general sub-languages and their various iterations over the long imperial age: (1) a normative and juridical language of an international system of constitutional states; (2) a social-scientific language (and philosophy of history) of the system's world-historical progress through stages of development from savagery to civilisation, or through stages of 'modernisation'; and (3) the language of self-determination of peoples (which I discuss in section 6). Although the first two languages have a variety of articulations in different traditions of European and North American theory and policy, one of the most

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[44] In their recent introduction to globalisation, *Globalization: A Short History* (Princeton: Princeton University Press, 2005), Jürgen Osterhammel and Niels Peterson go a considerable distance in bringing the imperial features of globalisation back into the central debate. I discuss this section in more detail in Chapter 7, this volume.

influential and presumptively universal accounts of this normative ideal
and set of processes is given by Immanuel Kant in, respectively, *Perpetual
Peace: A Philosophical Sketch* (1795) and *Idea for a Universal History with a
Cosmopolitan Purpose* (1784). I would like to use them as an exemplar of
the general kind of meta-narrative these two languages in their various
iterations narrate in different ways. Kant's formulation gives particularly
clear and uncompromising expression to many of the central features of the
classic modern imperial meta-narrative (except for the third part of it, self-
determination, which is grafted on to it during the decolonisation struggles
of the nineteenth and twentieth centuries).[45]

   In these two short texts in practical philosophy, Kant combined two of
the most influential products of the European Enlightenment: a social
theory consisting of the stages of universal historical development of all
peoples and societies, with Europeans at the highest and most developed
stage; and a normative or juridical theory of the just and final ordering of all
people and societies that would come about at the end of the historical
development. It pictures a just and universal post-colonial world of identi-
cal, free and independent constitutional states under public international
law, opened to capitalism and free trade, and governed informally by a
'league' of the advanced states, that is nonetheless the particular historical
product of European colonial imperialism.

   The normative theory is laid out in three definitive articles of *Perpetual
Peace*. Firstly, the only right ordering of all of humanity globally is the
gradual establishment of European-style, identical republican or constitu-
tional states that legally recognise individuals as negatively free, formally
equal and substantively unequal, and dependent on a single system of laws
and representative government. Secondly, these 'republican' constitutional
states are formally equal and sovereign, and they form a world system of
states subject to a set of universal international laws. The system of laws is
enforced by a 'league' or 'federation' of the most advanced European-style

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[45] I have discussed the various historical and contemporary formulations of this kind of story of
modernisation from Locke through the eighteenth century to the present in various works. For a recent
summary of the central imperial features of these ways of thinking about the world order as the
development of global modernity, see Mark Salter, *Barbarians and Civilization in International Relations*
(London: Pluto Press, 2002); and from a post-colonial perspective, Bill Aschcroft, *Post-Colonial
Transformation* (London: Routledge, 2001), pp. 82–104. Immanuel Kant situates his own imperial
narratives relative to the structure of other early-modern and Enlightenment narrative in 'Idea for a
Universal History with a Cosmopolitan Purpose', in *Political Writings*, pp. 51–3. For a more detailed
analysis, see Chapter 1, this volume, and Tully, *Strange Multiplicity*. The theories of Hegel, Marx and
Mill could be used to illustrate a similar narrative structure of the two languages, with, of course, specific
internal variations, as Salter and others have shown. I choose Kant's because it his particular fusion of
developmental and juridical universalism that has become so influential since 1945.

states that use primarily 'financial power', and military power if needed, to protect their members and bring other, less-developed and formerly colonised states into the federation over time. Thirdly, each state has a duty of cosmopolitan hospitality to open its borders to the cosmopolitan right of voluntary 'commerce' and free trade of other nations, even if the imperial powers initially abuse this right, as Kant acknowledges they do. This duty is enforceable by the league.[46] Finally, although constitutional states cannot intervene in other *constitutional states* unless they break down or close their doors to free trade, Kant emphasises in no uncertain terms that the league, or any single constitutional state, has the right to intervene militarily in any society that has not reached the state of a 'civil constitution' of European states, which is thus by definition posited as in a 'lawless state of nature', and to impose a Western-style constitutional order on it.[47]

The social theory of universal historical development in the earlier *Universal History* explains how this normative order gradually comes into being over the centuries. Development is guaranteed by 'nature', which works through the unintended consequences of competition of individuals and states; what Kant calls 'asocial sociability'. The main form of asocial sociability used by nature to develop the capacities of the human species towards a world system of states and perpetual peace is 'warfare':

Wars, tense and unremitting military preparations, and the resultant distress which every state must eventually feel within itself, even in the midst of peace these are the means by which nature drives nations to make initially imperfect attempts, but finally, after many devastations, upheavals and even complete inner exhaustion of their powers, to take the step which reason could have suggested to them without so many sad experiences that of abandoning the lawless state of savagery and entering a federation of peoples in which every state, even the smallest, could expect to derive its security.[48]

As he explains in systematic detail in the First Supplement to *Perpetual Peace*, nature works especially through the unjust wars of expansion in order to, firstly, spread people around the planet, moving the lower and savage peoples to more inhospitable climates as they move them off their traditional territories. Subsequently, Europeans spread and impose European

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[46] Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch', in *Political Writings*, pp. 99–108. There is a fair degree of indeterminacy in all three universal articles in Kant's various formulations in different texts and so in the interpretation of them over the last two hundred years in different circumstances. I suspect that this indeterminacy and ambiguity is part of the explanation of its continuing hold on the modern imagination that it shaped so profoundly.

[47] *Ibid.*, p. 98, introductory note to the three definitive articles.

[48] Kant, 'Universal History', in *Political Writings*, p. 47.

law by means of imperial wars and colonisation. And finally, they spread commerce, an ethos of competitive individualism, and the pacifying relations of free trade and economic interdependency to the rest of the world.[49]

These three features then lead to more wars of competition and development, but they gradually lead to the formation of the league to resolve wars among states, first among European states. These processes lead to the gradual replacement of military competition among states by economic competition, which is spread by 'cosmopolitan right' and 'mutual self-interest', so that 'the spirit of commerce sooner or later takes hold of every people'.[50] These three 'natural' globalising processes work along with the right of the league to intervene militarily in pre-constitutional states, or in constitutional states that break down into 'anarchy', violate contract law, or close their doors to foreign commerce, and impose a civil constitution on them. But the preferred instrument of the league is the use of economic sanctions once states are subject to global economic interdependency.[51] These processes move the world progressively towards the normative ideal of identical constitutional states, bound together by commerce and universal public international laws, and governed by the league of united states. That is, the natural mechanism described in the developmental social theory 'guarantees' the 'progress' towards the normative *telos*:

In this way, nature guarantees perpetual peace by the actual mechanism of human inclinations [asocial sociability]. And while the likelihood of its being attained is not sufficient to enable us to prophesy the future theoretically, it is enough for practical purposes. It makes it our duty to work our way towards this goal, which is more than an empty chimera.[52]

As we can see from this remarkably influential picture of world-historical development and normative universalism, the period of European colonial imperialism is an absolutely *necessary* stage in the development of the human species towards the end-state of a world system of European-style states bound together by global economic relations and international law

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[49] Kant, 'Perpetual Peace', in *Political Writings*, pp. 108–14. This is repeated from 'Universal History', where he explains that Europeans 'will probably legislate for all other continents', *Political Writings*, p. 52.

[50] Kant, 'Perpetual Peace', in *Political Writings*, p. 114.

[51] *Ibid*., pp. 96, 98. For the league's (or a single state's) defence of contracts against 'unjust enemies' who violate them, see Immanuel Kant, 'The Metaphysics of Morals', §60 (6: 349), in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1999), pp. 486–7.

[52] Kant, 'Perpetual Peace', in *Political Writings*, p. 114. This duty to work towards the Europeanisation of the globe is performed by exchanging public reasons about public policy in accordance with this normative and developmental framework ('Perpetual Peace', in *Political Writings*, pp. 114–15; further explained in Immanuel Kant, 'What is Enlightenment?').

and governed by a league of states exercising post-colonial informal imperial rule. Although European colonial imperialism is necessary, its actual, excessively violent wars cannot be justified in terms of Kant's three universal principles. As we have seen, Europeans are perfectly justified in coercively imposing Western law on non-Europeans if they fail to submit voluntarily to Western colonial law or to move off their traditional territories when the colonisers arrive, but Kant roundly condemns the excessive violence of European expansion as unjust and inhospitable.[53] Even though it is unjust, it is *necessary*: it is the means by which nature herself raises humans up the stages of historical development. Unlike utilitarian defenders of imperialism, the ends never *justify* the excessively violent means for the deontological Kant.[54] Nature does what is necessary through humans' unjust actions.[55]

Next, although the excessive violence of European imperial expansion is *unjust*, it cannot be resisted. According to Kant, there is an absolute duty to obey the law, no matter how unjust it may be or how unjust its original imposition. It is even a duty not to look into the origins of a colonial state, let alone resist it. The unjust foundations of any state, colonial or not, or of the imperial world order itself, cannot be enquired into with a view to challenging either, or revolting against them, no matter how violently they are imposed or how intolerably unjust they may be in the present.[56] The questions of whether the people agreed to the fundamental constitution and sovereign authority 'are completely futile arguments' and 'a menace to the state'.[57] The absolute acceptance of the imperial foundations of the European-imposed world order and the absolute duty not to resist this order, by a group within a state or a state within the system, constitute an 'idea expressed as a practical principle of reason, requiring men to obey the legislative authority now in power, irrespective of its origin'.[58] Each state has the right to crush a rebellion within a state and the league the right to

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[53] Kant, 'Perpetual Peace', in *Political Writings*, pp. 106–8.

[54] Kant, 'Metaphysics of Morals', in *Political Writings*, p. 173. For Kant, humans can be expected to exercise coercion within the bounds of his moral system only once they have reached the higher end of the stages of development. They are 'civilized' but not yet 'moral', so they will in fact act unjustly in conquering the non-European world and constructing it in accord with his legal and political plan. Kant, 'Universal History', in *Political Writings*, p. 49.

[55] Marx presents a somewhat similar argument that the wars of imperial expansion are unjust but necessary in his writings on India. More recently, Max Boot has presented a similar argument in *The Savage Wars of Peace*. This influential liberal defence of US imperialism is a history of US wars of intervention since 1890 and an exhortation to see them as savage yet necessary to economic freedom, progress and eventual peace among all liberal democratic states.

[56] Kant, 'Metaphysics of Morals', in *Political Writings*, pp. 143–5, 162, 173, 175.

[57] *Ibid*., p. 143. [58] *Ibid*.

intervene if the rebellion gets out of control.[59] The reason for this conclusion is that unsociable humans must have the law coercively imposed upon them by a master in order to establish the basis for the development of a lawful and rightful order in the first place.[60] Just resistance to the law or the sovereign authority, even against the 'most intolerable misuse of supreme power', is thus 'self-contradictory'.[61] Resistance to the coercive imposition of the law just shows that the resisters are exercising their asocial 'lawless freedom': that is, their antagonistic dispositions have not yet been sufficiently socialised and moralised into commercial and other forms of individualistic competitiveness within the imposed legal structure of the three definitive articles.[62]

In summary, Kant combined two very powerful imperial stories: a presumptively universal and Eurocentric narrative of historical development or modernisation and a presumptively universal and Eurocentric juridical theory of global justice. The Kantian theory or meta-narrative is imperial in the classically modern sense. Firstly, while it does not justify the excessive violence and pillage of European colonial imperialism and of the on-going remaking of the world in the political, legal and economic image of European state formation (even one particular image of it), it is presented as the universally necessary and irresistible path of development and modernisation. Secondly, it presents the post-colonial phase of development as a universal system of formally identical European state forms, abstracted from their continuing colonial relations of historical construction, deepening dependency and substantive inequality, *and* as a system of informal imperial rule through the league, in a completely non-imperial vocabulary. It redescribes and occludes in these formal and abstract terms precisely the imperial features of the present that I have tried to recover in the previous sections. Thirdly, this particular story of progress and its goal are presented not only as universal and necessary, but also as obligatory; as something all rational human beings have a 'duty' to work towards.

Fourthly, precisely because it is presented as universal, necessary and obligatory (that is, as a *meta*-narrative), it cannot recognise and respect any other of the plurality of narratives, traditions or civilisations as equal yet

[59] *Ibid.*, pp. 143–5; Kant, 'Perpetual Peace', in *Political Writings*, pp. 105, 114.
[60] Kant, 'Universal History', in *Political Writings*, pp. 45–6.
[61] Kant, 'Metaphysics of Morals', in *Political Writings*, p. 145.
[62] See Kant, 'Universal History', p. 46, and 'Perpetual Peace', p. 113, both in *Political Writings*, where he explains that moral behaviour follows after an established constitutional order. See his remarks on the so-called 'lawless freedom' of Indigenous peoples as the exemplar of unjust and regressive resistance to the external imposition of law (pp. 102–3); and Tully, *Strange Multiplicity*, pp. 79–82.

different, and enter into a dialogue with them on equal footing. Rather, it always already captures other peoples (and their legal and political civilisations) in its own presumptively universal categories: as either identical to European constitutional states, and so friends of peace and freedom; or 'lower peoples' somewhere down the developmental ladder (from 'barbarism' to 'culture' and 'morality'), and thus subject to imperial rule in some form or another. The moral and rational capacities of 'lower peoples' are less developed than the universalising rationalists and moralists at the higher stage.[63] The person who adopts this meta-narrative, as Kant's pupil Johann Herder put it in response, cannot approach another people's way of life as an alternative horizon, thereby throwing their own into question and experiencing human finitude and plurality, the beginning of insight and cross-cultural understanding. Rather, the exchange of public reasons takes place within this allegedly universal, necessary and obligatory world-view.[64]

5 NEO-KANTIAN IMPERIALISM

We are all familiar with how this dual language of universal norms and historical processes has been adopted and adapted in the Liberal and Marxist traditions, the social sciences, developmental studies, the policy communities of developed and developing states, international law, the League of Nations and the United Nations, and, as I have suggested, in the description and exercise of US informal imperialism over the twentieth

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[63] Kant depicts hunting and gathering Indigenous peoples ('lawless savages') and the pastoral peoples (their existence 'scarcely … more valuable than that of their animals') at the 'lawless' lowest stage and his contemporary Europeans as barely halfway up the ladder: civilised but not yet moral (Kant, 'Universal History', in *Political Writings*, pp. 45, 47–9).

[64] Johann Herder, Kant's pupil, presented scathing criticisms of Kant's imperialism; see F. M. Barnard, *Herder on Nationality, Humanity and History* (Montreal: McGill-Queen's University Press, 2003). For Burke's criticisms, see Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999). For Hans-Georg Gadamer's classic criticism of Kantian universalism as monological and closed to the other, see *Truth and Method* (New York: Continuum, 1999), pp. 346–62. There is now a vast literature on Kant's imperialism and racism. See Robert Bernasconi, 'Kant as an Unfamiliar Source of Racism', in *Philosophers on Race: Critical Essays*, eds. Julie Ward and Tommy Lott (Oxford: Blackwell, 2002); Brett Bowden, 'In the Name of Progress and Peace: The "Standard of Civilization" and the Universalizing Project', *Alternatives* 29(1), 2004: 43–68; Thomas McCarthy, 'On the Way to a World Republic: Kant on Race and Development', in *Politik, Moral und Religion: Gegensätze und Ergänzungen*, ed. Lothar Waas (Duncker and Humblot Verlag, 2004); Barry Hindess, 'The Very Idea of Universal History' (unpublished paper presented at University of Victoria, 2005); Michael Murphy, 'Civilizationism' (paper presented at the *First Nations Second Thoughts* Conference, University of Edinburgh, 2005); Anghie, *Imperialism*, pp. 295–8.

century.[65] One of the most influential post-Cold War reformulations of it, drawing explicitly on Kant, was presented by Francis Fukuyama in 1992.[66] By early 2005 it had clearly attained hegemonic status.[67]

The neo-Kantians today argue that they have made three major changes to the original Kantian story while retaining its universal, necessary and obligatory character. (1) They now see the so-called processes of historical development and modernisation as 'dialectical' rather than linear, yet still leading in a general way to a similar general universal normative end-point.[68] The processes continue to promote the conditions of peace, yet they also make its attainment more difficult. Furthermore, modernisation is not imposed 'unilaterally' onto a receptive non-European world, but is 'dialectical' in the sense that non-European peoples interact with these processes and modify them somewhat, making the overall direction less linear. A somewhat similar change has occurred in imperialism studies since the Second World War; from unilateral accounts of imperial domination to more interactive and agonistic accounts of hegemon–subaltern relationships, yet without the Kantian faith that Western imperialism leads to peace.[69]

(2) Kant's account of sovereignty has been modified to some extent by globalisation and multilayered global governance through the Bretton Woods institutions, changes in international law, the rise of powerful multinational corporations and the role of soft-norm creation by NGOs.[70] This has given rise to a more 'differential and polycentric' form of global rule. However, they do not describe this as informal imperialism as I have done. As I mentioned

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[65] For the global spread of these two languages over the last two centuries, see Vincent Tucker, 'The Myth of Development: A Critique of a Eurocentric Discourse', in *Critical Development Theory: Contributions to a New Paradigm*, eds. Ronaldo Munck and Denis O'Hearn (London: Zed Books, 1999); Ronaldo Munck, 'Deconstructing Development Discourses: Of Impasses, Alternatives, and Politics', in *Critical Development Theory*; Salter, *Barbarians*; and Rist, *The History of Development*.

[66] Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992).

[67] For a graphic illustration of its broad and enthusiastic endorsement, see 'Fukuyama was Right: We've Come a Long Way', *The Globe and Mail*, 1 January 2005: A14.

[68] James Bohman and Matthias Lutz-Bachman, 'Introduction', in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, eds. James Bohman and Matthias Lutz-Bachman (Cambridge, MA: MIT Press, 1997). The Introduction is a summary of the main themes presented in the chapters of the volume.

[69] *Ibid.*, pp. 9–12. For the change in imperialism studies, see Mommsen, *Theories of Imperialism*, pp. 70–141. For a critical survey and refutation of the neo-Kantian thesis of progress to 'democratic peace', see Andrew Lawrence, 'Peace of Imperial Method?: Skeptical Inquiries into Ambiguous Evidence for the "Democratic Peace"', in *Political Knowledge and Social Inquiry*, eds. Richard Ned Lebow and Mark Lichbach (New York: Palgrave, 2007).

[70] Bohman and Lutz-Bachman, 'Introduction', in *Perpetual Peace*, pp. 12–15. This modification is deeply indebted to the scholarship of David Held (see 'Cosmopolitan Democracy and Global Order: A New Agenda', in *Perpetual Peace*).

in the Introduction, they present this form of rule as 'non-imperial' by contrasting it with a centralised world empire, as if this is the only form of imperialism, just exactly as Kant does, in contrasting his 'league' with a world state-empire.[71]

(3) They argue that neo-Kantian universalism is more open to pluralism and democratic deliberation over the norms of association than Kant's view that all states must be identical in constitutional form. However, all other civilisations and traditions are characterised as 'particulars' within the 'general' or 'universal' framework of Kant's three definitive articles (the foundational cosmopolitan public law). In so far as their members can democratically negotiate some form of 'minority' recognition within this global empire (and this varies among the authors), they must do so within a presumptively universal framework for the exchange of public reasons over the norms of association (discourse ethics).[72]

In summary, these three modifications change the internal composition of the Kantian language to bring it in line with post-colonial informal imperialism and its dispersed institutions, international laws and particularities, while retaining its overall imperial character for the four reasons outlined in section 4.[73] In addition, the Kantian and neo-Kantian languages

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[71] Bohman and Lutz-Bachman, 'Introduction', in *Perpetual Peace*, p. 14; Kant, 'Perpetual Peace', in *Political Writings*, pp. 102–3. Kant changed his mind on this, seeing the league as a kind of negative surrogate for a world government that he seemed to have endorsed earlier. Habermas is one of the few neo-Kantians in the volume to argue for a kind of world republic at the UN to enforce international human rights: see Jürgen Habermas, 'Kant's Idea of Perpetual Peace with the Benefit of Two Hundred Years' Hindsight', in *Perpetual Peace*: and note 73 below.

[72] Bohman and Lutz-Bachman, 'Introduction', in *Perpetual Peace*, pp. 15–18. In recent works, such as *Global Covenant*, David Held is particularly concerned to draw a sharp boundary around cultural rights, drawing more than before on Brian Barry's liberalism. And Axel Honneth, in his exchange with Nancy Fraser, has argued against the recognition of cultural or legal diversity and for the 'integration' and 'individuation' of humanity into his formulation of the neo-Kantian universal framework: Nancy Fraser and Axel Honneth, *Recognition or Redistribution: A Political-Philosophical Exchange* (London: Verso, 2003), pp. 160–89.

[73] Both Habermas and Honneth attempt to respond to objections that the neo-Kantian global project is imperial in their chapters in the volume. They do not address the four reasons presented here. For a recent statement of my fourth reason, see Bruno Latour, 'Whose Cosmos, Which Cosmopolitics? Comments on the Peace Terms of Ulrich Beck', *Common Knowledge* 10(3), 2004: 450–63. For the failure of this general approach to recognise and accommodate democratic pluralism within states, let alone among different political societies, see Stephen Tierney, *Constitutional Law and National Pluralism* (Oxford: Oxford University Press, 2004). For the argument that this kind of approach fails to take into account a democratically grounded legal and political pluralism beyond the state, see Walker, 'The Idea of Constitutional Pluralism'; and Vito Breda, 'A European Constitution in a Multinational Europe or a Multinational Constitution for Europe?', *European Law Journal* 12(3), 2006: 330–44. For objections to Habermas' imperialistic formulation of the constitutionalisation of international law in *Der gespaltene Westen* (Frankfurt am Main: Suhrkamp Verlag, 2004) and 'The Kantian Project', see Neil Walker, 'Making a World of Difference: Habermas, Cosmopolitanism and the Constitutionalization of International Law', in *Multiculturalism and the Law*.

both have a tendency to serve to justify imperialism in practice when they are adopted as the language of foreign policy in the context of deformalised international law. During the Cold War, Hans Morgenthau argued that it could not but lead to 'a pax Americana or American Imperium in which the political interests and legal values of the United States are identified with universal values'.[74] Koskenniemi argues that the neo-Kantian project today has the same consequence in practice, leading either to a 'rational imperialism', where the decision-maker identifies his or her preferences with the abstract, universal values of the meta-narrative (moral and just) and others with 'mere preferences' (the ethics of a particular community), or to a 'cynical imperialism', where the decision-maker does not identify his or her preferences with universal values, but, having no alternative for justifying his or her actions, acts as if they are.[75]

6 THE FOURTH CRITICS: SELF-DETERMINATION, DEMOCRATISATION AND IMPERIALISM

The fourth set of critics see the length and breadth of informal imperialism and often the layers of imperial relationships laid down during the age of colonial imperialism. In response, they argue that the language and practice of popular sovereignty or the self-determination of peoples and democracy offer a genuinely non-imperial and anti-imperial alternative. If subaltern peoples and Indigenous peoples could only exercise their right of self-determination, through international law and reform of the UN or through revolution and liberation, they would free themselves from European and American imperialism. This view is widely expressed in the South and the Third World. It is also advanced in a modified way by critical international law theorists, who see the new 'democratic norm' of international law (and the 'right to democracy') as the extension of the right of self-determination. On this view, a state would be recognised under international law only if it were democratic, or democratising, and if it recognised the right of self-determination for any peoples within its territory. To be able to exercise the powers of self-determination or to

[74] In Koskenniemi, *The Gentle Civilizer*, p. 482.
[75] *Ibid*., pp. 483–93. He argues that the theories of both Habermas and Rawls are imperial in this pragmatic sense. For the view that Rawls' *The Law of Peoples* is a justification of US imperial foreign policy, see Jeffrey Paris, 'After Rawls', *Social Theory and Practice* 28(4), 2002: 679–99. For similar objections, see Bond, 'Top Down or Bottom Up?'; Deppe, 'Habermas' Manifesto'; and Benjamin Barber, 'Global Governance from Below', in *Debating Globalization*.

be able to organise as a democracy is to be free of imperialism on this view.[76]

Unfortunately, these two theses do not stand up to scrutiny. The protection of self-determination and democratic government under international law and the exercise of powers of self-determination and democratic self-rule are internal to informal post-colonial imperialism, at least in their present form. They are literally the two main ways by which the conduct of subaltern states is governed by informal imperial rule: that is, through supporting, channelling and constraining their self-determining and democratic freedoms.

During the early years of decolonisation, one of the first leaders to see the internal relation between informal imperial rule, self-determination and democratisation was Woodrow Wilson. He argued that most colonised peoples should be able to exercise the right of self-determination and democratic self-rule, but that the more advanced democratic states had the responsibility to educate the elites, train the military and intervene militarily from time to time to guide the self-determination of former colonial peoples along its proper stages of development to openness to free trade and Western-style democratisation.[77] The United States was the world leader in this form of 'enlightened' rule because of its long experience of this kind of rule by means of the Monroe Doctrine over the former colonies of Central and South America. The United States also had the responsibility to intervene militarily to protect the decolonising peoples from their two main foes: the old European colonial powers who claimed the colonies as their closed spheres of influence and the 'reactionary' internal leaders and movements who tried to close their economies to foreign domination and build up economic and democratic self-reliance through controlled trade (as the United States has always done in its own case).[78] In this way, Wilson was able to respond to the demands for self-determination of colonised peoples, except for the Indigenous peoples of the Fourth World,[79] yet to channel informally their

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[76] This is the third sub-language that I mentioned in section 4. The language of self-rule and self-determination has a long and complex history in Europe and the Third World prior to and in relation to the developmental and normative languages that Kant combined.

[77] This responsibility of the more advanced states to guide the former colonies in their exercise of self-determination was a continuation of the nineteenth-century 'duty to civilize' and its application in the Mandate System of the League of Nations (Anghie, *Imperialism*, pp. 245–68).

[78] Woodrow Wilson, 'An Address to the Senate, January 22, 1917', in *The Papers of Woodrow Wilson*, Vol. XL, ed. Arthur Stanley Link (Princeton: Princeton University Press, 1982). See Bacevich, *American Empire*, pp. 114–15.

[79] See *Volume I*, Chapter 8; and J. Anthony Hall, *The American Empire and the Fourth World* (Montreal: McGill-Queen's University Press, 2003).

exercise of self-determination into state-building and economic development within the existing imperial system. Of course, the granting of the right of self-determination to colonised peoples was a repudiation of Kant's non-resistance theory. However, it provided a normative justification and explanation from another Western tradition – popular sovereignty and self-determination – for the transition from colonialism to post-colonialism, something Kant's theory did not provide, while retaining the constitutive features of Kant's two normative-juridical and developmental-historical languages. Moreover, Wilson expressed the right of self-determination and the responsibility of informal imperial guidance in terms of the distinctive US tradition of the Monroe Doctrine, its corollaries, the doctrine of opening doors to free trade and democracy, and the ever-expanding frontiers.[80] In Chalmers Johnson's words:

Wilson … provided an idealistic grounding for American imperialism, what in our own time would become a 'global mission' to 'democratize' the world. More than any other figure, he provided the intellectual foundations for an interventionist foreign policy, expressed in humanitarian and democratic rhetoric. Wilson remains the godfather of those contemporary ideologists who justify American power in terms of exporting democracy.[81]

Major-General Smedley Butler, the famous marine in charge of implementing the Wilsonian doctrine of military intervention and self-determination, called it by its more familiar name, 'gangster capitalism':

I spent 33 years and four months in active service … I served in all commissioned ranks from Second Lieutenant to Major General. And during that time, I spent most of my time being a high class muscle man for Big Business, for Wall Street and the Bankers. In short, I was a racketeer, a gangster for capitalism … I helped make Mexico, especially Tampico, safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect

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[80] As I mentioned earlier, Wilson saw no contradiction in combining self-determination and democratisation with continual informal imperial intervention (military, economic and educational). William A. Williams presented this as the great contradiction in the Wilson doctrine a generation ago, but the present generation of US historians agree on the accordance of Wilson's writings and later US policy: that is, of what Andrew Bacevich calls a grand strategy of freedom as 'openness to free trade' dominated by US economic and military power (*American Empire*, pp. 46–51, 115–16). For the nineteenth-century development of this tradition on which Wilson drew, see the classic study of Albert K. Weinberg, *Manifest Destiny: A Study of Nationalist Expansion in American History* (Baltimore: Johns Hopkins University Press, 1935). For the role of wars against Native Americans (Kant's lawless savages) in the development of this tradition and military intervention up to Wilson and to the war in Vietnam, see Richard Drinnon, *Facing West: The Metaphysics of Indian Hating and Empire Building* (Minneapolis: University of Minnesota Press, 1980).

[81] Johnson, *Sorrows of Empire*, p. 51. As Weinberg shows, the policy of democratising the world and acting as a global policeman predates Wilson.

revenues in. I helped in the raping of half a dozen Central American republics for the benefit of Wall Street … I helped to purify Nicaragua for the international banking house of Brown Brothers in 1909 1912. I brought light to the Dominican Republic for American sugar interests in 1916. In China I helped to see that Standard Oil went its way unmolested.[82]

At the same time, decolonising elites *and* radicals in the former colonies adopted the language of self-determination to justify decolonisation and polity-building, but they were constrained – by the plenitude of overt and covert means of informal imperialism and the deeper dependency relations that continued through decolonisation – to exercise their political, legal and economic powers in accord with the latest versions of the developmental and normative sub-languages of the shared narrative of modernisation.

Far from [Benedict] Anderson's image of peoples whose inchoate dreams finally found form in nationalism, the social and political movements of the decolonized nation states have been highly various in their dreams, and have been repeatedly forced to attempt to fit their dreams and goals into the limits of the nation state form, to become nations or parts of a nation, content with local sovereignty and the project of national development.[83]

Throughout the Cold War, this way of governing the former colonies through the 'guided' exercise of self-determination was extended to the fight against communist and socialist movements from Franklin Roosevelt and Truman to Kennedy and Johnson. Today, a very similar tripartite language is employed. The league or 'coalition' of the United States and its allies is said to bring free trade and democratisation, to support the self-determination of peoples subject to tyranny and 'closed societies' by military intervention and economic sanctions against 'failed', 'rogue' or 'outlaw' states.[84]

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[82] Smedley Butler, 'On Interventionism' [1933], available at: www.fas.org/man/smedley.htm [Accessed 15 March 2006].

[83] Kelly and Kaplan, '"My Ambition is Much Higher than Independence"', p. 142. See also William R. Louis and Ronald Robinson, 'Empire Preverv'd: How the Americans Put Anti-Communism Before Anti-Imperialism', in *Decolonization*; and Michael Adas, 'Contested Hegemony: The Great War and the Afro-Asian Assault on the Civilizing Mission', in *Decolonization*, for the spread of the languages of developmental and self-determination throughout the Third World. This collection contains an excellent set of case studies on the co-constitution of self-determination, democratisation and informal imperialism. For the military, economic and educational means employed to exercise informal imperial power, see William Blum, *Killing Hope: US Military and CIA Interventions Since World War II*, 2nd edition (Monroe, ME: Common Courage Press, 2004).

[84] This is the main thesis of Simpson, *Great Powers and Outlaw States*. *The National Security Strategy of the United States of America* (2002) is a now classic formulation of this US global strategy of military intervention and the extension of bases around the world all for the sake of market freedom, openness and imposed democratisation throughout the world and against its latest enemies (section 2 above).

The kind of imposed or constrained democracy that is developed in these relationships of self-determination and dependency is not only 'unstable' (as we saw in section 3), but also 'low-intensity democracy'. This is a form of elite representative democracy dependent on foreign economic and military relations, and in tension with the more participatory democratic aspirations of the majority of the population. As the authors who introduced this term state: 'By invoking the American counter-insurgency catch-phrase "Low Intensity Conflict", it is our intention to show that perhaps more than in any time in the recent past, it is now that the struggle to define "democracy" has become a major ideological battle.'[85] Area scholars of recent global governance, democratisation and the creation of civil societies by the WB, IMF, transnational corporations and many aid agencies have shown that the imperial civilising project of opening the former colonies to free trade, labour discipline and market-oriented individual behaviour (from the old indirect colonial rule through the beginnings of controlled self-rule under the Mandate System to decolonisation) continues apace today.[86]

A related trend appears to exist in international law. A norm of democratic governance was introduced by Thomas Franck and Anne-Marie Burley (Slaughter) towards the end of the Cold War enjoining that a state should be recognised only if its internal constitution is liberal-democratic and based on popular sovereignty. Franck, somewhat like Fukuyama, argues that this international norm is emerging out of self-determination, decolonisation, human rights and the criterion that elections lend legitimacy, and is almost universally celebrated. In addition, it is a norm that expressly 'opens the stagnant political economies of states to economic, social and cultural, as well as political, development'.[87] In short, it is a neo-Kantian reformulation of Kant's three definitive articles and developmental theory, with the addition of the constrained right of self-determination and the Wilsonian language of freedom as openness to global markets.

Although the document failed to mention the support and guidance of self-determination, this was quickly remedied in the President's 2003 address on the support the war in Iraq was giving to Iraqi self-determination: 'Iraqi Democracy will Succeed' (11 June 2003) (as transcribed by FDCH e-media Inc.), available at: www.nytimes.com/2003/11/06/politics/00TEXT-BUSH.html. These long-standing imperial themes were repeated in his second acceptance speech in 2004.

[85] Gills, Rocamora and Wilson, 'Low Intensity Democracy', p. 52. Their general thesis is based on studies of Guatemala, Argentina, the Philippines, Korea, Chile, Nicaragua and Haiti.

[86] See Alison Ayers, 'Demystifying Democratization: The Global Constitution of (Neo)Liberal Polities in Africa', *Third World Quarterly* 27(2), 2006: 312–38, for a detailed empirical and theoretical study of informal imperialism in a number of African states today.

[87] Thomas Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law* 86(1), 1992: 46–91.

Anne-Marie Burley (Slaughter) explicitly draws the connection to Kant and states the universal norm of legitimacy in the following imperial way:

[Liberal democratic states] are defined broadly as states with juridical equality, constitutional protection of individual rights, representative republican govern ments, and market economies based on private property rights. 'Non liberal states', by contrast, are defined as those states lacking these characteristics.[88]

In her fascinating study of the emergence of this norm of informal neo-liberal imperialism, Susan Marks goes on to show how 'social-democratic' neo-Kantians, discussed above, develop their theories out of the same tradition but 'deepen' the narrow commitment to 'low-intensity democracy' of neo-liberal imperialism.[89] If I may put it this way, these two wings of liberal-democratic international law replicate the two wings of informal US imperialism.

After criticising the cosmopolitan democrats for a self-limiting definition of global democratisation, Marks argues for extending the norm of demo-cratisation further by deepening the commitment to 'democratic inclusive-ness'. However, this critical response would have to take into account the underlying imperial features of the state and international system in which peoples would be included if it were to avoid assimilation and subordina-tion. Imperialism will not be challenged by simply extending the para-mount forms of neo-liberal or social-democratic representative democracy, for they are imposed forms, and they are controlled indirectly by the techniques of informal imperialism. Rather, by promoting diverse 'high-intensity' forms of local and global democracy, self-determination and legal pluralism enlightened world leaders would enable the people subject to these low-intensity structures of law and politics to bring them under their shared democratic authority, without the current impoverishing and dis-empowering forms of dependency and threats of intervention.[90]

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[88] Anne-Marie Burley, 'Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine', *Columbia Law Review* 92(8), 1992: 1907–96, 1909.

[89] Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford: Oxford University Press, 2000). While she is critical of the cosmopolitan demo-crats, she does not call their form of neo-Kantianism 'imperial', even though it has the imperial characteristics of neo-liberal imperialism. She sees the emergence of the democratic norm as some-thing new, in contrast to the norm that a state should be recognised independently of its constitution. But the Kantian tradition has always had a 'civic constitution' criterion of statehood and has defined 'non-states', in contrast, as Kant does. In fact, the liberal imperialists of the interwar years anticipated this norm of liberal democratic orthodoxy in many respects (Morefield, *Covenants Without Swords*).

[90] For a similar criticism of the norm of liberal democracy in international law, see Jose E. Alvarez, 'Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory', *European Journal of International Law* 12(2), 2001: 183–246.

In summary, the dominant forms of representative democracy, self-determination and democratisation promoted through international law are not alternatives to imperialism, but, rather, the means through which informal imperialism operates against the wishes of the majority of the population of the post-colonial world.[91] The genuinely non-imperial alternatives are more broadly participatory or high-intensity democratic forms of democracy and self-determination that either draw on persisting *non*-imperial legal and political practices and traditions or create new ones.

7 THE FIFTH CRITICS: POST-COLONIALISM, LEGAL CONSTRUCTIVISM AND INTERACTIVE IMPERIALISM

The final set of critics I wish to discuss are the post-colonial critics of imperialism. Drawing on and extending the later work of Edward Said in *Culture and Imperialism* and the later work of Michel Foucault in 'The Subject and Power', they share much of the critical analysis I have presented above. They start from the premise that humans are 'field beings', always already in relationships of meaning, power and modes of relational subjectivity; and they see themselves as writing and acting *within and against* the specific fields of informal imperial relationships of meaning, power and subjectification among hegemonic and subaltern actors.[92]

They argue that imperial relationships are not unilaterally and monologically imposed on passive subjects who submit to the logic of capitalist development and Western juridification, as the Kantian narrative

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[91] See the Introduction to Gills, Rocamora and Wilson, *Low Intensity Democracy;* and Seabrook, *The No-Nonsense Guide to World Poverty.*

[92] For a general survey of post-colonial writing on imperialism, see Ashcroft, *Post-Colonial Transformation.* For a succinct statement of the post-colonial approach to international relations and international law, see Taraki Barkawi and Mark Laffey, 'Retrieving the Imperial: Empire and International Relations', *Millennium* 31(1), 2002: 109–27. I also take the legal constructivists, represented by Stephen Toope, Martha Finnemore, Jutta Brunnée and Antje Wiener in international law; and Neil Walker, Emilios Christodoulidis, Jo Shaw and Stephen Tierney in European public law, to share many of the features of post-colonial analysis, even though they have not addressed the question of whether the field of study is 'imperial'. That is, they understand domestic, transnational and international law to be a network of relationships among unequally situated subjects of law (hegemons and subalterns of various kinds) who are able (to unequal extents) to negotiate and modify the laws to which they are subject *en passant*. Martha Finnemore and Stephen Toope, 'Alternatives to "Legalization": Richer Views of Law and Politics', *International Organization* 55(3), 2001: 743–58; Antje Wiener, 'The Dual Quality of Norms and Governance Beyond the State: Sociological and Normative Approaches to Interaction', *Critical Review of International, Social and Political Philosophy* 10(1), 2007: 47–69; Walker, 'The Idea of Constitutional Pluralism'; Emilios Christodoulidis, 'Constitutional Irresolution: Law and the Framing of Civil Society', *European Law Journal* 9(4), 2003: 401–32; Jo Shaw, 'Postnational Constitutionalism'; Tierney, *Constitutional Law.*

prescribes. Rather, like the theorists of 'interactive' and 'excentric' imperialism, they see imperial relationships as agonistic and, to a large extent, mutually constitutive. That is, hegemonic imperial actors and their legal and political institutions and instruments of informal rule, and the corresponding subaltern actors are mutually constituted by the historical interactions among them; from the initial rise of the West and the sub-alternisation of the colonial world out of the dispossession and exploitation of their resources and the resistances internal to these processes, down to the complex field of interaction today.[93]

Post-colonial critics are also critical of the theories of self-determination and liberation of the decolonising period in much the same way as I have been above. They argue that these narratives of decolonisation and 'liberation' occlude the emergence of informal imperialism and, moreover, reproduce the great script of subject/sovereign 'doubles' of the Western tradition, rendering post-colonial subjects 'conscripts' of modernity.[94] Further, they suggest that there is no unified 'self', either hegemon or subaltern, who could stand outside the fields of linguistic, legal, political, economic, military and cultural relations in which we find ourselves and 'determine' the relations that bear us, as the self-determination narrative presupposes. 'Hegemon' and 'subaltern' are multiplex: dispersed across complex, criss-crossing and overlapping fields of unequal and mutually constitutive relationships of interplay. They are not conveniently located in the West and the non-West or the North and South, but within and across these binary categories of colonial geography,[95] dividing subaltern (and hegemonic) societies into complex hegemonic–subaltern classes and ethnicities, and often mobilising local pre-colonisation relationships of imperialism, quasi-imperialism and resistance.[96]

For post-colonial critics, the central feature of these multiple relationships of informal imperialism is the interaction or agonism between hegemons and subalterns. One of the discoveries of twentieth-century theorists and policy makers of both rule and resistance is that the subject (individual

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[93] Eric Wolf, in *Europe and the People Without History* (Berkeley: University of California Press, 1982), was one of the first to put world history in this way, although he drew heavily on earlier interactive accounts, such as those of Rosa Luxembourg and Eric Williams.

[94] David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham: Duke University Press, 2004). See also Edward Said's development of these two criticisms in *Culture and Imperialism*. For a brief summary, see Ashcroft, *Post-Colonial Transformation*, pp. 1–18.

[95] Stephen Flusty, *De-Coca-Colonization: Making the Globe from the Inside Out* (London: Routledge, 2004); Tully, *Strange Multiplicity*.

[96] Taraki Barkawi and Mark Laffey argue that this thesis is a constitutive feature of Chomsky's analysis of imperialism as well (note 88).

or group) is more effectively and economically governed *through* his or her own freedom – his or her own participation in relations of governance of production, consumption, militarisation, securitisation, leisure and so on – by incorporating degrees of subaltern legality (customary law), democracy and self-determination into informal and indirect modes of governance of political and economic life. As we have seen in the previous section, this invention in the realm of governance developed out of indirect colonial rule and decolonisation and then spread to neo-liberal modes of governance domestically and globally.[97]

The implication of this for post-colonial writers is that there is always a limited range of possible ways of exercising one's freedom in accordance with the rules of any practice of governance – following the rules as closely as possible, acting differently, trying to modify them to some extent overtly or covertly, seeking to call them into question and negotiate them with the powers that be in the corresponding legal and political institutions, and, at the limit, confronting them directly in the recourse to non-violent or violent revolt. (From this perspective, the great theories of self-determination and independence focused on one type of revolt to the exclusion of all the other possible practices of freedom available to subaltern actors.)[98]

Thus, instead of being seen as the passive constructs of imperial processes of 'interpellation', as in Louis Althusser's account, subaltern subjects are seen, extending Said and Foucault, as 'interpolators', writing and acting back in a multiplicity of ways within fields of discursive and non-discursive relationships.[99] While subalterns are constrained to act 'tactically' in these ways, because of their unequal and subordinate position, hegemons act 'strategically'. Hegemons try to structure the field of possible responses. They try to induce, train, encourage, fund, bribe, persuade, channel, threaten and constrain the conduct of subalterns at a distance or infrastructurally, to maximise results. They employ all the indirect means available and turn

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[97] For its employment within advanced liberal societies, see Rose, *Powers of Freedom*. Loughlin integrates governmentality into his account of public law in *The Idea of Public Law*, and Anghie, in *Imperialism*, traces the historical connection of governmentality, international law and the civilising project. For an overview of research in colonial and imperial history on these techniques of colonial governmentality, see Peter Pels, 'The Anthropology of Colonialism: Culture, History and the Emergence of Western Governmentality', *Annual Review of Anthropology* 26, 1997: 163–83.

[98] The classic sketch of this way of thinking about law and government is Foucault, 'The Subject and Power'. The section on writing back in Edward Said's *Culture and Imperialism*, pp. 191–281, is quite similar. See *Volume I*, Chapter 3.

[99] See Ashcroft, *Post-Colonial Transformation*; Sara Mills, *Discourse* (London: Routledge, 2004), ch. 5.

to military means only if all else fails. Hegemons and subalterns are thus mutually constituted to a considerable degree by their strategic and tactical interaction over time.[100]

Accordingly, any imperial relationship of knowledge, power, rules and modes of subjectification is not a command–obedience imperative, as in Kant, but a complex site or field of contestation over it and over the instruments and institutions that hold it in place. These sites can be as various as a contest over the language or literature of the imperial countries, a meeting of the World Bank, the UN forum, the norm of democratic inclusion in international law, rights in a sweat shop, brand marketing, local struggles over dispossession and so on. The aim is not to engage in these contests for their own sake, as critics often allege. It is to criticise and expose the dominant discourses and practices in such a way as to effect not only a modification but also a possible 'transformation' of them from the inside.[101] The master's house and tools are not something that one stands back from and tries to overthrow from the outside, as in Audra Lourdes' classic metaphor of the decolonisation and nation-building era. Rather, the master's house and tools are the on-going indeterminate construction of the strategic and tactical interactions of the hegemons and subalterns within. It is not only that the shape of the imperial houses change over time as a result of the contests, but that the relationships that constitute them are always in principle open to a possible transformation.

For all its considerable virtues, the problem with this response to contemporary imperialism is that it is not so much an alternative to contemporary imperialism but a move within the strategic and tactical logic of informal imperialism. It exploits the 'play' or 'indeterminacy' of relations of meaning and power in order to extend and modify them as they proceed. It appears as an alternative to imperialism because it is standardly presented in contrast to the boundaries and binary logic of the colonial and decolonisation periods. It is certainly an alternative to both. But, if the tactical forms of resistance recommended by post-colonial writers are viewed alongside the corresponding transformation in the way imperial power is exercised informally – as now governing former colonials through their constrained freedom of self-determination and low-intensity representation – then these

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[100] In *Power: Critical Concepts* (Oxford: Polity Press, 2001), John Scott has developed a complex theory of types of power on this basic model that covers power relations in informal imperialism. The idea of strategic and tactical interplay in everyday practices has also been developed by post-colonial writers from the work of Michel de Certeau (Ashcroft, *Post-Colonial Transformation*, p. 53).

[101] Ashcroft, *Post-Colonial Transformation*, pp. 45–56.

forms of resistance appear to be the very ways that subalterns are already 'conscripted' to conduct themselves in post-colonial imperial relationships. In so doing, they unwillingly play a role in developing these imperial relationships.[102]

If, for example, post-colonial actors try to modify and transform the international law norm of democracy beyond low-intensity democracy, they find that there are international forums in which they *can* enter into contestation. They find that an international norm is often open to democratic deliberation and modification, as the liberal-democratic theory of the equiprimordiality of the rule of law and democracy requires. However, the deformalised international law norm does not become the subject of the exchange of public reasons among free and equal actors, but, rather, the exchange of strategic and tactical acts among hegemonic and subaltern actors positioned in a vastly unequal field of institutions of informal imperialism. In these circumstances, it is the hegemon who is usually able to prevail and reconfigure hegemony in the course of modifying the deformalised norm, as we have seen in the section on the evolution of this democratic norm. The reason for this is not only the enormous substantive inequalities of the partners in these types of contest over the somewhat flexible norms of informal imperial rule, but the underlying, inflexible, relations of dependency laid down over the last five hundred years that structure the field itself.[103]

In summary, post-colonial and legal-constructivist critics of imperialism, like the earlier theorists of informal and interactive imperialism, have transformed the way we think about imperial relationships in the manner I have summarised. They have also gone on to suggest how it is possible for individuals and groups to act within and against the relationships that constitute the imperial field of law and politics today. This is an important advance on the other critics. However, they (including myself) have not yet been able to distinguish between a form of contestation that 'modifies' an imperial relationship, which leaves the underlying imperial features in place and to which the powers that be can respond and co-opt, and a form of contestation that 'transforms' an imperial relationship, whereby it comes

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[102] Hardt and Negri make a somewhat similar point in *Empire* from a different perspective.

[103] This is, of course, Koskenniemi's worry as well at the end of *The Gentle Civilizer of Nations* (pp. 494–509). I have discussed this dilemma of inclusion and subordination in more detail with respect to the law in Chapters 4 and 6 of this volume. Post-colonial writings occasionally overlook Foucault's influential formulation of the role of 'structures of domination' in setting the stage of unequal contests over flexible norms of action-coordination. See Foucault's 'The Subject and Power'.

under the shared, continuing democratic authority of those subject to it (and thus is de-imperialised). The traditional struggle of liberation and self-determination against colonisation was the classic model for transformation throughout the twentieth century, but we now know, as Fanon first pointed out above, that even this form of contestation did not overcome imperialism but only led to its modification into informal imperialism. So, we do not know if post-colonial forms of individual and collective anti-imperial contestation will lead to modifications that only reproduce the hegemony of the informal imperial features I have enumerated, or if they might lead to their transformation. This is not so much a criticism as a question for future research.[104]

CONCLUSION

I want to suggest that we can gain a clearer understanding of the imperial features of the present field of public law and political theory by means of the kind of historical and critical approach I have employed above. The result is that a number of discursive and non-discursive features of public law and political practices that critics have assumed to be alternatives to imperialism turn out to be implicated in a very complex imperial ensemble. The old and new features I summarised at the end of each section play – whether we like it or not – imperial roles in what Martin Loughlin calls the 'governance' of contemporary legal and political associations. We are not 'entrapped' in these fields of imperial relationships, but, to use Wittgenstein's alternative phrase, we are 'entangled' in them, and not so sure of our way out as the critics of imperialism lead us to believe.[105]

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[104] See Christodoulidis, 'Constitutional Irresolution' and 'Against Substitution: The Constitutional Thinking of Dissensus', in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, eds. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), for the most sustained critical reflection on this central dilemma. I do not mean to suggest that 'modifications' are not important (quite the opposite). But I do mean to suggest that research needs to be done on the types of modifications that are possible in this complex field of post-colonial imperialism to find out if there are ways to make minor modifications add up to something more transfiguring and lasting. See, for example, Boaventura de Sousa Santos, *The World Social Forum: A User's Manual* (December 2004), available at: www.ces.uc.pt/bss/documentos/fsm_eng.pdf [Accessed 27 October 2006]. I address this question directly in Chapters 8 and 9, this volume.

[105] For a survey of the themes of entrapment, emancipation and immanent critique that run through the theories I have discussed, see Eyal Chowers, *The Modern Self in the Labyrinth: Politics and the Entrapment Imagination* (Cambridge, MA: Harvard University Press, 2004). For Wittgenstein on 'entanglement', see *Philosophical Investigations*, § 125.

I would like to end on a slightly less gloomy note. The critics I have examined overlook not only many imperial features of the present, but also, as strange as this sounds, many non-imperial features as well. That is, their criticisms tend to be made within the broad horizons of the hegemonic languages of Western imperialism and their many modifications over the last two hundred years, from Kant and Marx, through to the critics and defenders of imperialism today. These languages of historical development, the global spread of Western legal and political institutions, self-determination and democratisation, and post colonial contestation from within make it appear that the world is actually made over accordingly by imperial expansion and subaltern resistance.

As a result, the critics tend not to see the alterity beyond their horizon: the legal, political and economic pluralism that has not been reconstituted by Western imperialism but continues to exist in the day-to-day lives of millions of people, even when they are constrained to work within the fields of imperial relationships. These old and new alternative ways of living in the present survive and continue to develop in their own complex and creative ways, in relation to their own traditions, because imperialism has always depended for its very existence on indirect and informal rule, leaving local alternative worlds in operation to some constrained extent, and building its relationships of control and exploitation parasitically on them. These continuing non-imperial forms of life are the living basis underlying Western imperialism. Without these networks of local economic self-reliance, gift relationships, mutual aid, fair trade, and legal and political pluralism, imperialism would not survive.[106] Imperialism has not made the world over to the extent the promoters and critics presuppose.[107] The world of lived experience is actually different from the world portrayed in the texts we have considered. For the most part, this 'strange multiplicity' is overlooked because it is recognised and categorised within inherited imperial languages as being 'less developed', 'pre-modern' or 'particular'. We in the

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[106] See, for examples, Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), pp. 1–31, 253–66; and Seabrook, *The No-Nonsense Guide to World Poverty*, pp. 117–25.

[107] My point is somewhat similar to the 'alternative modernities' movement associated with Dipesh Chakrabarty and Charles Taylor and the 'living democracy' movement of Vandana Shiva. The classic example is the Indigenous peoples of the world, who have been colonised and post-colonised more than any other peoples of the world, yet they have been able to preserve, live and develop their forms of life in the face of genocide, dispossession and assimilation. But non-imperial ways of life are also elsewhere: Notes from Nowhere, ed., *We are Everywhere* (London: Verso, 2003); John Cavanagh and Jerry Mander, eds., *Alternatives to Economic Globalization: A Better World is Possible* (San Francisco: Berrett-Koehler, 2002).

West have yet to enter into the difficult kind of dialogue with the others of the world that brings this horizon of persisting languages and practices into the space of questions and opens the interlocutors to a non-imperial relationship of dialogue and mutual understanding.[108] This would be the beginning of an alternative to imperialism.[109]

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[108] For this non-imperial type of dialogue, see Tully, *Strange Multiplicity*, pp. 99–139. Boaventura de Sousa Santos suggests, somewhat optimistically, that the World Social Forum could act as a forum for this kind of dialogue, in 'The World Social Forum: Toward a Counter-Hegemonic Globalization: Parts I and II', in *The World Social Forum: Challenging Empires*, eds. Jai Sen, Anita Anand, Arturo Escobar and Peter Waterman (New Delhi: Viveka Foundation, 2004), available at: www.choike.org/nuevo_eng/informes/1557.html [Accessed 27 October 2006].

[109] See Chapters 8 and 9, this volume, for this argument.

Communication and imperialism

The question I address in this chapter is the following: Is it possible to establish communicative networks of reciprocal elucidation between public philosophy and civic freedom in our present age that not only are imperial but also have undergone a recent communications revolution? I open with a form of civic ethics that was articulated prior to the communications revolution.

At the heart of former Canadian Prime Minister Pierre Trudeau's ethics is the activity of paddling against the current. As early as 1944, in 'The Ascetic in a Canoe', he said the ideal of paddling against the current is 'the resolve to reach the saturation point. Ideally, the trip should end only when the paddlers are making no further progress within themselves.' What does this ethic mean in practice today?

In the 1980s Trudeau campaigned for nuclear disarmament, downsizing military–industrial complexes, resisting the media's glorification of violence as the means to resolve disputes, and for the turn to peaceful and dialogical means of coping with disagreement. He saw this campaign for human security through peace and dialogue as a part of the civic ethics he had always practised. He said that he opposed big concentrations of power: superpowers, military–industrial complexes, media conglomerates, big corporations and the enormous global inequalities these power

networks enforce. His means of opposing big concentrations of power was to empower all citizens to participate in the democratic struggles for freedom and equality.

Trudeau argued that Canada's Charter of Rights and Freedoms should not be seen so much as a set of guaranteed rights and freedoms handed down from on high that Canadians could take for granted, but more as a toolbox that citizens should use to engage in practices of civic freedom against the unequal distribution of power in Canada and the world.[1] One does not develop the skills of a proficient canoeist by being handed a paddle and canoe, but by engaging in the practice of canoeing to the saturation point. It is the same with acquiring the skills of a proficient citizen. Only by exercising their Charter rights in practices of civic freedom will future generations of Canadians develop the civic ethics of peace, dialogue and equality of power-sharing that Trudeau saw as both the democratic means of struggle and the aim of these struggles. Without this identity-transforming civic experience of 'progress within themselves', Canadians would be shaped, formed and swept along in the dominant current promulgated by the big concentrations of power, becoming passive subjects rather than active democratic citizens.[2]

Our question today – and every day – is how can we adapt and apply Trudeau's civic ethics of critical freedom against the currents of the vast concentrations of power that shape, form and carry us along today? Before addressing this question, we need to ascertain the *character* of the big concentrations of power today.

The State of the Union Address of 31 January 2006 by US President George W. Bush gave a clear picture of their general configuration. Although he did not use the language of empire, he explained that the United States is the

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[1] The Canadian Charter of Rights and Freedoms, Section B of the Constitution Act 1982, is an amendment to the Constitution of Canada that was initiated by Pierre Trudeau while Prime Minister. His rationale for the rights and freedoms enumerated in the Charter was that they would empower individuals and groups in Canada to participate directly and more fully in the civic and political life of Canada; that is, they would enable citizens to exercise their popular sovereignty. This 'civic freedom' aspect of the Charter was overshadowed by the debate over whether it gives proper recognition to Quebec. My aim in this article is to recover and adapt this civic dimension of Trudeau's legacy for our times. See *Canadian Charter of Rights and Freedoms*, available at: http://laws.justice.gc.ca/en/charter/index.html [Accessed 29 October 2006].

[2] This description of Pierre Trudeau's civic ethics is based on his lecture to an introductory class in political theory at McGill University in the late 1980s when he was campaigning for nuclear disarmament. The quotation from 'The Ascetic in a Canoe' is taken from the Pierre Trudeau Foundation's website: www.trudeaufoundation.ca/trudeau_e.asp [Accessed 5 May 2005]. I would like to thank Alexandre Trudeau for discussions of this ethics today.

leader among the great powers whose role it is to govern the global empire
handed down to them by a half-millennium of Western imperialism. They
must complete the task of bringing the remaining recalcitrant states and
non-state actors in line by military means and opening their resources,
labour and markets to the global economy dominated by the corporations
of the great powers, and to perform these imperial duties in the name of
bringing (neo-liberal) freedom. If the first theme was thus to equate free-
dom with opening other societies to informal imperial control and struc-
tural adjustment, as the imperial powers have done for centuries, the second
theme was an equally classic imperial argument. These imperial responsi-
bilities are not some arcane aspect of foreign policy, but, rather, directly
related to the national interest, security and economic wellbeing of the
United States and the other great powers. The indispensable and seemingly
sovereign superpower is thus, paradoxically, dependent on the efficient
operation of the global empire of exploitation and inequality, and US
citizens and their Canadian and European allies must shoulder the
demands this dependency places on them. They must stay the course
and paddle with the dominant current if they are to continue to enjoy
their privileged lifestyle, and they must explain this to themselves not only
in terms of their self-interest, but also in terms of bringing freedom to the
non-West.

   This address thus implies that the big concentrations of power can be
characterised as an informal imperial system, with the United States as the
leading power, and this characterisation is substantiated by a large body
of academic literature, as we saw in Chapter 5. However, before we can
examine the possibilities of public philosophy and civic freedom in this
context, we need to examine the relations of communication available to us.

INTRODUCTION: THE TURN TO COMMUNICATIVE
ACTION

One of the necessary features of any form of imperialism and any form of
organised critical freedom in relation to it is communication. I want to try
to give a partial and specific answer to our question by focusing on the form
of communicative relationships in which we find ourselves, whether we
paddle with or against the prevailing current.

   The transformation of communication in the past century has left us
with two well-known and seemingly paradoxical currents. The first is a
defining trend of the present when it is described as the 'information age' or
'network society': the vast proliferation of networks of communication in

which people share and create information and knowledge.[3] Communication networks are the media through which ideas move. This trend is associated with and legitimated by a broad and contested concept of 'openness'. The second current is also a defining trend of the present when it is described as the 'age of insecurity' or the 'risk society': the equally vast proliferation of exclusions, restrictions, inducements, barriers and boundaries placed on communication, as well as on actual physical movement and ultimately on the sharing of knowledge.[4] Moreover, many of the risks and insecurities are said to come from within communication networks, especially since 9/11. These constraints govern the movement of ideas in communication networks. This trend is associated with and legitimated by a broad and contested concept of 'security' – of persons, cultures, religions, states, networks, civilisation and freedom.

Accordingly, section 1 is an analysis of the rise of networks as the defining form of communicative organisation in the present. Section 2 is an analysis of the forms of control, exclusion, assimilation, hierarchy and concentration of power that have developed along with communication networks and govern the transmission of knowledge and information. Section 3 is an analysis of the possibility of critical and effective forms of democratising action within the array of networks and controls in which we are both enabled and constrained to communicate and interact in the imperial present.

These critical and effective forms of action are examples of the emerging form of civic communicative freedom of 'we the governed' that I call 'democratic communicative action'. It is a new form of civic freedom appropriate to being governed through the types of imperial networks and controls discussed in sections 1 and 2. The enactment of civic communicative freedom in and against concentrations of network power and their communicative barriers, I will argue, is one way of adapting and applying Trudeau's civic ethics to the present.

I NETWORKS OF COMMUNICATION AND SOCIAL ORDERING

It is often remarked of the present age that, due to the astonishing growth of formal and informal networks of knowledge, production and transfer, great

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[3] Manuel Castells, *The Information Age: Economy, Society and Culture*, Vol. I, *The Rise of Network Society* (Oxford: Blackwell, 1996).
[4] Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage, 1992).

new possibilities exist for creation and exchange of shared knowledge across physical and cultural boundaries. This proliferation of networks of communication is in turn the communicative dimension of a larger and epochal trend – the emergence of networks as a key means of social ordering. As Manuel Castells states:

Networks constitute the new social morphology of our societies, and the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power and culture.[5]

Let's examine what it means to say that networks are the means not only of producing and communicating knowledge, but also of social ordering.

The idea that the network is the defining form of social organisation today developed out of the rapid spread of the Internet as the prototype and basis of a network social order. The Internet originated in the United States Department of Defense Advanced Research Projects Agency (DARPA). It was designed to avoid the destruction of US communications by a Soviet invasion. The US military figured that the Internet could not be controlled by a vulnerable (or hostile) centre, and it would be made up of thousands of autonomous computer networks that would have innumerable ways to connect and overcome electronic barriers. ARPANET, the network set up by the Defense Department, thus became the foundation of a global communication internet network, a World Wide Web, by the mid-1990s. In ironic confirmation of the Defense Department's thinking, the Internet rapidly escaped the direct control of the US military and is now routinely used by all sorts of networkers, including those whom the Department calls its 'enemies', such as terrorist networks.

Although the spread of the Internet and other information highways solidified the image of the network as the dominant form of organisation in the popular and academic imaginary, the Internet is built on, and still dependent upon, the earlier spread of electric light and heat, telephone, radio, television, radar, multimedia and other electronic 'networks', and this wider, pre-existing field of networks provides the background of the claim that we live in a network age. Moreover, the image of communication networks is ultimately grounded in the background understanding of human communication in face-to-face networks since time immemorial.

Hence, in the primary instance, Castell's claim that the network is the reigning form of organisation today[6] refers to a *communication* network: a network that produces and communicates information or knowledge

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[5] Castells, *The Rise of Network Society*, p. 469.   [6] *Ibid*.

among interconnected nodes by means of new information technology, especially the computer. For our purposes, we can pick out four main features of a communication network.

(1) The modes of communication range from the more or less unilateral informing of a passive, 'interacted' recipient at one end (information processing, surfing the web, watching a movie) to the ideal of 'interactive' communicative exchanges among free and equal networkers continuously creating new knowledge at the other.

(2) A node refers to any unit connected in any network: such as individual users of communicative technology, corporations, organisations of various and conflicting kinds, stock exchange markets, ministries, governments, cities, states and other networks or sub-networks.[7]

(3) These high-tech communicative networks are not only net-like but also exceptionally flexible and open-ended. Diverse and dissimilar nodes can be connected and coordinated, nodes can be easily added or subtracted, the organisation of the network can be modified, reorganised and retooled, the information transmitted and the technologies of transmission can be created, destroyed, programmed and reprogrammed as needed, and the interoperating codes and switches among networks enable indeterminate coupling and decoupling of multiple networks. According to Kevin Kelly, the 'network is the least structured organisation that can be said to have any structure at all. No other arrangement – chain, pyramid, tree, circle, hub – can contain true diversity working as a whole.'[8]

(4) Because the new information technology transmits information and knowledge instantaneously, it compresses space and time. This is not to say that it abolishes the 'here and now', the time and place of the lived practices of particular nodes. Rather, it takes hold of and hyperextends or 'glocalises' (globalises and localises) spatially and temporally the experiential field of social relations and interactions of participants in nodal practices in complex and massively unequal ways. Instantaneous network decision-taking outruns the time frame of traditional democratic decision procedures, and the consequences of these decisions extend across the jurisdictional boundaries of traditional nation-states. Communication networks based on the new technology are thus the basis of globalisation.[9]

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[7] *Ibid.*, p. 470.
[8] Kevin Kelly, *Out of Control: The Rise of Neo-biological Civilization* (Menlo Park, CA: Addison-Wesley, 1995), pp. 25–7; quoted in Castells, *The Rise of Network Society*, pp. 61–2.
[9] The compression of space and time is the central nexus of globalisation according to Castells, David Held and Anthony Giddens. For example, see Castells, *The Rise of Network Society*, pp. 376–468; Held *et al.*, *Global Transformations*.

Accordingly, communication networks have transformed the way humans communicate. But this is only the first dimension that has been observed of the communication transformation. Because communication is intrinsic to all organised forms of human activity, the rise of communication networks and the corresponding revolution in information technology have helped to bring about a transformation not just in the way humans communicate, but also in the way they carry out their communicatively mediated activities: production, distribution, finance, consumption, governance, war, resistance, culture, intimacy and much else. As Castells puts it above, communication networks and their logic 'substantially modify' or colonise the communicatively mediated practices (activities and institutions) in which they are embedded. They tend to modify the practices so that they too are organised along the lines of a network.

So, the network becomes the 'morphology' not only of communication, but also of the 'operation and outcomes in the processes of production, experience, power and culture'. It becomes the dominant form of 'social ordering', transforming or displacing older forms of social, political, cultural, military and economic organisation. This deeper, colonising effect of communication networks is referred to as the 'network society' and the informational transformation of society. Let's look briefly at three constitutive features of this revolution.

(1) The production and communication of information and the production of the corresponding technology have become the leading sector of capitalist production. Following Castells, the information/communication technology revolution coincided with the global restructuring of capitalism and became its essential tool, thereby transforming the dominant mode of production. This marks the transition from the industrial age and industrial mode of production, oriented towards economic growth, to the informational age and the informational mode of production, oriented towards information technology development (the accumulation of knowledge and higher levels of complexity in information processing):

In the new, informational mode of development the source of productivity lies in the technology of knowledge generation, information processing, and symbol communication … [W]hat is specific to the informational mode of development is *the action of knowledge upon knowledge itself as the main source of productivity*. Information processing is focused on improving the technology of information processing as a source of productivity, in a virtuous circle of interaction between the knowledge sources of technology and the application of technology to improve knowledge generation and information processing … Whereas industrialism is oriented to economic growth, informationalization is oriented towards technological development, that is, toward

the accumulation of knowledge and higher levels of complexity in information processing.[10]

(2) The 'informational' mode of production transforms the nature of the dominant labouring activities, from the 'material' labour of the industrial age (producing material objects) to the immaterial labour of the information or communication age (producing immaterial objects). According to Michael Hardt and Antonio Negri, immaterial (or communicative) labour refers to the three following changes, called the 'informatization of production'.[11] The predominant form of labour under informational capitalism is the production of immaterial goods – such as knowledge, communication, a service, a cultural product, and the patenting and modifying of life processes – and the productive activities all involve a similar range of information processing, communicative, problem-solving and symbolic-analytical skills. All labouring practices tend towards the prototype of information processing and communication networks. Next, while the material labouring activities of industrial production remain to a large extent, they are transformed by the information technology into predominantly immaterial labour. Producing and servicing automobiles, for example, is mediated through computer technology and communication networks.

Moreover, immaterial labour also involves the production and manipulation of 'affects'. This refers to social services that primarily affect the emotional wellbeing of those served. But, even more importantly, it refers to the multimedia communication networks that affect directly the emotions, desires and especially the imagination of the audiences to whom they communicate, without passing through self-conscious reflection. Movies, the news, election campaigns, political events, advertising, branding, internet spam and pornography, and so on all act directly on the senses of their connected audiences, in the 'Hollywoodisation' of global communication. Behaviour is now said to be governed to a considerable extent by what Guy Debord calls 'the spectacle' of affects,[12] unmediated by conscious reflection, whether the spectacle is Princess Diana's death, branding, election campaigns, 9/11 or the scenes of high-tech war. Far from rendering the network revolution 'anachronistic', as some have suggested, the al-Qaeda networks that orchestrated 9/11, the media that turned it into a spectacle and the heightened securitisation, wars against terror and resistances to them that followed all depended upon and immensely expanded processes of networkisation.

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[10] Castells, *The Rise of Network Society*, p. 17.
[11] Hardt and Negri, *Empire*, pp. 29, 280–302.   [12] Debord, *Society of the Spectacle*.

Following in the footsteps of Harold Innis and Marshall McLuhan, cultural theorists suggest that what is always given directly to the recipients in the endless programmes and messages of communication networks as their unnoticed affects, no matter how culturally diversified the messages may be, tends to be a fourfold background global imaginary. This imaginary consists of production and consumption, of risks and insecurities, of the endless programmability of cultural and natural relationships, and of *us* (who are open to this imperial 'openness') *versus them* (who are backward and closed to this brave new world) – and of the 'cool' ordering of one's desires and emotions within it. What moves along the information highways is not so much ideas as images that structure the form of consciousness of the recipient (paradoxically, images of the infinite programmability of consciousness).

(3) The spread of communication networks restructures not only the activities and subjectivities, but also the form of organisation – the 'morphology' – of the practices they colonise. Castells illustrates this with the restructuring of economic organisations in the 1990s. The 'industrial firm' has become the 'network enterprise'[13] with its flexible production and flextime workers, interfirm networking, corporate strategic alliances, horizontal global business networks, its ability to make decisions, add and drop nodes instantaneously, and constantly reinvent the network infrastructure in whole or part:

For the first time in history, the basic unit of economic organization is not a subject, be it individual (such as the entrepreneur or the entrepreneurial family) or collective (such as the capitalist class, the corporation, the state). As I have tried to show, *the unit is the network*, made up of a variety of subjects and organizations, relentlessly modified as networks adapt to supportive environments and market structures.[14]

The restructuring of economic organisation along the lines and logic of communication networks is just the leading edge of the restructuring of forms of human activity that undergo the informational technology revolution. The military–industrial sector has undergone a similar reorganisation into military–informational networks. Wars are prepared for and fought on the basis of the most advanced communicative technologies. The United States military could not exercise the full spectrum dominance of the planet that the Pentagon claims to exercise without the network revolution.[15] Higher education, terrorism, religious and cultural organisations, dating and so on

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[13] Castells, *The Rise of Network Society*, pp. 151–200.
[14] *Ibid*., p. 198.   [15] Johnson, *Sorrows of Empire*.

have been similarly networked. As new human practices become possible as the result of the information technologies, their forms and activities follow the communication network model, from gene splicing and biotechnology to the weaponisation of space.[16]

In addition to these three constitutive features of social ordering by communicative networks, every form of social ordering also has distinctive relations of power by which the conduct (roles) of those subject to it is ordered (governed). Furthermore, being subject to these relations of governance (as I will call them) and acting in accordance with them over time gradually brings about and instils a corresponding form of subjectivity or subjectification. For example, being subject to and so acting in accord with the exercise of power through the rule of law gradually brings about a form of self-consciousness of being a law-abiding subject with rights and duties and of comporting oneself accordingly. Social ordering by means of communication networks is no exception to this rule of subjectification. It too has distinctive relations of network governance, and networkers tend to acquire a corresponding network form of subjectivity through submission to their forms of organisation, types of communicative activities and routines. These two further features of the network age are ways of governing and controlling communication and communicators.

2 CONTROLLING COMMUNICATION

This leads us to an important question that is explored in this section: how and by whom is the communication of information and knowledge controlled in the network age? No doubt there are innumerable ways in which network communicators and their communicative actions are governed. I would like to provide a background to this issue by highlighting four generic types of control of communication that operate in countless instances in various networks.

(1) *Exclusion.* The first and most obvious way in which communication is controlled is by the exclusion of people from communication networks. Networks are scarcely a global phenomenon. Over one-third of the world's population does not have access to a power grid and so is excluded. The next third, while in societies where power is available, does not have the money, infrastructure or time to network. The remaining third is concentrated in the advanced capitalist nations, predominantly in the North, and in the middle and upper-income classes.

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[16] Havercroft and Duvall, 'Taking Sovereignty out of this World'.

That is, rather than a democratic and horizontal net of equal nodes unfolding around the globe, communication networks have developed on the foundations of and reproduce the unequal nodes and routes of communication, commerce and military rule laid down over five hundred years of European–American imperialism, as many scholars, including Castells, have noted.[17] This imperial distribution of nodes and communication routes – in which 30,000 children die every day of malnutrition in the non-connected areas and the wealth of the two hundred richest families in the North is eight times the wealth of 582 million non-connected people in the least developed countries[18] – is the underlying constitution of the network age, just as it was of the industrial age on which the network society is constructed. As a result, the very people whose lives are most adversely affected by the rise of network social ordering and who have the most pressing need and right to communicate are excluded from the outset. The network age is thus an imperial age built upon the historical legacy of exclusions, subordinations and massive inequalities of earlier phases of Western imperialism.

(2) *Inclusion and assimilation*. Communicators are also governed in networks by inclusion in and assimilation to a network form of subjectivity. This is the central form of network governance to which every networker is subject. Castells argues that there are two main classes: those who 'interact' and those who are 'interacted' upon; and who fits in which class is determined by class, race, gender and country. Notwithstanding, there is a more general form of self consciousness and consciousness of others that comes along with engaging in communicative and communicatively mediated activities in network regimes that he calls the 'spirit of informationalism'.[19] This is the *habitus*, the habitual form of subjectivity and corresponding set of cognitive and behavioural competences and modes of relating to others (intersubjectivity or interconnectivity) that agents acquire and internalise in the course of using network technology in whatever communicative roles they perform. It is a mode of being in the world with others that they come to acquire through immersion in immaterial labour, of knowledge acting on knowledge, with its creativity, flexibility and openness, its compressed sense of time and space; its particular communicative and interactive skills of information processing, analysis of symbols, reduction of complex

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[17] Castells, *End of Millennium*, pp. 70–165.
[18] Martti Koskenniemi, '"The Lady Doth Protest too Much": Kosovo, and the Turn to Ethics in International Law', *Modern Law Review* 65(2), 2002: 159–75, 171; UN Development Programme, *Human Development Report 2000: Human Development and Human Rights* (Oxford: Oxford University Press, 2000).
[19] Castells, *The Rise of Network Society*, pp. 195–200.

phenomena to an underlying and manipulable code, and problem-solving; its experience of being able to belong to contingent virtual communities and cultures and to modify or disconnect from them as one pleases; and its overriding sense of 'creative destructiveness' – that everything can be programmed and commodified. It seems to disclose the world as a set of contingent relationships that can be created and destroyed, programmed and reprogrammed, by the appropriate problem-solving techniques. At the same time, networkers are always vaguely aware that they too are subject to the communication of 'affects', surveillance, monitoring and manipulation at a distance. 'It is a culture of the ephemeral', Castells concludes, 'a culture of each strategic decision, a patchwork of experiences and interests, rather than a charter of rights and obligations.'[20]

Arthur Kroker suggests that the genetic engineering of the 'codes' of life in humans and other organic resources, at one end, and the monitoring, surveillance and precision targeting of the global population in space-based network warfare through full spectrum global dominance at the other represent the two extremes of this way of being in the world (legitimated in terms of 'openness' of scientific inquiry and 'security' of individuals and the species). Here life itself is pictured as both a network and an object of manipulation and control by informational technologies. Human nature and the environment are absorbed into culture, and so culture/nature is pictured as a kind of standing reserve of manipulable networks.[21]

This is not a form of subjectivity and intersubjectivity that a person bears in one particular role among many. It is a communicative *habitus* that communicators tend to operate within at work and leisure, on the home computer, the cell phone, the wireless laptop and the BlackBerry. When networkers put these more interactive modes of communication down, they tend to turn to the technology of the communication of 'affects': radio, television, movies and videos. As a result, this world-view and skill set is carried into other areas of life, either colonising them or discarding them as 'uncool' if they are inaccessible through the network technology.

The form of subjectivity and intersubjectivity of network communicators is not an ideology or a world-view in the traditional sense. It is rather the opposite: a mode of being that is skilled in and accustomed to 'world-viewing' – surfing through, interacting with and negotiating a kaleidoscope

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[20] *Ibid.*, p. 199.
[21] Arthur Kroker, *The Will to Technology and the Culture of Nihilism: Heidegger, Nietzsche and Marx* (Toronto: University of Toronto Press, 2004); Castells, *The Rise of Network Society*, p. 477. If human consciousness and embodiment are as deeply wired into communication technology as Kroker claims, then the tempered democratic communicative action I recommend in section 3 is too little too late.

of shifting ideologies and world-views. Secular modernists, Western scientists, Indigenous peoples, neo-liberals, NGOs, anti-globalisation activists, hyper-globalisers, deep ecologists, apocalyptic religious fundamentalists in the Bush administration and Bin Laden terrorist networks are all at home in this habitat. Yet, it is not a neutral, all-inclusive medium of communication. It substantially modifies the pre-network forms of subjectivity it includes, transforming them into contingent and malleable world-views, civilisations, codes, programs, and 'scapes', yet, paradoxically, placing beyond question its own background horizon of disclosure of the world *as* a complex system of contingent and programmable networks. This taken-for-granted form of subjectification tends to come with the network and goes without saying. It is the characteristic form of subjectivity of network imperialism.

We are just beginning to study and make explicit the tacit ways communication networks are reorganising human subjectivity. Boaventura de Sousa Santos and other critical sociologists of network communication and control argue that the net brings with it, in tandem with programmability, other taken-for-granted ways of organising and imagining experience, privileging certain forms of communication, communicative rationality, knowledge, problem-solving, cooperation and competition, production and consumption, and discounting or excluding others.[22] Finally, although this is a powerful and insidious new form of subjectivity and social ordering, it is still one (non-omnipotent) form among many that we bear as subjects, and we are not passive recipients of it (as we will see in section 3).

(3) *Hegemonic nodes.* The third way the flow of knowledge is controlled is through the action of the more powerful nodes in any network. The popular image of networks as flexible, open and democratic governance communities or partnerships tends to hide this feature. Although all the various actors (nodes) in a network (or network of networks) participate and have a degree of active agency (the condition of it being interactive) within the relationships of network governance, the actors are differentially situated in these asymmetrical relationships. As a result, the more powerful or hegemonic actors within a network are able to govern and control the less powerful or subaltern actors, not by directly commanding them to act in a certain way, as in pre-network forms of rule, but indirectly or infrastructurally: by structuring the field of possible actions of the subaltern actors in the

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[22] Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, 2nd edition (London: Butterworths, 2002); and Santos, 'The World Social Forum: Toward a Counter-Hegemonic Globalization', section entitled 'The WSF and the Sociology of Absences'.

network through strategically controlling the flexible and hierarchical infra-structural relations of communication, technology, research, finance, security, norm creation, and subjectification among them.

The distinctive feature of this form of network governmentality is that it is able to govern the conduct of weaker partners through their constrained free participation; through inducing and then indirectly channelling, by diverse means, their communicative, creative and productive participation, or by excluding them and connecting with others if they fail to participate in the way the hegemonic actors require. It is precisely this dimension of constrained free participation in a seeming democratic and flexible community of actors and norms, and where actors may be added and removed on an ad hoc basis, that serves to legitimate and obscure the differentials in power and influence between hegemon and subaltern participants in imperial networks. Jochen Von Bernstorff sums up the critical literature on this 'hegemonic' type of network rule in his major study of public–private network governance systems in the EU and the international arena:

> The more abstract thesis developed throughout is that, on the global level, network like governance structures inevitably exclude certain actors and interests while operating outside procedural and substantive legal commitments and constraints. These 'flip sides' of the flexible network structure tend to sustain the dominance of the strongest actors of the network, and may turn the 'participatory' claim into an instrument of hegemony.[23]

Let's use two well-researched examples to illustrate the two general types of hegemonic network governance of communication referred to in this abstract quotation. These two types of hegemonic network governance can be found in almost any network, structuring the network and bypassing or overriding governmental institutions.

We saw in section 1 that transnational corporations were among the first organisations to be transformed into networks by the information and communication revolution. In this reconfiguration they do not need to own their branch plants in the Third World and directly control the workers in them, as was the form of social ordering in the industrial age. Rather, branch plants in which the world's information technology is typically assembled are often owned locally or regionally. They are participating actors in a global network exercising their interactive labour and management powers in their own ways to a certain limited extent. However, as Naomi Klein and others argue, their free participation is governed indirectly by the

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[23] Jochen Von Bernstorff, 'Democratic Global Internet Regulation? Governance Networks, International Law and the Shadow of Hegemony', *European Law Journal* 9(4), 2003: 511–26, 513.

control that the hegemonic transnational corporations are able to exert over the infrastructural relations between the subaltern plant or sweat shop and its access to resources, financing, technology, research, branding networks and world markets.[24]

Von Bernstorff stresses that a key factor here is the ability of powerful actors to set up and structure a network in the first place. Moreover, if subaltern nodes fail to deliver the goods or adapt to the flexible work regimes, then the hegemonic corporation can govern their participation by constraining their access to the network infrastructure; entering into a public–private network partnership with the local government to support them and suppress the workers' expression of their grievances; threatening to remove them from the network, or removing them and adding a more compliant node. If the weaker actors in the network are able to exert a degree of collective control over the hegemonic actors, then the latter can leave the network and establish another. Here, as in thousands of other unequal networks, flexibility and openness become strategic resources for the hegemonic actors, rather than indicators of democratic transparency.[25]

The second type of hegemonic network governance over communicative and communicatively mediated activities consists in bypassing or overriding domestic and international legal and political institutions that would otherwise be able to enforce the freedom of expression and access to information of the subalterns. This type of undemocratic control over communication is called the 'delegalisation' and 'de-democratisation' of governance networks. Von Bernstorff shows that the more powerful states and transnational corporations in various global governance networks are able to do this in a wide variety of ways.

Networks operate in a different communicative time and space from traditional legal and political institutions (section 1). Owing to the compression of time, decisions are taken instantly, in contrast to the time-consuming due deliberation, consultation and accountability of traditional legal and democratic forms of communicative reasoning and decision-making. And, owing to the compression of space, network decisions (such as financial decisions) affect the lives, environments and futures of millions of people, regions and countries around the globe who have no say over them; in contrast to the effects of decisions of traditional legal and democratic institutions, which are limited to a specific territory and jurisdiction, and according to which all affected should theoretically have a say,

[24] Klein, *No Logo*; Falk, *Predatory Globalization*.
[25] Von Bernstorff, 'Democratic Global Internet Regulation?', pp. 524–5.

representation or redress. (Of course, this ideal of representation and legal recourse is often unrealised in practice, yet, unlike networks, it is a norm of legitimacy intrinsic to legal-democratic institutions and their historical development.) As a result, governance networks seek to free their secret, immensely consequential and unaccountable communicative and decision-making procedures from the time-expensive and spatially limited, old-fashioned legal and democratic restraints, in the name of efficiency, flexibility and the technical imperatives of the new age. In the words of President Clinton's administration's domain-name policy coordinator, Ira Magaziner, in 1998: 'We believe that the Internet as it develops needs a different type of coordination structure than has been typical for international institutions in the industrial age. Governmental processes and Intergovernmental processes by definition work too slowly and somewhat too bureaucratically for the pace and flexibility of this new information age.'[26] How are network governance structures able to bypass or override traditional legal and democratic communicative procedures that have been built up over the centuries?

In the first instance, as the quotation from Ira Magaziner implies, the operation of powerful governance networks simply leaves the traditional legal and political institutions in their wake, and this lag then serves to support the claim to exemption. Next, hegemonic actors in global governance networks are able to create and control their own global constitutional and normative orders, administered by the WB, IMF and the WTO, that override the legal and political institutions of representative democracies and international law; precisely the institutions that could open these guarded networks to democratic communicative action.[27] In other cases, they are also able to outrun traditional legal and democratic protection of the flow of ideas by expanding their own, tailor-made, flexible and manipulable network of private law to govern networks, the controversial *lex mercatoria*.[28] Finally, even when powerful networks are constrained to work with traditional institutions they are able to mobilise influence over parliaments and courts, not least through the ability of the oligarchy of media networks to create the language, images and effects of public discussion.

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[26] Cited in Von Bernstorff, 'Democratic Global Internet Regulation?', p. 515.
[27] Shrybman, *The World Trade Organization*.
[28] A. Claire Cutler, *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge: Cambridge University Press, 2003).

The rapid rise of this hegemonic mode of network governance of communicative action and its capacity to manipulate or evade the fetters of legal-democratic modes of governing communication is not as surprising as it may seem. Recall from Castells' analysis that communication networks were developed by the four biggest pre-existing concentrations of power from the earlier age of industrial imperialism and under the lead of the United States: the military–industrial complex, private economic enterprises, the leading states prepared to support and promote the research, development and employment of the new technology, and the multimedia conglomerates. The information revolution transformed these four concentrations of power into the same network morphology and, in so doing, coordinated their interaction through common overlapping networks and a common orientation to expansion of the network age. The result is a global politics of 'structuration'. The complex interactions and competition among networks of these differentially situated and resourced actors give rise to persisting global hegemonic–subaltern formations (or processes), and the large-scale formations reciprocally structure the field of interactions, as in struggles over the Kyoto Accord, sustainability and the Washington Consensus.[29]

In what is perhaps the dominant public language of our age, a global pattern of hegemonic–subaltern networks, and its expansion over and against other modes of communication and social ordering, is legitimated in terms of 'freedom' and 'security'. The sense of 'freedom' here is 'openness' – the openness of individuals, groups, cultures and civilisations to enter and participate in the creative, expanding world of communication networks, and to exercise their freedom to communicate, produce and consume in the ways available to them. The complementary sense of 'security' is the global monitoring, protection and extension of market freedoms and 'network freedoms', backed up by the 'full spectrum dominance' of the United States' global military network. This 'indispensable' security and freedom network is presented by its proponents as acting in accord with the legal and democratic institutions when possible, but it is prepared to act instantly, unilaterally and globally, in cases such as military intervention, without and against the time-consuming, multilateral communicative review of international law, civil liberties and democratic will-formation domestically or through the UN, for the transcendent goods of 'freedom and security'.[30] Many of the traditional rights and freedoms of

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[29] Castells, *The Rise of Network Society*, p. 474.

[30] This global network strategy of freedom and security is presented in two documents: The White House, *National Security Strategy of the United States of America*; and United States Space Command,

information and communication are dispensable in this new form of social ordering, as was demonstrated in the invasion of Iraq, the Patriot Act in the United States and the Anti-Terrorism Act in Canada. At many levels and to varying degrees, this cluster of hegemonic networks and legitimating languages of freedom and security 'structures' the global field of possible alternative communicative actions in the network age.[31] And, perhaps partly because of its pre-eminence, the two types of hegemonic rule employed to control communicative activities are replicated in innumerable other networks (including the terrorist networks it opposes).

(4) *Governance within communication relations.* Finally, I would like to examine the specific nature of relations of governance characteristic of network governance. This will provide a fuller understanding of how communicative activities are actually guided by this form of governance, and constitute the basis for understanding how we can act critically in response (section 3).

The first distinctive characteristic of relations of network governance is that they are immanent within relations of communication, and, as we have seen, relations of communication are immanent within relations of immaterial production. Networkers are subject to relations of governance of their communication and communicatively mediated activities just in virtue of participating in them. The diverse technological and multimedia infrastructure employed in all communicative activities – information technologies, modes of communication, programs, codes, routines, commands, messages, operations, learning procedures and acquired skill sets – governs the conduct of the communicators as they work, almost intangibly. A relation of network governance is not so much a single relation of power acting on an individual subject from outside his or her activities as it is 'governmentality': a whole ensemble of governmental means operating within and on a field of interrelated communicators to create an overall network *mentalité*.[32] This technological absorption of relations of power directly into relations of communication is, according to Hardt and Negri, the most revolutionary feature of the network age. Relations of governance

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Vision for 2020 (February 1997), available at: www.middlepowers.org/gsi/docs/vision 2020.pdf [Accessed 29 October 2006]. For an excellent analysis of the global security strategy of the United States, and place of the first document in it, in relation to international law, see Brunnée and Toope, 'Slouching Towards New "Just" Wars'. For the historical development of the hegemonic language of security and freedom, see Bacevich, *American Empire*. For these themes, see also The White House, *State of the Union Address* (31 January 2006), available at: www.whitehouse.gov/stateoftheunion/2006 [Accessed 29 October 2006].
[31] Johnson, *Sorrows of Empire*.   [32] Rose, *Powers of Freedom*.

thus 'become ever more immanent to the social field, distributed throughout the brains and bodies of the citizens':[33]

What the theories of power of modernity were forced to consider transcendent, that is, external to productive and social relations, is here formed inside, immanent to the productive and social relations. This is why communications industries have assumed such a central position. They not only organize production on a new scale and impose a new structure adequate to global space, but also make its justification immanent. Power, as it produces, organizes; as it organizes, it speaks and expresses itself as authority. Language, as it communicates, produces commodities but moreover creates subjectivities, puts them in relation, and orders them. The communication industries integrate the imaginary and the symbolic within the biopolitical fabric, not merely putting them at the service of power, but actually integrating them into its very functioning.[34]

From one perspective the folding of power relations into communication relations makes this form of social ordering more decentralised, horizontal, more indistinguishable from the communicative activities we perform, and thus in a sense more 'democratic'. Yet, from another perspective, it provides for a more vertical, more 'oligopolistic' form of control of communication by the more powerful nodes:

[T]he computer technologies and communications technologies internal to pro duction systems allow for more extensive monitoring of workers from a central, remote location. Control of labouring activity can potentially be individualized and continuous in the virtual Panopticon of network production. The centralization of control, however, is even clearer from a global perspective. The geographical dispersion of manufacturing has created a demand for increasingly centralized management and planning, and also for a new centralization of specialized pro ducer services, especially financial services.[35]

This vertical or 'oligopolistic' dimension is the basis for the kind of hegemonic governance of network communications discussed above. Hegemonic actors do not govern the communication of subalterns directly, but indirectly, by strategically manipulating, monitoring, planning, dispersing, appraising, contracting-out and restructuring the horizontal distribution

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[33] Hardt and Negri, *Empire*, p. 23.
[34] Hardt and Negri, *Empire*, p. 33. By creating 'subjectivities', Hardt and Negri mean that relations of immanent communicative governance give rise to the corresponding network form of subjectivity we discussed above.
[35] *Ibid*., p. 297.

and employment of technological infrastructure to guide immanently communicative activities to specific ends. Relations of network governance are thus immanent to the field of communicative action and are at once democratic and oligopolistic.

The second distinctive feature of relations of communicative governance is that they operate through the communicative freedom of networkers; through their communicative action. Networkers are not coerced by the detailed drills and repetitions of the industrial age, the assembly line or *Modern Times*. From the beginning, starting now in day care, networkers are encouraged to see network communication from two perspectives. From one side, it is absolutely necessary to submit to commands, functions and routines as an enabling condition of becoming a networker and learning the rules of the game. On the other hand, it is a flexible and open-ended game in which networkers are treated as free players, as interactive and creative communicators, modifying the rules of the game as they play. They interact with the software and are encouraged to ask it questions, create new and different ways through the programs, customise the software, acquire and contribute information, solve problems and pose others, create their own networks, and eventually reprogramme the programs through which they are governed. This is another reason why the immanent relations of governance and forms of subjectification in network communication are so difficult to notice. For we tend to presume that the exercise of power must be external (a separate structure of ruler–ruled) rather than immanent; that it excludes the exercise of freedom rather than encourages it (liberalism's negative freedom); and that it imposes itself on a passive subject rather than playing strategic games with an interactive agent (the command–obedience model).

The informational mode of education, research, development, production and consumption actually depends for its existence and dynamic growth on this interplay between immanent relations of governance and the free, creative and unpredictable communicative competences of networkers, celebrated in the image of Silicon Valley. As a result, network relations of power are reciprocally dependent on and responsive to the communicative freedom of networkers. They govern communicative action and assimilate communicators interactively, by enabling and encouraging the free development of communicative capacities on one side and conducting their exercise to specific ends by diverse means on the other, and by constantly readjusting in response to the unpredictable trajectory of communicative action. This realm of communicative freedom within network power relations is the subject of the final section.

3 DEMOCRATIC COMMUNICATIVE ACTION

To summarise, I have tried to provide a background sketch of the field in which communicative activity is 'controlled' today. The communication of information and knowledge in networks is the defining form of human activity of our age and the dominant form of social ordering. Communicative action takes place within networks (with four main features); communication networks are the leading sector of the economy; and they transform the communicatively mediated activities and institutions they colonise (into networks of immaterial labour). Communicative and communicatively mediated action in networks is governed by four major means: (1) exclusion, (2) inclusion and assimilation to an interactive network form of subjectification, (3) the strategic use of communications infrastructure and the bypassing, overriding and influencing of legal-democratic governance, and (4) the employment of immanent, democratic and oligopolistic power relations to foster and channel free communicative action. This complex field of communication networks is the specific morphology of the latest phase of Western imperialism.

This background sketch sets the stage for a third important question: What form of critical and effective social, political and cultural action is possible today in relation to the control of the communication of knowledge? We could not answer this question without first laying out the specific context in which communication occurs and the relations of governance that enable and control it. For social action will be critical and effective only if it is based on an understanding of, and oriented in relation to, the specific relations of communication and governance in which it is situated. We may dream of utopian modes of communicative action as much as we wish – free of power, technological mediation, spatial-temporal compression, hegemonic–subaltern relations and pre-reflective subjectification. But if we wish to confront the historical situation into which we are thrown, then (as I have argued elsewhere) we need to situate our question in the existing field of relationships.[36]

I take this sketch of the existing field of power relations that operate in contemporary communications networks to be a more realistic approach than the optimistic literature on network governance and policy networks. As Jochen Von Bernstorff's study suggests, this literature has a tendency to abstract from the unequal power relations in communication networks in advancing the claim that global networking fosters democratic governance

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[36] See *Volume I*, Chapter 1 for this approach.

beyond the state.[37] This is to disregard the forms of exclusion and to equate inclusion with democracy, thereby overlooking the anti-democratic powers of assimilation, subjectification and subalternisation that are exercised directly or indirectly by hegemonic actors within the field of communication networks. And, it overlooks the persisting relations of inequality and subordination handed down from earlier phases of imperialism. Even the important work that seeks to combine 'bargaining' with the more idealised 'arguing' approach in international relations and international law still presupposes actors who are free of precisely the real-world unequal relations of governance that I have tried to delineate in my sketch.[38] As Antje Weiner concludes in her critical review of this literature, it presupposes an 'egalitarian political culture' that does not exist.[39] What we need in order to be both critical and effective is not an account of norm creation for some ideal game, but an account of the possibility of democratic norm creation under the conditions of the field in which we find ourselves here and now.[40]

Now, Castells writes of this field and social action:

I would argue that this networking logic induces a social determination of a higher level than that of specific social interests expressed through the networks: the power of flows takes precedence over the flows of power. Presence or absence in the network and the dynamics of each network *vis-à-vis* others are critical sources of domination and change in our society: a society, that, therefore, we may properly call the network society, characterized by the preeminence of social morphology over social action.[41]

We will see if it is as deterministic as he implies. Yet, given our background sketch, he does seem correct to infer that network social morphology is pre-eminent over social action. I take him to mean that, if critical and effective social action is possible today, then social actors are constrained to think and act within and against the given social morphology of communication networks.

The first answer to our question of the possibility of critical action, therefore, is just to raise explicit awareness of the distinctive background context in which we communicate today, by means of various background sketches. For, as we discussed, network subjectivity tends to render its mode of governance intangible, a matter of course, and its immanent rule 'goes

[37] Von Bernstorff, 'Democratic Global Internet Regulation?'
[38] Harald Müller, 'Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations', *European Journal of International Relations* 10(3), 2004: 395–435.
[39] Wiener, 'The Dual Quality of Norms'.   [40] See Chapters 2 and 4, this volume.
[41] Castells, *The Rise of Network Society*, p. 469.

without saying'. Uncritical reflection on communication and control then tends to overlook the implicit infrastructural relations that govern communicative action without the communicators questioning them and having a say in and over them; that is, undemocratically.

Rendering networks and network governance explicit thus puts us in the position of being able to call into question and have a say over the relations of power through which our communication is governed and the norms that are advanced to legitimate them, that is, of acting democratically. For, the primary sense of 'democracy' (as opposed to the low-intensity democratisation promoted by the neo-liberal institutions) is just the basic Athenian idea that the people have a say in and over the rules by which they are governed and over the public goods the rules are enacted to bring about. We can thus call the diverse forms of questioning and having an effective say in and over the global and local relations governing all communication and communicatively mediated action democratic communicative action. This is to apply Trudeau's civic ethics directly to everyday communication relations. So, our question can be reformulated as follows: what are the possibilities and examples of democratic communicative action?

Two general types of democratic communicative action are possible.[42] The first is to subject communication networks to the traditional legal and political institutions of existing nation-states, international law and the United Nations. The flow and control of ideas would be regulated in these legal-democratic institutions by the representatives of the people subject to network governance, against the dominant current of hegemonic rule by powerful network actors and their 'delegalisation' and 'de-democratisation' of network communication. This might be called the 'traditional' legal-democratic approach locally and globally. As noted earlier, legal-democratic, Enlightenment institutions are 'works in progress' that require major reforms to be effective, especially in the international realm, and their inadequacy has led to the search for another, more effective strategy.

The second general strategy, accordingly, is to democratise communication networks directly, so networkers and those excluded yet affected can call into question and have a say in contextually appropriate practices of democratic discussion, negotiation and decision-making in the nodes in which they network (or from which they are presently excluded). This runs against the dominant current of assimilation and subjection to a form of communicative interaction that, while creative in many dimensions, is subtly (and not so subtly) channelled away from networkers questioning

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[42] See Chapter 2, this volume.

and transforming the dominant undemocratic relations of network governance. The creation of sites of democratic communicative action within networks might be called a new approach, one tailored specifically to the new form of communicative power, but also simply a new form of 'direct' or participatory democracy. Direct democratic communicative action is the fitting response to the compressed time and space of network communication and decision-making, as it too can be mobilised instantaneously and across the multi-jurisdictional global space of network effects.

These two types of democratic communicative action are counter-hegemonic (against the dominant undemocratic control of the flow of ideas) and complementary (working in tandem against different types of undemocratic control). One of the most depressing features of Canada today is the antagonism between proponents of these two strategies – between those who participate through the traditional institutions and those who wish to participate directly through direct democratic communicative action in networks. Yet, both strategies have the same means and end: the democratic governance of the means of communication by the communicators.[43]

If these two strategies were successful, they would constitute a revolution – the legal-democratic transformation of the network age. The people and their representatives would decide how to govern the communication of knowledge and information and for what ends. Such a transformation appears utopian from the perspective of the present, and it certainly is if we imagine that the dominant actors of the network age might institute this transformation for us. If there is to be change in this direction, we the governed have to initiate it from the ground up by organising and participating in concrete forms of democratic communicative action that *enact* initiatory and exemplary practices of these two strategies here and now.

Hence, we are in a situation analogous to Trudeau's three decades ago. For him the question was, given the big concentrations of power in Canada and globally, how could he help to empower citizens to participate democratically in civil society, communicate freely, democratise hegemonic concentrations of power and repatriate democratic powers and power-sharing to the sovereign people, and so diminish the enormous inequalities? His answer was Canada's Charter of Rights and Freedoms and the

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[43] These two types of democratic-communicative action have to be pursued in tandem as they are mutually supportive. Von Bernstorff concludes that the problem of delegalisation 'cannot be solved by the reference to a higher standard of "accountability" and "transparency" through a "network constitution" or ombudsman structures for informal governance arrangements. Principles of "good governance" cannot substitute for the loss of procedural constraints and substantive commitments imposed by a legal order' ('Democratic Global Internet Regulation?', p. 526).

counter-hegemonic civic ethics he hoped it would foster. The difference today is that the concentrations of power and means of participation have been transformed by the communications revolution, and thus the analogous answer is democratic communicative action that subjects network communication to democratic control, and does so by democratic communicative means.

The first step is to realise that the possibilities and opportunities for democratic communicative action exist here and now, wherever we communicate.[44] Section 2 suggested that the entire network organisation of contemporary societies rests on the free, creative communicative capacities and activities of networkers. Network governance relations can foster communicative action and channel it towards specific ends, but they cannot control it in detail, for the development of the information age depends on creative and innovative forms of communication. This is why networks are necessarily flexible and open, encouraging and then responding to the indeterminate and unpredictable communicative activities of networkers, rather than fixed structures of domination. As a result, there is an element of interactive freedom or free play – a limited range of possible ways of communicating in any network situation. There is thus always the limited possibility of communicating differently, in discord with the commands, routines and norms in some way or another – just as in canoeing, there is always the possibility to turn and paddle against the current in different ways. This element of interactive human freedom and surprise is irreducible.

Now, this creative communicative freedom is directed, with all the powerful technological and multimedia means at the disposal of hegemonic actors, towards its exercise in innovations and creations that serve the prevailing imperial ordering and goals of the information age. In contrast, the exercise of creative communicative freedom democratically *on* the prevailing governance relations is discouraged, except for innovations in forms of local or regional self-rule and self-management that increase efficiency and can themselves be governed and monitored infrastructurally (as in the downloading and contracting-out of regimes of self-government and dispute resolution to subaltern nodes in local, national and global governance networks). Nonetheless, because relations of governance are immanent within relations of communication, the existential possibility of exercising creative communicative freedom in its democratic form cannot be eliminated or blocked completely by the powers that be.

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[44] Notes from Nowhere, ed., *We are Everywhere*.

Not only is democratic communicative action possible in some abstract sense. It is an 'opportunity' in any node. The popular image of the expansion of the network age that the media communicate over and over is of a cluster of global processes or closed systems that are technologically driven, necessary and inescapable, too complex to be modified by those subject to them, and, in any case beyond human control. Yet, networks are grounded in the communicative activities of networkers at their particular nodes, and the hyperextension of these activities and decisions throughout the network. As heretical as this may sound to some systems theorists, these local practices of network communication are in turn partly grounded in the daily, non-technological, face-to-face relations of communication of the networkers, and these alternative forms of intersubjectivity provide grounds of resistance to networkisation. Of course, there are hegemonic structural formations of global networks and forms of subjectivity that make these formations appear inevitable. But both formations and subjectivities are grounded in and reproduced by the daily practices of local networkers going along with the prevailing routines of communication without a say. So, despite the hegemonic image of deterministic technological processes imposed on us from above and to which we must submit, global network-isation is actually based in and hyperextends out from the everyday communicative activities of networkers. Steven Flusty describes this more accurate and counter-hegemonic picture:

[Network globalization] is a combination of distinct spatial and temporal practices that, in their execution and their accretion, exercise globally formative effects. These practices are brought about through the quotidian business of conducting life within and across ever widening distances and by means of ever more distended social relations. It thus entails a redefinition of globalization not as an extrinsic quasi opaque imposition from above, an irresistible structural imperative, or a commandment unifying capital markets. Rather, it is globalization as both imma nent in, and increasingly intrinsic to, our everyday practices.[45]

Consequently, communication networks are less deterministic and provide more opportunities for democratic challenge and reform from within than Castells suggests. I would like to illustrate the range of opportunities available with a few examples of counter-hegemonic democratic communicative action that have helped to bring communication networks under direct and/or legal-democratic governance. The most popular vehicle for democratic communicative action in the network age is without doubt NGOs. However, their role is ambivalent. Many NGO counter-networks

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[45] Flusty, *De-Coca-Colonization*, pp. 3–4.

have been successful in organising and including many formerly excluded peoples, challenging the assimilative features of network subjectivity, countering the hegemonic rule and aims of powerful actors in major communicative networks, and showing ordinary people that they have more freedom to organise and act critically than they are led to believe by the dominant discourse. Yet many other NGOs have been instrumental in reproducing and expanding some of the undemocratic features of existing networks. Over 70 per cent of the 50,000 INGOs (international NGOs) are registered in Europe and North America and funded by Northern governments and corporations to promote their agendas. When they bring excluded peoples into the major government and corporate development networks, they often discount their traditional forms of communication and cooperation and assimilate them to the network form of communication and subjectivity they bring with them, rather than nurturing non-assimilative forms of inclusion. Their relatively ineffective informal consultative role in major networks is often used by the hegemonic actors to simulate democratic scrutiny and to legitimate cosmetic changes. Furthermore, NGO networks are often unaccountable to the people whose interests they claim to represent and their internal organisation tends to replicate the hegemonic–subaltern structure and undemocratic decision-making of major networks. Many are now referred to as CONGOS (co-opted NGOS).[46]

Since, as Castells argues, social action has to be organised in networks to be effective, NGO networks will continue to be used. However, if they are to be a means for the gradual democratisation of communication in the network age, they too will have to be subject to democratic reform from within, so they embody the same democratic communicative action for which they claim to be fighting.

One instructive example of combining the legal-democratic and direct democracy types of communicative action is the use of democratic-communicative or 'soft power' networks to bring about an enforceable ban on land-mines. This in turn is part of a larger, counter-hegemonic, soft power network organised through countless nodes of communicative action to question and fight to reform the dominant, global security–freedom network in the name of another kind of security and freedom. From this counter-perspective, the causes of insecurity and unfreedom are the

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[46] For a relatively optimistic view of NGOs, see John Keane, *Global Civil Society?* (Cambridge: Cambridge University Press, 2003), and for a critical view, see Hardt and Negri, *Empire*, pp. 35–7, 312–14. For a range of views based on case studies, see Sanjeev Khangram, James Riker and Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis: University of Minnesota Press, 2002).

enormous global inequalities and the exclusion of the worse-off majority from democratic-communicative action. The dominant global security–freedom network does not address these underlying causes but, rather, protects and extends them, causing more wars and insecurity. The path to security and equality is to provide the multifaceted infrastructure of network communication that developing countries demand, so they can engage in free communicative action on a level playing field, and then the other inequalities will soon diminish. This global counter-network is far from successful, yet it demonstrates the power of democratic-communicative action to challenge and offer an alternative to the networks that now govern undemocratically the communicative action of millions.[47]

From the pioneering activities of Amnesty International and Doctors Without Borders in confronting and opening closed channels of communication to the latest small-scale, alternative network globalisation from below, such as providing e-mail for rural doctors and missionaries in Zambia by high-frequency radio and Sailmail, there are countless other examples from which we can learn.[48] However, I would like to move on and conclude with one final and indispensable feature of democratic communicative activities if they are to be effective in building a better future.

Boaventura de Sousa Santos observes with respect to the World Social Forum that we need more meeting places for the multiplicity of counter-hegemonic democratic networkers.[49] These forums would be places like the annual Pierre Trudeau Foundation Public Policy Conferences in Canada, where researchers, academics, students, democratic activists from diverse networks, representatives from the excluded majority, policy makers, film-makers, communication experts, scientists, technicians and business people working on soft, democratic communicative technologies and education, representatives from the volunteer sector, politicians and a host of other actors could come together and exchange their case-specific and specialised knowledge of how network communications are governed and how they can be rendered more accountable by democratic communicative action. They would be places for anyone uncomfortable with the ways in which communication is currently governed and hopeful that another world is possible. If democratic communicative action is to be critical and effective,

[47] Lloyd Axworthy, *Navigating a New World: Canada's Global Future* (Toronto: Knopf Canada, 2003).

[48] 'E-mail Innovation Helps Zambia Go Global', *Times Colonist*, 11 July 2004: B1. For recent surveys, see Flusty, *De-Coca-Colonization*; Brecher, Costello and Smith, *Globalization from Below*; Louise Amoore, ed., *The Global Resistance Reader* (London: Routledge, 2005).

[49] Santos, 'The World Social Forum: Towards a Counter-Hegemonic Globalization', pp. 69–89, 121.

it needs to be based on the reciprocal communication among academic research on how communication networks operate, policy communities' knowledge of what sorts of local, domestic and international legal and political initiatives are possible, and the experiential knowledge of communicative activists and the excluded on the ground. Finally, these forums could be models of democratic communicative action in which the participants learn through practice the civic ethics they hope to hyperextend in their diverse activities. The World Social Forum is an exemplary annual meeting place of such reciprocal networks, but the task now is to create a multitude of similar and more specific forums.[50]

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[50] See Chapters 8 and 9, this volume.

The imperial roles of modern constitutional democracy

INTRODUCTION

The title of this chapter derives from an article in the *Economic History Review* in 1953 by John Gallagher and Ronald Robinson entitled 'The Imperialism of Free Trade'. The authors showed that the foreign policy of free trade by the imperial powers in the nineteenth and twentieth centuries was not anti-imperial but, rather, an alternative form of imperialism to colonial imperialism that gradually won out in the late twentieth century. The 'great powers', with Great Britain in the lead, realised that they could orchestrate the formation of legal and political regimes in non-European countries so they would function to 'open' their resources, labour and markets to 'free trade' dominated by economic competition among European powers, without the need for the expensive and increasingly unpopular old imperial system of formal colonies and monopoly trading companies. In a series of publications in the following decades, Robinson, the German imperial historians Wolfgang J. Mommsen and Jürgen Osterhammel, and their many followers went on to document the long and complex history of free trade imperialism since the eighteenth century and to argue that decolonisation and the Cold War comprised its triumph over colonial imperialism. Decolonisation and the Cold War, they argued, involved the dismantling of the remaining formal colonies, mandates and trusteeships; the transfer of limited powers of self-rule to the westernised elites of nominally sovereign, yet dependent Indigenous governments in a global network of free trade imperialism. This imperial network is governed by the post-Second World War great powers (the 'G8' with the United States taking the military and economic lead); their transnational

corporations; the Bretton Woods institutions of global governance and their successors (the WB, IMF, GATT, the WTO after 1995 and its evolving transnational trade agreements such as the Trade-Related Aspects of Intellectual Property Rights agreement (TRIPs) and the General Agreement on Trade in Services (GATS); supportive NGOs; and the North Atlantic Treaty Organization (NATO)). They called this complex transition period 'the imperialism of decolonisation' and 'the end of empire and the continuity of imperialism'. Since the defeat of the Soviet Union and its Third World allies at the end of the Cold War in 1989, this complex form of rule has been extended over the planet.[1]

This now widely used interpretation of the modern world order is often termed 'open door' and 'free trade' imperialism, neo-colonialism, imperialism without colonies, and 'post-colonial' imperialism, but for two defining reasons it is now usually called 'informal and interactive' imperialism. Firstly, it is a complex form of rule that governs imperialised peoples by means other than formal colonies (informal and indirect means). Secondly, the hegemonic great powers and their accompanying institutions recognise the imperialised or subalternised peoples as self-governing constitutional states and they interact with them on this basis, yet within the deeply unequal hegemon–subaltern relations of economic, political, legal, educational and military power laid down over centuries of Western expansion (interactive rule among unequal sovereigns rather than the unilateral domination of colonialism).

While Gallagher, Robinson and Mommsen stressed the importance of the legal and political institutions in dispossessing non-European peoples of popular sovereignty over their resources, labour and markets and opening them to the informal paramountcy of the great powers and their trading companies, they did not treat this aspect in detail, concentrating instead on economic, administrative, military and educational means of informal dependency and rule. The objective of this chapter is to describe the imperial roles that modern constitutional forms and constituent powers have played in this interpretation of global rule. The first section sets out seven main aspects of the modern Western configuration of constituent powers and constitutional forms that is commonly called 'constitutional democracy' and 'democratisation' today. The second section goes on to show the many ways in which legal and political prototypes of

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[1] Robinson and Gallagher, 'The Imperialism of Free Trade'. The importance of the theory of informal imperialism advanced by Gallagher and Robinson is discussed in Mommsen, *Theories of Imperialism*, pp. 86–93, who argues that it is the most important theory of imperialism in the modern period.

constitutional democracy have been extended around the world by formal and informal imperial means to subalternise non-European peoples. The third and final section examines democratic efforts to de-imperialise the imperial dimensions of modern constitutional democracy, that is, to bring them under the shared democratic authority of the peoples who are subject to them. I call these de-imperialising attempts 'democratic constitutionalism' (in contrast to constitutional democracy).[2]

I WESTERN CONSTITUTIONAL DEMOCRACY: THE MODERN ARRANGEMENT OF CONSTITUENT POWERS AND CONSTITUTIONAL FORMS

In their perspicuous Introduction to The Conference on Constituent Power and Constitutional Form, Martin Loughlin and Neil Walker describe the central tension of the modern organisation of constituent powers and constitutional forms as follows:

The paradox [of constituent power and constitutional form] is the expression of the fact that modern constitutionalism is underpinned by two fundamental though antagonistic imperatives: that governmental power ultimately is generated from the 'consent of the people', and that, to be sustained and effective, governmental power must be divided, constrained and exercised through distinctive institutional forms. Although each of the imperatives is expressed in early modern formulations of legitimate governmental power, it is only with the emergence of the modern sense of a constitution that this tension between constituent power (the power of 'the people' to make   and break   the constituted authority of the state) and constitutional form (the formal framework of rule erected as a bargain or contract, or evolved in their absence) becomes more acute.[3]

I start from their description and analysis to set out seven salient aspects or features of this 'paradoxical' modern configuration of constituent powers and constitutional forms. I follow common usage in calling this conjunction of modern Western-style constitutions and representative governments 'constitutional democracy' (without scare quotes), yet bearing in mind that this elegant phrase hides its historical particularity and makes it appear universal (which is precisely its rhetorical function). I call it constitutional

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[2] I discuss democratic constitutionalism as an alternative to the imperialism of modern constitutional democracy in *Strange Multiplicity*, in Chapter 6 of Volume I, Chapter 4 of this volume, and then more fully in Chapters 8 and 9.

[3] Martin Loughlin and Neil Walker, Introduction to the Conference on Constituent Power and Constitutional Form (Department of Law, European University Institute, Florence, 24–25 March 2006).

democracy in the narrow sense when I contrast it with constitutional democracy in the broad sense, which includes non-Western 'customary' legal and political orders of constitutional forms and constituent powers.[4]

(1) *The formality condition.* I take a modern 'constitutional form' to be a structure of law that has a degree of separation or disembeddedness from the activities of those who are subject to it and it has the compliance capacity to structure or even 'constitute' the field of recognition and interaction of the people subject to it. If it did not have this degree of autonomy or 'formality', there would not be the 'paradoxical' relationship between the rule of law and constituent powers at its centre. Like most historians of Western constitutionalism, Loughlin and Walker see this disembeddedness to be distinctive of the modern phase of constitutionalism, perhaps no earlier than the building of absolute and constitutionally limited centralised states in the seventeenth and eighteenth centuries. In my opinion, historians and anthropologists are correct to say that many non-Western civilisations do not have Indigenous constitutional forms of this specifically modern disembedded type. This difference is usually indicated by calling Western legal orders mostly 'formal' and non-Western mostly 'customary', and ranking modern Western law as superior and more 'advanced' for this reason (among others). This is not to say that non-modern legal orders do not have a constitution, since any persisting legal order *is* a constitution in the Aristotelian or 'ancient' sense, whether customary or formal. But in the influential debates over the American and French constitutions (and the constitutional debates that have followed down to today in Afghanistan and Iraq), an embedded (customary) constitution was defined as 'ancient' in contrast to a 'modern' (formal) constitution, and thus said not to be a constitution at all. This elision was then applied to virtually all non-European legal orders by the nineteenth-century authors of modern international law.[5]

Let us call this first aspect of modern constitutionalism the formality or autonomy condition. That is, there are laws that are not immanent norms

[4] That is, 'constitutional democracy' appears to refer to any legal and political order that has some kind of constitution and democracy, and so it appears inclusive of pluralism (constitutional democracy in the broad sense). Yet, it is then standardly used to refer exclusively to (1) a particular type of modern constitutional representative government in the West, and (2) particular legal and political orders in the non-West that are similar in some respects and thus said to be on the historical path to 'developed' constitutional democracy in the Western sense (constitutional democracy in the narrow sense). This slippage is intrinsic to the standard usage of the phrase 'constitutional democracy'. The seeming inclusiveness of the broad sense comes to be predicated only on instances of the narrow sense in the course of its use.

[5] See Tully, *Strange Multiplicity*, and section 2 below.

within the activities they regulate and which change as subjects interact with them in day-to-day rule following (as with customary laws), but are external to them. They constitute or legislate the field of practice, and subjects comply. If people wish to change the laws, they must go to a separate institutionalised procedure such as a court, a legislature, and formal amending procedure or judicial review. Kant's imposition theory of law is the classic modern theory of law in this formal sense, yet it goes back to Samuel Pufendorf's theory of modern law in 1672, the first theoretical reflection on the post-Westphalian order.[6]

There are two classes of modern constitutional forms that develop together in the West: the constitutions of modern states and the constitutions of systems of law beyond the state. The second class today includes not only what is called 'international' law (the basic laws among modern constitutional states) but also subsystems of other supra-state bodies of law that have at least some of the properties of a modern constitutional form: the basic laws of the EU, NAFTA, the UN Charter of an international society of states, basic international human rights law, and the vast array of transnational trade agreements from GATT (1947) to those under the WTO. In addition, these post-decolonisation constitutional forms were built on the basis of much older bodies of transnational law that were developed along with the European constitutional states when they were formal empires. These are the bodies of imperial law and colonial law of the European imperial states, and of the old law of nations, *ius commercium* and *lex mercatoria*, which were designed to regulate inter-imperial competition. Subsystems of these vast systems of law 'constituted' the respective European empires and their colonies. They were gradually transformed into the world system of constitutional states and transnational and international laws in the twentieth century.[7]

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[6] Of course, this formality aspect is a feature of much of a modern legal system and not just the constitution in the narrow sense. As Walker points out, a modern constitution is closely connected to the legal system it constitutes and thus some properties of constitutional law will also be properties of some non-constitutional laws. Formality or autonomy is one such shared property: see Neil Walker, 'EU Constitutionalism in the State Constitutional Tradition' [2006] (European University Institute Law Working Paper No. 2006/21), available at: http://ssrn.com/abstract 939780 [Accessed 29 August 2007]. I am greatly indebted to Walker's work on constitutionalism and to Loughlin, *The Idea of Public Law* for my formulation of the seven features of section 1. For Pufendorf, see my 'Introduction' to *Pufendorf: On the Duty of Man and Citizen According to Natural Law* (Cambridge: Cambridge University Press, 1991), pp. xiv–xxxvii.

[7] For an excellent introduction to transnational law since the Second World War, see Peer Zumbansen, 'Transnational Law', in *Elgar Encyclopedia of Comparative Law*, ed. J. M. Smits (Cheltenham: Edward Elgar, 2006), pp. 738–54. For its origins in *lex Mercatoria* (Merchant law) and *ius commercium* of the age of empires, see Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, pp. 208–36. The

It is thus misleading historically to picture constitutional states developing first and then beginning to experiment with transnational and international constitutional forms in the twentieth century, as legal and political theorists have done since decolonisation. European constitutional states, as state empires, developed *within* global systems of imperial and colonial law from the beginning, and this whole intertwined complex of two classes of constitutional forms is the historical basis of the very recent, post-decolonisation global legal order. Indeed, like most nineteenth-century theorists and legal historians, both Marx and Weber argued that the modern European constitutional state form was dependent for its peculiar historical formation on the legal incorporation and exploitation of its colonies, just as the legal historians of informal imperialism today argue that the current constitutional form of the great power states is equally dependent on the post-colonial legal incorporation and exploitation of the former colonies by means of the new systems of international and transnational law (see section 2). Hence, it is impossible to understand the relationship between modern constitutional forms and constituent powers unless the imperial and post-imperial supra-state constitutional forms are seen as internally related to the state constitutional forms.[8]

(2) *Constituent political powers.* I take 'constituent powers' to be the powers of humans (individually and collectively) to govern themselves. 'Constituent powers' refers to these powers in abstraction or separation from any specific form they take in order to be exercised. They take different forms in different constitutional forms (since the constitutional form *is* the form that the constituent powers take): for example, the people, the nation, representative democracy, modern citizenship, federalism, self-determination, participatory democracy, revolution and so on. Even the concept of constituent power *as* 'popular sovereignty' already recognises these powers under a concept and thus presupposes a form and is one step away from the distinctly modern idea of constituent power as a capacity or potentiality, prior to taking on a concrete form, as Loughlin and Walker remind us. This modern concept of unformed constituent power is of course the condition of possibility of the modern idea of popular sovereignty and, more radically, the 'multitude': that the 'people' or the multitude could stand back from any constitutional form of organisation of themselves as a specific people

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systems of transnational law, especially trade law, function as 'constitutions' in the sense that they subordinate national constitutions, that is, treat national constitutions as legal regimes under their jurisdiction (first order rules in H. L. A. Hart's sense) and open them to free trade.

[8] This internal relation between constitutional state formation and imperialism has always been a commonplace in theories of imperialism: see Mommsen, *Theories of Imperialism*.

and bring their form of constitutional organisation into being in some founding moment or process of deliberation (the procedures of which would themselves be brought into being by the deliberators, and so on). Perhaps Rousseau was among the first to explore this paradoxical idea, and Hardt and Negri among the most recent.[9]

If we did not have this concept of a constituent power that exists prior to its actual forms in conjunction with the concept of a disembedded constitutional form, then we would not have the paradoxical relationship between them that Loughlin and Walker describe, and which is constitutive of the contingent historical ensemble of *nomos* and *demos* we call constitutional democracy. Indigenous peoples have a different idea of constituent power. For them the constituent powers of humans (and non-humans) are always already immanent in the specific forms of transposable *habitus* they take in the countless normative relationships of interaction (non-formal customary laws) that humans and non-humans both bear and transform as they go.[10] And if the twentieth-century philosophers of practice from Heidegger to Pierre Bourdieu, Charles Taylor and Lon Fuller are correct, the modern systems of formal law and abstract constituent power, which modern theorists take as their starting point, are actually grounded in everyday practices of custom and transposable *habitus* that go without saying, which Indigenous philosophers take as their starting point.[11]

The constituent powers of the people are constituted by the two classes of constitutional forms (state and supra-state) into two main political formations. The first is representative democracy (or 'constitutional democracy'), with its various forms of modern citizenship, representation and institutionalisation of various constituent powers (legislative, judicial, federative,

[9] Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004). For a genealogy of the constituent powers of citizens within states to which I am deeply indebted, see Quentin Skinner, 'States and the Freedom of Citizens', in *States and Citizens: History, Theory, Prospects*, eds. Quentin Skinner and Bo Stråth (Cambridge: Cambridge University Press, 2003); for the incorporation of constituent powers into the form of rights, see Annabel Brett, 'The Development of the Idea of Citizens' Rights', in *States and Citizens*.

[10] For this account of Indigenous customary constitutionalism and constituent power internally related to the law, see the important work of two Indigenous legal scholars: John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002); Borrows, *Indigenous Legal Traditions* (Ottawa: Law Commission of Canada, forthcoming); and Val Napoleon, 'Law as Governance: Thinking about Indigenous Legal Orders and Law' (Paper prepared for the National Centre for First Nations Governance, Ottawa, forthcoming).

[11] See the classic formulation in Charles Taylor, 'To Follow a Rule', in *Philosophical Arguments*. Like Taylor, I believe that the best treatment of the internal relationships between a formal system of rules and the transposable dispositions of the agents who act in, with or against it, which is at the heart of this chapter, is to be found in Wittgenstein, *Philosophical Investigations*. For an introduction see *Volume I*, Chapter 2.

military, administrative, etc.) within a constitutional state. And the forms of oppositional constituent powers intrinsic to constitutional representative democracy are extra-parliamentary opposition, the general strike, direct action, revolution and so on. The second comprises the mostly non-representative (or distantly representative) forms of organisation of constituent powers characteristic of supra-state constitutional forms. These include the governing institutions of the old imperial systems, the European congresses and conferences of the nineteenth century (which never included colonial peoples), the League of Nations, the UN, the Bretton Woods institutions and WTO, meetings of the G8, and the (more representative) institutions of the EU.[12] And, in democratic opposition, the great decolonisation movements of the twentieth century (and earlier), internationalist movements, alternative NGOs, the World Social Forum, and global civil society claim to manifest or represent the constituent powers of the people and struggle to democratise these supra-state constitutional form and constituent power complexes.

(3) *Constitutive sovereigns*. It is not possible to understand the field of interactive relationships between constitutional forms and constituent powers without seeing a third actor internally related to these first two features. As Loughlin and Walker point out, modern constitutionalism did not derive historically from the exercise of constituent powers of sovereign peoples or multitudes alone. If it had, we would not have the antagonistic relationship between the two. Rather, as Quentin Skinner has shown, modern constitutions are also the product of the 'sovereign' in the traditional sense of the ruler: the monarch, emperor, Crown, aristocracy, ruling class, elite or, more commonly, the sovereign state, in an agonistic relationship with the people. This is the form of 'constitutive' power that is traditionally said to constitute the legal and political order in the West since Roman law. Constituent power in the sense of popular sovereignty arose in opposition to sovereignty in this Hobbesian sense and continues to be in a gaming relationship with it (over the form of the constitution itself, popular freedoms and constitutional limitations). Even when the sovereign in this sense can plausibly be said to derive its powers from the consent of the governed, it is still able to separate itself from dependency on them and to exercise sovereignty over them and the constitution that is supposed to limit its power, especially in the great game of foreign power with other

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[12] The WTO describes itself as an institution of 'global governance'. For its ascension to this role, see Narlikar, *The World Trade Organization*.

sovereigns, as the realist tradition from Bodin to Morgenthau has always argued.[13]

This doctrine of state sovereignty gives rise to yet another kind of separation: the relative autonomy of the state (or executive) from both the people and the constitution. It is integral to modern constitutionalism. A modern constitution, Kant famously argued, does not arise from the spontaneous interaction of the pre-civil people but requires some kind of master or legislator to impose law on the crooked timber of the people and to act without their consent and independent of law in exceptional circumstances until they are 'civilised' by centuries of subjection to civil law. As Machiavelli and Chomsky add, these constitutive powers are supplemented with the powers of 'manufacturing' the consent of the people and making non-constitutional actions appear constitutional in order to gain legitimacy. Far from disappearing, some contemporary theorists argue like Hobbes that sovereignty in this sense structures the constitutional form and the form that constituent powers take within it. That is, the field of 'constitutional form and constituent power' is really a game between the constitutive sovereign and the constituent people *within* and over the constitutional form (the 'contract' between them) – a game that, according to the realists, the sovereign dominates.[14]

As with constitutional forms and constituent powers, there are two corresponding classes of constitutive sovereignty: state sovereignty in its various forms and the candidates for sovereignty over the various global constitutional forms listed above. The global sovereigns range from the competing imperial powers in the colonial age to the informal sovereigns today, such as a single superpower (the United States since 1989), the G8 or G20, a coalition or balance of civilised, advanced or democratic states, the Bretton Woods institutions and WTO, the transnational corporations empowered by trade agreements under the WTO, an empowered UN, or some combination of these contenders.

(4) *Constituent productive and defensive powers.* I have been writing as if constituent powers (feature 2) consist only of 'political' powers, that is, powers of self-government that are said to be delegated or alienated to representative institutions and also exercised directly in public spheres. But

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[13] Skinner, *The Foundations of Modern Political Thought*, Vol. II, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978). See also, Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001); and Martin Loughlin, 'Ten Tenets of Sovereignty', in *Sovereignty in Transition*, ed. Neil Walker (Oxford: Hart, 2003).

[14] See James Tully, 'Diverse Enlightenments', *Economy and Society* 32(3), 2003: 485–505.

this is too narrow. As Locke, Marx and Weber insisted, the constituent powers of the people that are institutionalised by a modern constitutional system of laws consist of three distinct types of powers: (i) political power or the powers of self-government (feature 2); (ii) labour or productive powers; and (iii) the powers to protect oneself and others, or military and police power. Modern constitutions differentially distribute these three types of constituent powers into three distinct sets of legal institutions of modern societies: political, economic, and police and military.[15]

Labour power, the second type of power just itemised, is exercised by selling it for a wage on the market to competing national or multinational corporations that manage its exercise and extract a profit. These capitalist forms of constituent labour power, private property in the means of production and contractual relations are stipulated by the constitutional forms of state and international legal regimes and enforced by the corresponding sovereigns. This form of organisation of productive power is distinctive to modern constitutionalism, where humans have been dispossessed of their access to the land and independent means of production, first with the enclosures within Europe and then with the dispossession of the non-European peoples of their Indigenous legal and political control over their resources and labour during the spread of Western imperialism and its legal orders, as Marx and Hobson concurred.[16] Just as one can think of political powers being either delegated or alienated to the representative institutions, so too can one think of economic powers being either delegated or alienated to the capitalist corporations, as Weber neatly demonstrated. Productive powers are also conceptualised in the same abstract way as political powers: that is, as capacities capable of being shaped and exercised in a multiplicity of forms within the corporatised division of labour.[17]

The third type of constituent powers, the powers of self- and other-defence, is alienated to the police and the military-industrial complex in modern constitutional formations. Although rebellions were fought in the name of 'no standing armies' in the seventeenth century, by the early nineteenth century every modern state had a constitutionally protected

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[15] See James Tully, 'An Introduction to Locke's Philosophy', in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993); and Van Creveld, *The Rise and Decline of the State*.

[16] J. A. Hobson, *Imperialism: A Study* [1902] (New York: Cosimo Classics, 2005); Karl Marx, *Capital: A Critique of Political Economy*, Vol. I (London: Penguin, 1990), pp. 873–942. For a recent history of the legal dispossession of colonised peoples, see John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen's University Press, 2003).

[17] James Tully, 'Rights in Abilities', in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993).

permanent military complex.[18] These complexes are standardly connected to the most advanced research and development institutions, the largest commercial firms, a secure tax base, a permanent supply of recruits through the *levée en masse*, the draft and, more recently, the state's purchase of private armies on the market, a separate class of influential military–political leaders, naval and army bases throughout the old European empires and the paramount global military system of the United States that claims to exercise full spectrum dominance of the planet today. As Montesquieu foresaw in 1748, this peculiar formation of protective powers is caught in an ever-escalating arms race with other constitutional states and, since Decolonisation, an expanding arms-sales industry to dependent and indebted former colonies and proxy states. As Locke warned in 1675, the resulting power imbalance between the permanently armed sovereign state and the legally disarmed people undermines the rough equality between the people and their representatives that was the guarantee of a free and constitutionally bound polity, opening the people to abuse by their own government and to unlimited military adventures abroad without an effective counterbalance. Yet, because the people always desire to be free of oppression, the system is a recipe for inevitable wars and revolts.[19]

Just as constituent political powers are organised in different governance institutions within constitutional states and supra-state organisations (feature 2), so too are economic and military constituent powers. The Bretton Woods institutions, the G8 and the most powerful transnational corporations govern economic power through the supra-state systems of trade and finance law.[20] The United States now claims to exercise full spectrum military dominance over the world's forms of constituent military power to protect democracy and free trade, multilaterally and in accord with international law and the Security Council if possible (juridical dominance), but unilaterally and without the law if necessary (executive dominance).[21]

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[18] Volker Berghahn, *Militarism: The History of an International Debate, 1861–1979* (Cambridge: Cambridge University Press, 1981); William Hardy McNeill, *The Pursuit of Power: Technology, Armed Force, and Society since A.D. 1000* (Chicago: University of Chicago Press, 1982).

[19] This line of argument was put forward in an anonymous pamphlet believed to be by Locke, *A Letter from a Person of Quality to a Friend in Country* [1675] and is repeated in *Two Treatises of Government* [1690]: see Tully, 'An Introduction to Locke's Philosophy', at pp. 37–47. For Montesquieu on the arms race, see Charles de Secondat Montesquieu, *The Spirit of the Laws* [1748], eds. Anne M. Cohler, Basia Carolyn Miller and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), Bk 13, §17.

[20] The trade agreements under the WTO are seen as global constitutions and charters of rights of transnational corporations: see Shrybman, *The World Trade Organization*, pp. 1–18.

[21] The White House, *National Security Strategy of the United States of America*. The new *National Security Strategy* of March 2006 is similar.

I would like to suggest that we cannot understand the dynamics and paradoxes of the relationship between modern constitutional forms and constituent powers unless we include in the field of interaction these two dimensions of constituent power (productive power and military power). I concede that the monopolisation of economic constituent power by networked multinationals and international legal regimes and the monopolisation of powers of self- and other-defence by huge networked military complexes are considered beyond question in the dominant democratic and constitutional theories today, except for a few notable exceptions. However, the global popular protests from decolonisation to the movements against the current imperial wars in the Middle East and against the neo-liberal form of free trade imperialism today are over precisely the present concentration and exercise of these two forms of constitutionalised constituent powers and the inability of the available forms of political power to make any significant difference whatsoever. And this is not surprising, for the low-intensity representative democratic institutions and modern constitutional formations have been powerfully shaped and formed by the parallel de-politicalisation and concentration of these other two forms of constituent power. Indeed, for many social scientists today, these two concentrations of economic and military power have not only disempowered the people but also usurped the de facto role of the sovereign within state and global formations.[22] Therefore, an analysis of constitutional form and constituent power would be out of touch with the populist global constituent *discomfort* with the existing order if these two types of constituent power were left unexamined.[23]

(5) *Governmentalité*. All three types of constituent powers of individuals and collectivities are guided and habituated into their various constituent forms of subjectivity by the vast repertoires of modern techniques of *governmentalité*. We know from Weber, Foucault, Loughlin and the Governmentality school that these techniques of modern subjectification cannot be reduced to or derived from the sovereign state, constitution, the rule of law, representative government and citizenship regimes, or the self-fashioning practices the people and peoples apply to themselves. The historical development of dispersed regimes of governmentality within modern and advanced liberal constitutional states has been well researched.

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[22] See, e.g., Harvey, *The New Imperialism*.

[23] See the similar argument of Santos, *The World Social Forum: A User's Manual*. For a survey of populist global resistance movements against these two forms of power, see Amoore, ed., *The Global Resistance Reader*.

The parallel history of regimes of formal colonial *governmentalité* and the more recent post-colonial governmentalité by various informal means of global governance has not received as much attention.[24]

(6) *Four theses on interaction*. The dynamic relationship between constitutional forms and constituent powers is a function of the complex interactions among the *actors* within and against the constitutional formations. To summarise, I outlined the two classes of constitutional forms under which constituent powers are configured into constitutional actors (the state and transnational classes of feature 1); constituent political powers (feature 2), constitutive sovereign authorities (feature 3), constituent productive and defensive powers (feature 4), and regimes of *governmentalité* (feature 5). Loughlin and Walker summarise the four main types of interaction of constituent-power actors with their corresponding constitutional forms as follows.

In the first type of interaction the actors all exercise their political, economic and protective powers more or less routinely in accord with the two constitutional formations and their corresponding institutions of constituent powers, then the interaction approximates what Loughlin and Walker call the 'juridical containment thesis'. That is, the constitution founds and structures the exercise of constituent powers, as in modern liberal theories of constitutional democracy. In the second type of interaction, the people seek to change the particular constitutional forms and the corresponding ways their constituent powers are contained by exercising their popular sovereignty within a modern constitutional and democratic order (and within its traditions of interpretation), either by constitutional reform or democratic revolution. Then, the whole interaction accords with the 'co-originality and mutual articulation thesis'. That is, the constitutional form and the constituent powers of democratic self-rule are 'equiprimordial' (equally basic), as in many theories of 'democratic constitutionalism'.[25] Thirdly, when the people subject to a constitutional form see themselves as a multitude (an as yet unorganised and unrecognised potential agent) behind the whole constitutional–constituent formation and strive to exercise all three constituent powers together, overthrow the regime and bring into being a new kind of constitutional formation, which in turn must be subject to on-going constituent transformation (so the

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[24] See Ayers, 'Demystifying Democratization', and the now classic article on colonial *governmentalité*, Pels, 'The Anthropology of Colonialism'. For a review of the limits, compromises and failures of colonial *governmentalité*, see Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002), and section 3 below.

[25] See Chapter 4, this volume.

multitude remains sovereign over the constitutional form to which it subjects itself), then interaction accords with the 'radical sovereignty' or 'self-creation' thesis, as in radical democratic theories.[26] When, in the fourth type, diverse individuals and groups exercise their constituent powers in countless ways *within and against* the constitutionalised forms of constituent powers to which they are subject, in the hopes of modifying or transforming them agonistically, as they proceed, or if they invent new forms of constituent organisations (such as networks) yet are unable to *transform* the hegemony of the prevailing sovereigns and constitutional forms, interaction is in accord with the 'irresolution thesis'. It is 'irresolvable' because the subalterns are able to modify but not to transform the unequal relations in which they act.[27] The irresolution thesis in this rather pessimistic form characterises fairly accurately the way subalternised states and non-state actors are constrained to interact in the current informal imperial order, as we saw in the introduction to this chapter.[28] While this list leaves out a crucially important form of interaction, which I highlight in the final section (acting otherwise), it nevertheless encapsulates fairly well the major forms of interaction characteristic of modern constitutional democracy.

Of course, at the same time, the respective constitutive sovereigns of modern constitutional states and of global constitutional formations have a repertoire of constitutional and extra-constitutional ways of re-naming and responding to the irruptions of popular sovereignty, radical sovereignty and agonistic irresolution domestically and internationally, and of bringing them in line with the containment thesis or a manageable form of the mutual articulation thesis. Indeed, we can think of these four types of game of interaction between constituent powers and constitutive sovereigns within and over constitutional forms as co-extensive with, and the driving force of, the reign of modern constitutional democracy.

(7) *Discursive formations*. As we have seen, this complex of constitutional forms and constituent powers has a dynamic history. This history is portrayed as a dynamic set of world-historical processes that coordinate the previous six features: respectively, constitutionalisation, representative democratisation, centralisation of sovereignty, economic and military modernisation, governmentalisation, and citizenisation in both the state

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[26] Hardt and Negri, *Empire*.   [27] Christodoulidis, 'Constitutional Irresolution'.
[28] But see the final section below for my reformulation of this thesis in tandem with the co-articulation thesis. For a more optimistic version of the irresolution thesis, see Jutta Brunnée and Stephen Toope, 'International Law and Constructivism: Elements of an Interactional Theory of International Law', *Columbia Journal of Transnational Law* 39(1), 2000: 19–74.

and international spheres. These so-called processes with their purported necessary logics of development bear a number of descriptive–evaluative names that serve to legitimate them and put them beyond question: civilisation, development, modernisation, decolonisation, globalisation, democratisation, opening to free trade and so on. They have their origins in Europe but they sweep up the rest of humanity, which is portrayed as at lower stages of historical development and in need of Western imperial aid, and gradually make the world over in accord with 'constitutional democracy' (in its various iterations over time).[29] This *telos* is defined in different ways by writers such as Vattel, Smith, Kant, Hegel, Marx, Mill, Lauterpacht, Westlake, Hartmann, Wheaton, Wilson, Rostow, Fukuyama, Friedman, Hardt and Negri, and Habermas, but, as Herder objected to Kant's model, it is always posited as a universal and cosmopolitan end-point for one and all.[30] These legitimating meta-narratives are woven into the horizons of modern humanities and social and legal sciences, and into the day-to-day administration of all aspects of constitutional democracies, so deeply that even critics accept them as the bounds of reasonable argument. Like the other six aspects, these 'world-process' discursive formations have been predicated on both modernising constitutional states and their imperialising projects simultaneously since the early modern period.[31] Again, I would like to suggest that one cannot adequately analyse the dynamics of an ensemble of constitutional forms and constituents powers without taking into account the discursive formations employed in its operations.

[29] Of course these six features were not called 'constitutional democracy' until recently, after decolonisation and the emergence of a world of formally equal nation-states. But the present usage of this phrase makes it appear that the contingent histories of the six features make up aspects of underlying processes that necessarily lead to constitutional democracy as the end-point. And the contingent histories can be arranged so they appear to illustrate the stages of their development and so that those at the highest stage can see constitutional democracy's essential aspects. As I mentioned in the introduction to this chapter, this is the rhetorical function of the phrase in its narrow sense. But it is also important to remember that we can also arrange descriptions of customary legal and political associations so that they appear as natural extensions of constitutional democracy (by showing, for example, that they perform similar functions); then modern constitutional democracy can be seen as a particular instance of a much broader class of constitutional and democratic association, rather than as the universal end-point. The resulting legal and political pluralism is what I call 'common constitutionalism' in *Strange Multiplicity*.

[30] For critical analyses of these legitimating discourses of imperialism, see Chapter 1, this volume; Koskenniemi, *The Gentle Civilizer of Nations*, pp. 179–352; Chakrabarty, *Provincializing Europe*; and Ashcroft, *Post-Colonial Transformation*.

[31] Pagden, *Lords of All the World*.

2 THE IMPERIAL ROLES OF CONSTITUTIONAL DEMOCRACY

The previous section set out seven aspects of the modern arrangement of constituent powers and constitutional forms commonly called constitutional democracy. I suggested that it cannot be adequately understood by focusing exclusively on its histories within Western states. It should be set in the broader context of its global spread by means of Western imperialism in its formal (colonial) and informal (free trade) phases, which was briefly summarised in the introduction to this chapter. I then brought this broader imperial context into the history of state formation by distinguishing between two intertwined classes of constitutional forms (state and imperial), and then the two classes of the following five features. Feature 7 showed how they are integrated in the grand discursive formations (or meta-narratives) of constitutional democratic modernisation. I will now bring together these imperial dimensions of constitutional democracy in a very brief historical synopsis.

Since the early-modern period, European states have asserted a crucial *eighth* feature of modern constitutional democracy: the imperial right of European states and their companies to trade freely in non-European societies and the duty to civilise non-European peoples, together with the correlative duty of hospitality of non-European peoples to open themselves to trade and civilisation. If Indigenous peoples resist and defend their own constitutional forms and constituent powers and civilisations, and thus violate the international duty of hospitality, the imperial powers have the right and duty to impose coercively the 'conditions' of trade, hospitality and civilisation; namely, the appropriate features of modern constitutional forms and constituent powers. The right and two duties – in their many formulations from Francisco de Vitoria through Locke and Kant to the GATT/WTO, the World Bank and the norm of democratisation under international law – serve to legitimate the coercive imposition and protection of the conditions of the Western imperialisation on the non-West. I will call the right and two duties the 'imperial right'.[32]

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[32] For an introduction to the complex history of the imperial right, see Anghie, *Imperialism*; Tully, *Strange Multiplicity*; Koskenniemi, *The Gentle Civilizer of Nations*; and Pagden, *Lords of All the World*. For the norm of democratisation under international law today, see Marks, *The Riddle of All Constitutions*. A well-known and illustrative example of the duty of hospitality of non-Europeans to open themselves to European trade, or face punishment under international law, prior to nineteenth-century international law, is Kant's cosmopolitan right and duty of hospitality – the third definitive article of 'Perpetual Peace'. There is a long history of this cosmopolitan right and correlative duty of openness, referred to as *ius commercium*, in the earlier law of nature on which Kant draws.

The imperial right has been exercised in three major ways over the last half millennium.[33] The first is the implantation of European settler colonies in the Americas, Australia and New Zealand. In these cases of 'replication imperialism', the rudimentary colonial structures of modern constitutional forms and constituent powers were imposed over the legal and political systems of the Indigenous peoples, dispossessing them of their territories and usurping their governments, by force or dishonoured treaties. Approximately 80 per cent of the Indigenous population, which was larger than Europe's in 1492, was exterminated by 1900. The remaining Indigenous peoples were subjected to forced assimilation or removed to tiny reserves with limited powers of local self-government and ruled despotically by ministries of Indigenous affairs. When the colonies freed themselves from the British, Spanish and Portuguese empires, they retained the legal structures of the colonial period and continued to exert and extend imperial sovereignty over Indigenous peoples and their territories throughout the four continents.[34]

The second method of constitutional imperialisation is 'indirect' colonial rule. The imperial powers establish a small colonial administration or trading company to rule over a much larger Indigenous population indirectly, by establishing a 'formal' infrastructure of imperial law and *lex mercatoria* while also preserving and modifying the existing Indigenous 'customary' constitutions and constituent powers so that resources and labour are privatised and opened to trade, labour discipline, investment and contract law dominated by the European trading companies. Once this legal system is in place, resistance is illegal under their 'own' laws. As Hobson explained in *Imperialism* in 1902, the various means include recognising local rulers as quasi-sovereigns and making unequal treaties with them, civilising or westernising local elites and making them dependent on imperial economic and military power and bribes, dividing and conquering opposition, training the Indigenous armies to protect the imperial system of property and trade law and to fight proxy wars for them, inciting resistance so the trading companies can claim compensation for damages and lost profits (as in Iraq after 2003), and so on. This is the major way the imperial right was exercised in India, Ceylon, Africa prior to

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[33] For an analysis of these forms of imperialism, see Doyle, *Empires*, pp. 30–50.
[34] Paul Havemann, ed. *Indigenous Peoples' Rights in Australia, Canada and New Zealand* (Oxford: Oxford University Press, 1999).

its violent recolonisation after 1885, and the Middle East in the twentieth century.[35]

The third way – informal or free trade imperialism – can be seen as one step beyond indirect rule. The imperial power permits the self-rule, and eventually self-determination, of Indigenous peoples within a protectorate or sphere of influence while exercising informal 'paramountcy' (hegemony) to induce them to open their resources, labour and markets to free trade by establishing the appropriate legal and political forms, thereby combining 'empire and liberty', the oldest rallying cry of British and US imperialism. The informal ways and means include the recognition of quasi-sovereignty and unequal treaties, economic, military and aid dependency, bribes, sanctions, the 'civilisation of the natives' by voluntary and religious organisations and by Western legal, political, economic and military experts, and threats of military intervention and actual military intervention if all else fails. These diverse means of 'open door' or 'intervention' imperialism, as it is also called, replace and often supersede historically earlier formal colonisation or indirect rule (which laid the groundwork). The ultimate guarantee is the establishment of small yet overwhelming naval and military bases (originally coaling stations) established throughout the imperialised world, such as Guantánamo Bay (1901), that can threaten or actually intervene on a moment's notice if subaltern peoples threaten to take democratic control of their own resources or foreign companies. The British empire and the United States illustrated the superiority of informal imperialism over the expensive old colonial system during the nineteenth century in their competitive free trade paramountcy over the independent former colonies of Latin America (with frequent interventions). As I mentioned in the introductory section, it has grown to become the dominant form of imperialism since decolonisation and the United States now has over 725 military bases strategically located around the world.[36]

The different formulations of the imperial right were brought together in an authoritative form in the European and US construction of modern international law in the nineteenth century. As Gerrit Gong, Martti Koskenniemi, Edward Keene and Antony Anghie have shown in their remarkable studies of the creation of modern international law, the centrepiece of this project is the 'standard of civilisation'. 'Civilisation' refers to

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[35] For the Middle East, see Fisk, *The Great War for Civilization*; and Doyle, *Empires*, for a comprehensive survey.

[36] For the rise of US-led informal imperialism, see Bacevich, *American Empire*; Johnson, *Sorrows of Empire*.

both a set of world-historical processes and an end-point: namely, the seven aspects of constitutional democracy outlined in section 1. (After decolonisation and the criticism of the imperial uses of 'civilisation' by the new Third World states at the United Nations, the term 'civilisation' was replaced by 'modernisation' and 'democratisation', although 'civilisation' has come back into use.)[37]

The modern constitutional state with its constituent powers (the seven aspects) was defined as the uniquely 'civilised' and universal legal and political order. Only European states (and the United States in 1895) met the standard and were thus recognised as sovereign under international law. The complex and overlapping legal and political associations of the non-Western peoples who had been colonised over the previous four hundred years were defined in contrast as customary and uncivilised. Hence they were not recognised under international law but were subject to the imperial law of the respective sovereign powers. In Kant's influential formulation, the very *fact* that the so-called uncivilised peoples lacked a modern constitutional form was asserted to be a threat to civilised states and thus to give them the right to impose Western law, by treaty or by removing them from their traditional territories if possible, or, if they failed to submit, to employ coercion.[38] Since openness to free trade, acceptance of corresponding domestic and international legal orders, and a Western territorial state form were defining aspects of a civilised society, if an Indigenous society tried to retain customary jurisdiction and sovereignty over its own association, it proved itself to be uncivilised and a civilised legal order was imposed in one of the three ways described above.[39] The few non-Western civilisations that were too strong to be bullied in this way were brought into or alongside the club of great powers and restructured accordingly (as with China and Japan).

The right of the self-proclaimed civilised, imperial powers to extend colonial and international modern constitutional regimes around the world was correlated with a 'sacred duty to civilise' the Indigenous peoples under their rule. Non-Western civilisations, many of which are older and more complex than the aggressive Western states, were scientifically

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[37] Gong, *The Standard of 'Civilization'*; Keene, *Beyond the Anarchical Society*; Koskenniemi, *The Gentle Civilizer of Nations*; Anghie, *Imperialism*.

[38] Immanuel Kant, 'Perpetual Peace', in *Political Writings*, p. 98. See Anghie, *Imperialism*, pp. 295–7, for the significance of this justification of pre-emptive intervention in the context of the imperial War on Terror today.

[39] Gong, *The Standard of "Civilization"*, pp. 14–15, summarises the features of the 'standard of civilization'. The openness to trade and subordination to Western free trade laws is the first feature. This fundamental feature is repeated in the latest trade agreements under the WTO, in the Most-Favoured Nation Rule, which derives from GATT (1947).

classified at various stages of historical backwardness or underdevelopment relative to the 'civilised' imperial states and subjected to calibrated techniques of civilisation and modernisation. The civilising duty involved, first and foremost, imposing the civilising Western laws over Indigenous legal order, dispossessing or marginalising or transforming their customary forms of cooperative ownership, work and governance, and introducing capitalist corporations, foreign investment, labour discipline, modern contractual relationships and a territorially based colonial political order. The second dimension of the duty to govern those who were too uncivilised to govern themselves was to apply colonial *governmentalité* in detail to shape and form their forms of subjectivity so they would become able to take on, in stages, civilised forms of self-government and competitive individualism of a modern, foreign-controlled capitalist economy in a global system led by the developed states.[40]

International law was powerless to enforce this civilising duty on the imperial states in the nineteenth century. Although it was clearly in the long-term interest of a stable, 'juridical' imperial system, the competing imperial states reverted to the short-term 'executive' strategy of war, pillage, slavery, hyper-exploitation, genocide and destruction in Africa, and the tropics more generally, after the Berlin Conference of 1885 (similar to the atrocities in Afghanistan, Iraq and Lebanon 118 years later).[41] This unbridled imperial competition culminated in the First World War, the 'great war for civilisation'.[42] In 1919 the great powers realised that they could not continue the mutually destructive 'great game' of competing militarily over the domination and exploitation of the non-Western world. They tried to set up a League of Nations and an international legal order that would, firstly, force the great powers into a more cooperative and law-based form of imperialism, and secondly, establish a shared, 'international' project of civilising the natives and guiding them to self-rule. The first project, which Hobson and Kautsky feared as the coming cooperative hyper-imperialism, was not achieved until after the Second World War, the establishment of the United Nations, decolonisation and the Cold War triumph of the Western powers over the socialist states. The second project took the form of the Mandate System under the League of Nations. The colonised

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[40] In addition to the excellent treatment of the sacred duty of civilisation by Gong, Keene, Koskenniemi and Anghie, see the classic critique of it in Marx, *Capital*, pp. 931–42; and Hobson, *Imperialism*, pp. 113–327.

[41] Koskenniemi, *The Gentle Civilizer of Nations*, pp. 98–166, for the 'new imperialism' of the 1890s, and Gregory, *The Colonial Present*, for the 'new imperialism' of this century.

[42] John H. Morrow, *The Great War: An Imperial History* (London: Routledge, 2004).

peoples were classified into three main uncivilised types, and techniques of modernisation were applied (irregularly) by the respective mandatory imperial states as they increased resource exploitation, especially in the oil-rich Middle East. These 'processes' of preparing colonial peoples for Western-style self-government continued during the Trustee System of the United Nations and, after formal independence, the duty to civilise took the form of the trade agreements of the WTO and imposition of neo-liberal structural adjustment and privatisation programmes by the World Bank and IMF, and the norm of democratisation under international law.[43]

The great decolonisation movements of the middle of the century temporarily disrupted these two projects. The former colonies tried to free themselves from both formal and informal imperialism, to form a Third World not aligned with Western or Soviet imperialism, and to continue to develop their own distinctive constitutional forms, constituent powers and civilisations (as both Fanon and Gandhi hoped). However, the former colonies were constrained by the informal means available to the great powers to exercise their constituent powers of 'self-determination' in accord with modern constitutional forms and constituent powers, open themselves to free trade dominated by the great powers and submit to international legal regimes that denied them 'permanent sovereignty' over their own resources or face military intervention and regime change. This modernisation and dependency project was often carried through by the Third World westernised elites, corrupted by massive economic and military dependency, against the resistance of the majority of their own people, who dreamed of creating their own democracies, rather than the low-intensity nationalist democracies they were forced to accept.[44] The resulting resource-rich petrotyrannies, sweat-shop dictatorships and strategically important regional dependencies remain unstable 'failed states' as a direct result of their continuing subjection to informal imperial manipulation: the

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[43] See Anghie, *Imperialism*, pp. 115–272; Ayers, 'Demystifying Democratization'; Marks, *The Riddle of All Constitutions*; Koskenniemi, *The Gentle Civilizer of Nations*, pp. 465–509; Shrybman, *The World Trade Organization*. For the Mandate System, see Michael D. Callahan, *Mandates and Empire: The League of Nations and Africa, 1914–1931* (Brighton: Sussex Academic Press, 1999); and Callahan, *A Sacred Trust: The League of Nations and Africa, 1929–1946* (Brighton: Sussex Academic Press, 2004).

[44] See Duara, ed., *Decolonization*. This history explains why 'Indigenous peoples' and 'Indigenous laws' are used in broad and narrow senses. In the broad sense, 'Indigenous peoples' refers to all non-European peoples who have been subject to Western imperialism. As Western-style formal legal systems were imposed and decolonisation carried out, the peoples who acquired statehood (and were thus considered 'civilised') ceased to be called 'Indigenous'. 'Indigenous peoples' came to be used narrowly of those peoples who are subject to the continuing internal colonisation of the original settler states and the new post-decolonisation states; that is, the 'Fourth World' of 250 million people today.

dependent elites are constrained by their dependency to suppress the democratic aspirations of their people to control their own resources and work conditions; the people are driven to violence in self-defence; this is called failure and terrorism; and – as Locke predicted[45] – intervention follows.[46]

 This synopsis brings us up to the global network of informal imperialism I set out in the introductory section, now with the roles of the institutions of constitutional democracy added to it. The result is that the low-intensity constitutional democratisation of the former colonies and the quasi-constitutional transnational and international legal regimes that override them if necessary now provide the legal and political basis of a new phase of Western imperialism. With the international power of the great powers concentrated in the Security Council, the institutions of global governance, NATO and the US full spectrum dominance, these 'unequal sovereigns' are able to exercise 'legalized hegemony' over the nominally sovereign yet substantively subalternised former colonies.[47] The resulting inequalities, extreme poverty, dispossession, irresponsible foreign control and destructiveness are greater under post-colonial imperialism than under colonialism.[48] Yet the only official debate in the West is whether global rule will be primarily executive-based and unilateral (the current policy of the United States and United Kingdom) or primarily law-based and multilateral (the European alternative).[49] The shared historical foundation of these two historically intertwined strategies (warfare and lawfare) in the imperialism of constitutional democracy we have surveyed goes without saying.[50]

3 BEYOND IMPERIALISM: DEMOCRATIC CONSTITUTIONALISM

In summary, constitutional democracy, consisting of the eight features outlined in sections 1 and 2, plays three main roles in Western imperialism.

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[45] See note 20 above.
[46] Gills, Rocamora and Wilson, eds., *Low Intensity Democracy*; and Wendt and Barnett, 'Dependent State Formation'. For more recent surveys, see Chomsky, *Failed States*; Gregory, *The Colonial Present*; Petras and Veltmeyer, *Globalization Unmasked*; and Fisk, *The Great War for Civilization*.
[47] Simpson, *Great Powers and Outlaw States*.   [48] Seabrook, *The No-Nonsense Guide to World Poverty*.
[49] Peter Swan, 'American Empire or Empires? Alternative Juridifications of the New World Order', in *Empire's Law: The American Imperial Project and the War to Remake the World*, ed. Amy Bartholomew (London: Pluto Press, 2006). Swan argues for a renewed European imperialism based in the EU.
[50] It is worth noting that these two strategies or 'wings' within the shared meta-narratives and institutions of constitutional democracy have been a feature of Western imperialism for over a century. The debate over the 'new imperialism' today is very similar to the debate over the 'new imperialism' at the beginning of the twentieth century.

(i) Low-intensity constitutional democratisation has been imposed on non-Western peoples without their consent or democratic participation. (ii) These colonies and post-colonial replicas are then subject and subordinate to a cluster of regimes of transnational and international laws over which they have no or little say. (iii) These regimes in turn are governed by the most powerful constitutive sovereign states through global institutions and military networks in which the governed have no or little say, even though they are the vast majority of the world's population. All three dimensions are imperial and abhorrent in their inequalities and injustices, yet each is composed of aspects of constitutional democracy in its dominant narrow sense.

How can these three dimensions of constitutional democracy be de-imperialised? A democratic answer is to work to bring the basic constitutional and constituent structures of each of the three dimensions under the participatory shared authority of those who are subject to them. This is the basic idea of democratic freedom and 'democratic constitutionalism': the laws must always be open to the criticism, negotiation and modification of those who are the subjects of them as they follow them. As we saw in my discussion of feature 2 in section 1, this participatory and reflexive freedom of negotiating the norms to which we are subject as we go is at the heart of non-modern, customary constitutional forms and immanent constituent powers. The formalisation and disembedding of modern constitutionalism and constituent powers displaced this freedom to representative institutions.[51] The imposition of proto-constitutional democracy under imperialism has attenuated this representative freedom further in the low-intensity democratisation of colonial and post-colonial regimes. And, finally, the transnational and international legal regimes weaken the participatory freedom of the governed even more. Yet, as we also saw, even formal systems of law are grounded in everyday customary practices underlying the formal institutions of law-making, law-following, law-enforcing, law-interpreting and law-adjudicating in which the laws are negotiated within limits in the course of interaction. So the project of democratic constitutionalism is not one of bringing even more cumbersome representative institutions to bear from the outside. It is to exploit and expand the existing yet severely limited field of possibilities of direct participatory freedom (the exercise of constituent powers) within and against the constitutional forms to which the governed are now subject, directly or indirectly, at the very sites where these unjustly constrain their ability to exercise shared authority

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[51] For this history, see Chapter 2, this volume.

over the conditions of their activities. This is not the freedom to protest against imperialism or to confront it directly in a revolution aimed at overthrowing it. The co-optation of decolonisation revolutions and protests by informal imperial means has caused anti-imperialists to turn to these concrete practices of democratic constitutionalism: of organising non-imperially and modifying the imperial dimensions of constitutional democracy from within. Referring back to my discussion of feature 6 in section 1, this turn is a reformulation of the kind of limited freedom depicted in the 'irresolution' thesis or, conversely, a more realistic reformulation of the 'co-articulation' thesis under real-world conditions of hegemon–subaltern relations (the fourth and second theses described under feature 6).[52]

As we know from the history of imperialism, such practical attempts to democratise constitutional democracy will be met with official opposition and force.[53] However, this response further exposes the false and anti-democratic premise of imperial constitutional democracy. In my discussion of the imperial right in section 2, we saw that the premise has always been that the non-Western 'other' is uncivil and so untrustworthy because they are not already subject to a structure of civil law and the civilising effects of subjection. Therefore, before democratic dialogue and negotiation over legal and political arrangements can begin, a structure of Western law has to be imposed. Constitutionalism precedes democracy. This is the juridical containment thesis. But this premise is false and the cause of endless imperial wars.

Non-Western peoples have always been subject to their own *nomoi* and *demoi* and civilised by them in their different ways. There is thus no reason why democratic dialogue and negotiation cannot precede and ground the negotiation of shared constitutionalism. The willingness to enter into dialogue with others in this disarmed, open and trusting way generates trust, as Gandhi and Hans-Georg Gadamer have shown in practice and theory, whereas the coercive imposition of the law of one over the other, backed up by the ever-present threat of more military intervention, destroys trust and generates *ressentiment*, as the young Nietzsche saw.[54] It is rather the imperial powers that cannot be trusted to respect the others' laws and

[52] This turn to concrete constituent 'practices of freedom' within and against imperial relations of power was introduced after decolonisation by Frantz Fanon, Partha Chaterjee, Edward Said and Michel Foucault. For a fuller theoretical account, see Mike Simpson, The Creative Insurgence of Subjugated Practices: Non-Capitalist Practices and the Interstices of Capitalist Modernity, MA thesis, University of Victoria, 2006.

[53] See, e.g., Chossudovsky, *The Globalization of Poverty*; Chomsky, *Hegemony or Survival*.

[54] For Gandhi and his immense influence, see Thomas Weber, *Gandhi as Disciple and Mentor* (Cambridge: Cambridge University Press, 2004). For Gadamer's argument that this is the only

ways, but to misrecognise and delegitimate them – as mere 'customs', uncivilised, savage, the lawless state of nature, *terra nullius*, the Wild West, terrorist regimes or rogue states – and then intervene and subvert them. This has been the structure of argument and practice of the imperial right since the sixteenth century.[55]

What can be done? Despite the destructiveness of imperialism, non-Western customary legal and political normative orders have not been completely destroyed or superseded, as the Western meta-narratives confidently continue to predict. Western expansion has not been as total as its defenders and critics assume. In section 2 it was noted that imperial rule is always parasitic on the persistence of non-Western customary legal and political practices for its daily operation because it has to rely on the indirect and informal *collaboration* of the subaltern, that is, the majority of the world's population. This practical room to manoeuvre has enabled the diverse peoples of the world to 'act otherwise' to some limited extent: that is, to live creatively in accord with their own ever-changing customary constitutional forms and constituent powers within the interstices of imperial constitutional formations to vastly varying degrees.[56] Even the most relentlessly imperialised people – the Indigenous peoples of the Americas – have preserved their normative legal and political and civilisational practices and are now enacting a renaissance or 'resurgence' of them within and against continuing internal colonisation.[57] Hence, as legal pluralists show, there are subjugated and overlooked 'alternative worlds' of customary law and democracy that exist in the day-to-day practices of millions of people, despite the overarching hegemony and seeming inescapability of the particular Western form of constitutional democracy.[58] As Boaventura de Sousa Santos argues, existing legal and political pluralism is neither to be rejected as uncivilised nor accepted uncritically, but brought into critical dialogues

genuine (non-imperial) form of dialogue, see Gadamer, *Truth and Method*, pp. 341–62. For Nietzsche, see Friedrich Nietzsche, 'The Means to Real Peace', in *Human All Too Human: A Book for Free Spirits* [1878] (Cambridge: Cambridge University Press, 1986), §284, pp. 380–1.

[55] Anghie, *Imperialism*, pp. 13–31.

[56] The limit case is where a colonised people have been so totally assimilated that they take on the customary practices, *habitus* and forms of subjectivity that undergird formal constitutional democracy in the Western world. This is much less common than is supposed by modernisation theories, and the space for living 'alternative civilisations' within it, which often go unnoticed by Western observers, is much greater than is supposed. Even within the West, culturally diverse peoples act in culturally different ways to a very large extent within shared legal and political orders, and constantly negotiate the boundaries. On diversity of rule-negotiating in the EU, see Antje Wiener, *The Invisible Constitution of Politics* (Cambridge: Cambridge University Press, 2008), and *Volume I*, Chapter 6.

[57] For references to the reassertion of legal and political pluralism, see Borrows, *Recovering Canada* and *Indigenous Legal Traditions*; and Napoleon, 'Law as Governance'.

[58] Benton, *Law and Colonial Cultures*; Santos, *Toward a New Legal Common Sense*, pp. 85–154.

within and over different forms of organising shared authority non impe-
rially, both locally and globally – dialogues that include the non-imperial
aspects of Western constitutional democracy.[59] And these experiments are
the growing basis of non-imperial forms of global networking that seek to
provide a 'living democracy' alternative to the current constitutional forms
of the WB, IMF and WTO.[60]

Analogous spaces of democratic freedom exist in Western countries.
Millions of westerners refuse to support the imperial dimensions of con-
stitutional democracy and strive to create non-imperial legal and political
ways of interacting with partners in the rest of the world, gradually
de-imperialising constitutional democracy from within.[61] Following the
examples of Gandhi, Vandana Shiva, Johan Galtung, Fritz Schumacher,
Arne Naess, Kofi Annan, Thich Nhat Hanh and countless other mentors,
they are building networks of globalisation in which the constitutional form
of the network is based on the on-going democratic and non-violent
exercise of the constituent powers of the partners who subject themselves
to it.[62] These experiments in democratic constitutionalism include coopera-
tives rather than corporations, fair trade rather than free trade, local democ-
racy, non-violent dispute resolution rather than the recourse to arms, deep
ecology, mutual aid rather than aid tied to privatisation and military bases,
and continuing dialogues among the civilisations involved.[63] Despite the
horrors of present-day imperialism, and perhaps partly because of them,
there are arguably more activities of creating non-imperial customary norma-
tive orders and of modifying the more formal imperial normative orders
from the inside than at any other time in the long history of non-imperial
and anti-imperial movements.

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[59] Santos, *Toward a New Legal Common Sense*. Santos sees the World Social Forum as a space for this
    kind of critical dialogue.
[60] Jerry Mander and Victoria Tauli-Corpuz, eds., *Paradigm Wars: Indigenous Peoples' Resistance to
    Economic Globalization* (San Francisco: International Forum on Globalization, 2005).
[61] See Chapter 8, this volume.
[62] For Gandhi's influence on most of these mentors, see Weber, *Gandhi as Disciple and Mentor*. Thích
    Nhat Hanh, *Keeping the Peace* (Berkeley: Parallax Press, 2005), describes the non-violent, dialogical
    way to peace in contrast to the imperial way of war and force: 'When the Israelis and Palestinians have
    listened to each other and communicated in Plum Village (a non-violent retreat in France), they
    return to the Middle East and establish communities of practice, and invite other people to join. We
    are able to make change on a small scale. But it has proven to be effective. If our governments apply
    the techniques, creating an atmosphere of peace, helping people to calm down, helping them to sit
    down and listen to each other, that is a much better way to remove terrorism and war than the way of
    war and force. In 2004, the United States spent about four billion dollars a month in Iraq. Organizing
    a retreat costs much less' (p. 84).
[63] See, e.g., Cavanagh and Mander, eds., *Alternatives to Economic Globalization*.

The growing movement for democratic constitutionalism and global justice in Western legal and political research centres can play an important partnership role in the growth of democratic constitutionalism in practice, for these practical examples strive to manifest, in concrete forms, the pluralistic and egalitarian ideal of genuinely democratic constitutionalisation that critical scholars – such as Edward Said, Iris Marion Young, Thomas Pogge, Boaventura de Sousa Santos – are trying to articulate. Such a relationship of reciprocal elucidation between de-imperialising practices of democratic constitutionalism and critical theoretical and empirical research may help in time to make the irresolution thesis less pessimistic than it is at the moment.[64]

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[64] In memory of Iris Marion Young, whose spectacular work and personality inspired us and kept our spirits aloft in these dark times. It is up to us to carry on under the gentle sway of her example. The suggestive themes in this final section are addressed more fully in Chapter 9 of this volume.

CONCLUSION

Civic freedom contra imperialism

A new kind of Europe? Democratic integration in the European Union

INTRODUCTION

In this and the following chapter, I turn to the question of how practitioners of civic freedom and public philosophy can work concretely and democratically to address the political struggles we have studied in the course of the two volumes. These are, to recall, the interrelated struggles over recognition and distribution in *Volume I* and over the environment and the de-imperialisation and democratisation of oppressive global relationships in *Volume II*. This chapter addresses what can be done within the European Union and the final chapter focuses on global *and* local citizen practices of freedom.

Critical reflection and debate on the forms of integration of the diverse members of the EU have always been a part of the integration processes since the beginning of the European Community. However, since the global War on Terror and the explosion of conflicts over immigration, economic policy and foreign policy, the question of integration has become the most urgent challenge facing Europeans: the epicentre of struggles on the ground and of critical reflection and rival solutions in the popular media, policy communities and academic research. In response to this complex and unpredictable terrain of integration conflicts and disintegration trends, I would like to propose for consideration a new answer to the question of integration; an answer appropriate to today's problems. This is not a specific answer in the sense of a set of policy recommendations, but, rather, a general *form of orientation* to the conflicts over integration for citizens, policy makers and academic researchers.[1]

[1] With the appropriate adjustments, I think this approach is applicable to other constitutional democracies as well.

The form of orientation to the problems of integration of the diverse members of the EU that is both practically effective and normatively legitimate is a specific kind of democratic integration. By 'diverse members' I mean the culturally diverse citizens and minorities (multiculturalism), the twenty-five member states with their diverse national cultures (multinationalism), and the diverse civilisations of individuals, minorities and majorities (multicivilisationalism). 'Integration' refers to three main areas of EU integration: cultural, economic and foreign policy. The specific kind of democratic integration that I propose is not predominant today in either policy or theory. However, my argument is not that this alternative form of democratic integration is *possible*, in the abstract sense that 'another world is possible'. Rather, I wish to suggest that this democratic orientation to integration is *actual* but *overlooked*, and, as a result, *overridden*. It is a way of integration that actually takes place in practice in the everyday activities of Europeans, but which the prevailing policy communities and theoretical schools overlook. These evolving everyday practices of integration are overlooked perhaps because they are so commonplace that they go without saying, but also because even policy makers and researchers who try to see them tend to predicate the prevailing forms of representation on them, and thus misrepresent and overlook them, thereby exacerbating the very problems they seek to address. If this invisible form of democratic integration was rendered visible and given more prominence in the official institutions of integration, the EU would be a new and different form of association. It would be an association resting on the democratic practices of integration of its diverse members and thus always open to new voices, responsive and creative experimentation, and renewal as a shared way of life – a living democracy.[2]

I   THREE APPROACHES TO INTEGRATION

The general definition of '*democratic* integration' is that the individual and collective members who are integrated into the EU must have an effective democratic say over the norms of integration to which they are subject. The

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[2] The general orientation of turning critically to the everyday in order to begin anew, against the tendency to project an abstract form of representation over everyday activities, often in the form of ineluctable processes, procedures and rules of modernisation, is of course an orientation of a wide range of scholars, such as Hannah Arendt, Talal Asad, Veit Bader, Pierre Bourdieu, Stanley Cavell, Michel Foucault, Bruno Latour and Ludwig Wittgenstein (whom I paraphrase in this paragraph). For recent work in this tradition, see Nikolas Kompridis, ed., *Philosophical Romanticism* (London: Routledge, 2006).

norms of integration must be 'open' to the democratic negotiation of those who are subject to them. Those who are subject to them must be 'free' to enter into these negotiations, in the sense of actually being able and encouraged to participate, either directly or indirectly through trusted representatives who are held accountable in turn to those they claim to represent by practices of democratic negotiation. We can say that the legitimacy and effectiveness of norms of integration rest on their grounding in two on-going types of 'discursive practices': of interpreting and following the norms differently in practice without challenging the norms directly; and of questioning, challenging, agreeing and disagreeing, negotiating modifications or reaffirming the existing norms, implementing and experimenting with a modified regime of integration norms, acting in accordance with it and testing it in turn. This is the traditional meaning of 'democracy' – rule by and of the people – and the traditional meaning of 'democratic citizenship' or 'democratic freedom' – that citizens have a participatory say over the laws to which they are subject – as applied to rules of integration.

Although this general definition of democracy is widely shared, there are three very different approaches to integration that claim to follow from it. The first approach is democratic in the most attenuated of senses and should be called anti-democratic. This is the approach that bypasses the democratic condition and imposes integration regimes on immigrants and other diverse members without their say, on the grounds that technical elites know best about culture, economics and foreign policy, that complex modern systems integrate members 'behind their backs', that the situation is too volatile and dissonant for democratic procedures, that immigrants are subjects but not yet citizens so they do not have a say, that the *demos* comes after integration, and so on. I think most Europeans would agree that this anti-democratic approach is both illegitimate (democratic deficit) and ineffective (it fails to cultivate attachment to norms through participation and elicits disintegrative responses over its imposed integration policies). Yet this is the paramount form of integration today. Moreover, the propaganda around terrorism, security, and the clash of civilisations strengthens this anti-democratic approach and the reactions its policies cause are then used to justify its extension.[3] According to the European Monitoring Centre on Racism and Xenophobia, the prevailing forms of integration increase discrimination and segregation. And in this atmosphere of ignorance and fear, the interior ministers of the six largest member states (France, Italy,

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[3] Fred Halliday, 'Terrorism and Delusion', *OpenDemocracy* (12 April 2006), available at: www.opendemocracy.net [Accessed 30 October 2006].

Germany, Poland, Spain and Britain) meet privately to devise even more offensive citizenship tests, integration contracts and other policies of coercive assimilation. This approach is clearly part of the problem rather than a solution.[4]

The second and third approaches both claim to be opposed to the antidemocratic approach and to embody the democratic ideal. Yet they are very different. I will call the second a low-intensity or 'restricted' democratic approach and the third an 'open-ended' or 'non-restricted' democratic approach. The open-ended approach is the one that is overlooked and which I recommend. I think that the central question today in Europe and elsewhere is which of these three orientations to integration is to prevail in the twenty-first century?[5]

The major differences between the restricted and non-restricted approaches can be seen clearly by comparing them across four aspects of democratic negotiation of integration regimes.

The restricted approach is 'restricted' in that it places limits on all four aspects of democratic negotiation:

1. The democratic negotiation of norms of integration takes place only in what we might call the official institutions of the public sphere. Furthermore, official representatives of the people subject to the norm in question usually partake in the negotiations.

2. Democratic negotiation takes place within a set of pre-established procedures, and having a say within them usually consists in saying YES or NO to a proposed norm developed elsewhere (as, for example, in the vote on the constitution).

3. The general outline of what a norm of integration must look like at the end of the negotiations is given at the beginning. It is usually given as beyond question by some grand narrative of global processes of modernisation, good governance, democratisation, human rights or civilisation.

4. The discursive practices of norm negotiation are seen as a discrete step in a larger process of norm generation that comes to an end. Democratic

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[4] Mats Engström, 'The Fear Haunting Europe', *OpenDemocracy* (26 May 2006), available at: www.opendemocracy.net [Accessed 30 October 2006].

[5] The distinction between low-intensity democracy and a more open-ended and participatory democracy emerged in the early 1990s in area studies of the non-European world. In the early years of this century, it began to be applied to the study of the restricted and elite character of representative democracies in Europe and North America and to the narrow definition of democracy in policies of global democratisation in international law. See, respectively, Gills, Rocamora and Wilson, 'Low Intensity Democracy'; Santos, *The World Social Forum: A User's Manual*, pp. 104–15; Marks, *The Riddle of All Constitutions*.

negotiation is one phase in the development of acceptable and final norms of integration.

The open-ended or non-restricted orientation to democratic integration opposes this restricted model on all four limits that it places on democratic negotiation:

1. The democratic negotiation of norms of integration takes place not only in the official forums of the traditional public sphere, but also *wherever* individuals, groups, nations or civilisations in the EU come up against a norm of integration they find unjust and a site of disputation emerges. What makes a norm of integration 'democratic' on this view is precisely that those subject to it have the right to call it into question here and now, to present reasons for interpreting it in different ways, or, if necessary, for changing it; and to enter into democratic negotiations over being able to act differently under it or, if this is not possible, to negotiate its amendment or transformation. Moreover, it is not only the official representatives of constituencies who have a right to enter into the multiplicity of public spheres, but, in principle, every member represented by an official spokesperson who is affected by the norm in question. The democratic principle of *audi alteram partem* – always listen to the other side – is applied all the way down so that everyone who speaks for another is held accountable.

2. Since the procedures of negotiation are themselves just another set of norms of integration, they cannot be set beforehand and placed beyond question by some dubious argument or another about their meta-democratic status. They too must be open to different interpretations, to question and modification by those subject to them in the course of the negotiations. This is often the main dispute. It is also not sufficient that those subject to a norm be constrained simply to take a YES/NO position on a proposed norm that has been drafted elsewhere and handed down from on high. The formulation of the norm and the interpretation of its various meanings and ways of acting in accord with it must pass through democratic negotiations of the culturally diverse subjects who are subject to it.

3. The general form that the norm of integration must take cannot be imposed beforehand by an appeal to allegedly universal, necessary, or self-evident processes of modernisation, democratisation, juridicalisation or Europeanisation, for, in many cases, it is precisely these framing discourses that are being called into the space of questions and challenged in the deeply diverse Europe of today. There are alternative ways of living modernity and a multiplicity of cultures and civilisations *of* Europe today that need to be acknowledged and accommodated if Europe is to

be democratically and effectively integrated. We know from recent expe-
rience that attempts to integrate undemocratically, through the imposition
of partial, assimilative and inflexible integrative regimes, only lead to the
worst kinds of reaction on both sides.

4. Finally, the dialogues or, rather, *multilogues* of negotiating the terms
   of integration are not some discrete step towards a final end-point. They
   are on-going, open-ended and non-final constituents of a democratic
   way of life.

On the open-ended view, a multicultural, multinational and multicivi-
lisational association is not held together by some definitive set of public
institutions of discussion, procedures of negotiation, shared narratives, or
final norms of integration on which all must agree and that set the limits to
democratic negotiation. While the restricted approach allows for inclusion
in democratic negotiations over norms of integration, in contrast to the
anti-democratic exclusionary approach, it places four assimilative limits on
democratic negotiation precisely where disagreement is most likely to irrupt
in diverse societies, and thus displaces rather than faces the urgent conflicts
over integration today. Rather, the answer is found in the contrasting and
quotidian democratic attitude that none of these four features is ever
beyond question or the subject of unconditional agreement. What holds
the diverse members together and generates bonds of belonging to the
community as a whole across continuing differences and disagreements is
that the prevailing institutions, procedures and norms of integration are
always open to free and democratic negotiation and experimentation with
alternatives by those subject to them.

Finally, the term 'democratic negotiation' comprises two distinct forms
of negotiation involved in integration. The first involves the activities of
challenging a prevailing norm of recognition and integration, calling it into
question, entering into negotiations and, if successful, modifying the pre-
vailing norm, and implementing and experimenting with the modified
norm. This form of democratic negotiation, at least in its more public
and official instances, has received the lion's share of attention by research-
ers of deliberative and agonistic democracy.

The second form of democratic negotiation occurs where diverse mem-
bers share the same norm of integration yet act differently in accord with it.
They interpret and practise norm-following in a variety of different ways,
yet all can be seen, from their diverse cultural, national, civilisational or
creative perspectives, to be acting in accord with the norms of integration
they share with others. We might call this diversity of *practices within* a field
of shared rules diversity of 'ethical substance' or 'democratic *ethos*'. This

distinct form of diverse integration under shared norms has received less attention and it is often overlooked altogether. The vast landscape of the diversity of human practices within the shared rules of any complex association is overlooked because of the dominant yet nevertheless false view that norms are applied and followed in only one right way: that is, a rule determines rule-following behaviour. On this false view of rule-following (rules as rails), if members want to change anything or act differently they have to change the rules of the game, and so theory, research, policy and political practice tend to focus exclusively on the rules and procedures, thereby disregarding diverse practices of rule-following.[6] Yet, as Antje Wiener shows in her empirical and theoretical study, aptly entitled *The Invisible Constitution of Politics*, diverse members of the EU negotiate the shared rules and procedures (the visible constitution) through their culturally, nationally and improvisationally different *practices* of rule-following on a day-to-day basis (the invisible constitution).[7]

I will now survey three overlapping and interrelated areas of integration (culture, economics and foreign policy) to see which of the two democratic integration approaches presents a more effective and democratic alternative to the anti-democratic approach, and which establishes a non-coercive relationship of reciprocal elucidation between policy communities and makers on one side, and the overlooked everyday integration practices of the people on the other. These two questions are closely related, for it is my thesis that official integration will be effective and legitimate only if it is internally related to and shaped by popular practices of integration, rather than running roughshod over them. This is to say that there is not a 'no *demos*' problem in the EU. There are multiple *demoi* but they tend to be overlooked and so either excluded from official integration processes or included in them and subordinated to elite-driven and assimilative procedures.[8]

2 CULTURAL INTEGRATION

Cultural integration comprises the culturally diverse citizens and minorities (multiculturalism), the member states with their diverse national cultures (multinationalism), and the diverse civilisations of individuals, minorities and majorities (multicivilisationalism). The prevailing policies of integration tend to be based on the anti-democratic and restricted orientations.

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[6] See *Volume I*, Chapter 2.   [7] Wiener, *The Invisible Constitution of Politics*.
[8] For the background to this section see *Volume I*, Chapter 9.

The integration of immigrants, cultural, linguistic and religious minorities, Indigenous peoples (Sami), sub-state nations and non-territorial nations (Roma), the national traditions of member states, and different civilisations tends to follow two general approaches:

1. Either integration consists in assimilation to a set of norms of membership that is said either to transcend cultural, national and civilisational differences or to encode essential Western values, and thus democratic negotiation consists solely in ratifying this transcendent or essential set;

2. Or, there is said to be scope for the expression of cultural and minority nation differences, but this is usually limited to regimes of minority rights and exceptions to the rule of various kinds that are more or less given beforehand and, again, require democratic negotiation primarily for purposes of ratification or minor modification.

The global protests over the caricatures on the subject of Islam, Muslims and the Prophet Mohammed in the Danish newspaper *Jyllands-Posten* (30 September 2005) have tended to polarise and narrow the debate over norms of integration even further. The choice comes down to one between a highly assimilative (and often offensive) set of norms of membership, not uncommonly couched in the nineteenth-century imperial terminology of 'civilisation', as in the debate over Turkey, or a minimal and non-negotiable regime of minority rights, as if this represents a generous defence of the aspirations of multiculturalism and multinationalism.[9]

As the democratic theorists and social scientists of struggles over recognition have shown, these options bypass or co-opt the active engagement of the members affected in the processes of working up the conditions of integration, of debating them and of negotiating modifications of them over time. But, it is precisely these democratic activities that create a sense of attachment to the larger community even when members do not get all their demands. Conversely, it is exclusion from or subalternisation within these discursive practices that ratchets up ignorance of the other, xenophobia, extreme positions and the predictable outpouring of *ressentiment*.[10]

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[9] Faisal Devji, 'Back to the Future: The Cartoons, Liberalism and Global Islam', *OpenDemocracy* (13 April 2006), available at: www.opendemocracy.net [Accessed 30 October 2006]; Fred Halliday, 'Turkey and the Hypocrisies of Europe', *OpenDemocracy* (16 December 2004), available at: www. opendemocracy.net [Accessed 30 October 2006].

[10] Breda, 'A European Constitution'; Tierney, *Constitutional Law and National Pluralism*; Veit Bader, 'Against Monism: Pluralist Critical Comments on Danielle Allen and Philip Pettit', in *Political Exclusion and Domination*, eds. Melissa Williams and Stephen Macedo (New York: New York University Press, 2005); Nikolas Kompridis, 'Normativing Hybridity/Neutralizing Culture', *Political Theory* 33(3), 2005: 318–43; Nikolas Kompridis, 'The Unsettled and Unsettling Claims of Culture: A Reply to Seyla Benhabib', *Political Theory* 34(3), 2006: 389–96.

For example, Vito Breda applies an open-ended approach to EU constitutionalisation and suggests that the NO votes in France and the Netherlands can be explained in part in these terms:

The European Convention, which prepared for drafting the Treaty Establishing a Constitution for Europe, aimed to rationalize the existing system of treaties and to set a blueprint for a new model of European Governance. Because of its institutional structure and mission, the Convention was not a suitable democratic arena for a process of recognition of national identities and their claims, which were depicted as an obstacle in the process of European integration.[11]

In another exemplary context of failed integration, the riots of Muslim youth in the poor neighbourhoods of French cities in 2005 (which continue today) may also be based in part on not having any democratic forum in which to express their grievances and influence policy.

The tragedy is that we do not even know why peoples voted NO in one case and rioted in the other because discursive practices of having a say were not part of either. There has been much speculation about the reasons and aspirations of those involved in both cases, but the open-ended approach, which would have provided the answer, was not tried. It is difficult to see, for example, how the well-documented racism, discrimination and economic inequality suffered by Muslim youth can be addressed unless the people who are subject to it have an effective say from the bottom up. As Breda points out, most of the member states already have the legal and political means to establish discursive practices of democratic negotiation for various forms of cultural integration.[12]

Nevertheless, despite all the deep difficulties of cultural integration, in everyday life Europe is one of the most convivial intercultural, international and intercivilisational associations on the planet. The diverse members negotiate their interactions on an everyday basis (in both senses of 'negotiation'). A new kind of diversity-savvy solidarity across cultural differences is emerging out of these interactions that Paul Gilroy calls 'conviviality', that is, 'the processes of cohabitation and interaction that have made multiculture an ordinary feature of social life in Britain's urban areas and in postcolonial cities everywhere'.[13] These practical arts of peaceful interaction and dispute resolution among diverse partners are learned and practised in the daily activities of work, school and play, in not-for-profit organisations, in immigrant and refugee organisations, and so on. As Gilroy, Breda, and Weiner show in different ways, they exist throughout the EU. The ethical

[11] Breda, 'A European Constitution', pp. 341–2. [12] *Ibid.*, p. 340.
[13] Paul Gilroy, *After Empire: Melancholia or Convivial Culture?* (London: Routledge, 2004), p. xi.

arts of grass-roots conviviality in working against racism, discrimination and inequality fall beneath the threshold of most social-scientific research, policy making and theory, for, as we have seen, they tend to focus on the explicit norms rather than the implicit diversity of democratic ethos within them. Yet, for all that, these ordinary practical abilities and informal arts are the ground of an alternative and democratic integration.

Finally, cultural integration cannot be addressed in isolation from the other two fields of integration in the following sections (economic and foreign policy). A promising example of a democratic approach that tries to take into account all three fields is the Alliance of Civilizations. It was set up in 2005 by the leaders of Spain and Turkey through the United Nations to deal with civilisational integration holistically and through multilevel dialogues among Muslims and non-Muslims. Tomaz Mastnak, the Director of the Secretariat for the Alliance of Civilizations, explains that Muslims will not be successfully integrated into Western societies until civilisational inequalities are addressed and the continuing imperialism of the foreign policy of Western powers in Muslim countries is abolished. For starters this means the end of war in Afghanistan and Iraq and the resolution of the Israel–Palestine conflict.[14]

3 ECONOMIC INTEGRATION

If we turn to economic integration, which is probably the primary field of integration, affecting the other two in complex ways, we see an analogous situation. The paramount form of economic integration today is the neo-liberal model. Of course there is considerable dissatisfaction with this. However, when the question is asked 'what is the nature of this dissatisfaction with neo-liberal economic integration?', the leading answer is not to bring the dissatisfied into the official discussions. Rather, the pre-emptory answer is that the dissatisfaction is the expression of support for a rather familiar alternative, namely, a social-democratic economic model with a traditional public sphere for the European *demos*.[15] And, when this

[14] Tomaz Mastnak, 'Working Paper for the High Level Group' (unpublished paper prepared for the Alliance of Civilizations Meeting, Palma De Mallorca, 27–29 November 2005); Vitaly Naumkin, 'Taking the First Hard Steps to Civilization Alliance', *RIA Novosti* (27 February 2006), available at: http://en.rian.ru/analysis/2006222/43712744.html [Accessed 30 October 2006]; Dalia Al-Hadidi, 'Alliance of Civilizations Urges "Action not Talk"', *Islam Online* (26 February 2006), available at: www.islamonline.net/English/News/2006-02/26/article05.shtml [Accessed 30 October 2006]; Gregory, *The Colonial Present*.

[15] For a statement of this alternative approach, see Jürgen Habermas and Jacques Derrida, 'February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of

alternative model is advanced by the counter-elites of the 'core countries' of the Union, it further divides rather than integrates. Many of the economic and policy elites in the core countries are clearly more comfortable with the neo-liberal (or Anglo-American) model and do not wish to threaten their economic relationship with the United States by confronting it with an alternative economic model and entering into a rivalry. And the United Kingdom and many of the 'non-core' or 'new Europe' countries refuse to take the role assigned to them by the core counter-elites and support the neo-liberal model.[16] As with cultural integration, the debate over these two pre-packaged models of economic integration is accompanied by speculative interpretation of the periodic outbreaks of popular dissatisfaction: the NO votes on the constitution may have been an expression of dissatisfaction with neo-liberal integration; the demonstrations of French students, union members and concerned citizens probably were; the election of social-democratic governments in Spain and Italy may be a sign of something, and so on.

However, what tends to be bypassed or subordinated by these two dominant models is recourse to discursive practices in which members could have a say on the conditions of economic integration. Yet, there is already a multiplicity of alternative forms of economic integration that exist in practice in the civil societies of Europe *within* the norms of the two contending elite models. The immensely successful European cooperative movements, the grass-roots movements for associative democracy, voluntary simplicity, the rapidly growing network of 'fair trade' within and against the norms of free trade, a plethora of ecological economic networks, ecosystem management experiments, ecological certification networks and other alternative trade systems, food security and food sovereignty, sustainable consumption, green consumerism, and the fledging European

Europe', in *The Derrida-Habermas Reader*, ed. Lasse Thomassen (Edinburgh: University of Edinburgh Press, 2006), first published 31 May 2003. Although primarily concerned with European foreign policy, it recommends building the key features of social democracy, the welfare state and a European-wide official public sphere into the EU as a basis for a counter foreign policy to that of the United States. The manifesto is closely associated with the project of Joschka Fischer, the German Foreign Secretary, in May 2000, to renew the core countries of Europe. For the divisive effects of this alternative integration model and the rapid decline in support for it, see Deppe, 'Habermas' Manifesto for a European Renaissance'. For the foreign policy side of the proposal, see the following section, as well as Habermas, 'The Kantian Project', and Walker, 'Making a World of Difference?'. For a defence of the classic assimilation model of European social-democratic integration, including the claim that it is valid for the 'human race', and the dismissal of the kind of open-ended and multicultural democratic approach I propose, see Fraser and Honneth, *Recognition or Redistribution*, pp. 110–97, 237–68. For a critical introduction to this debate, see Simon Thompson, 'Is Redistribution a Form of Recognition? Comments on the Fraser–Honneth Debate', *Critical Review of International Social and Political Philosophy* 8(1), 2005: 85–102.

[16] Deppe, 'Habermas' Manifesto for a European Renaissance'.

Social Forum are all examples of alternative economic organisations within Europe and internationally that do not conform to the two elite models but, rather, manifest actual alternatives.

There is a growing body of academic research on these populist alternative economic networks across Europe and globally. In addition, the EU and its member states are probably the world leaders in beginning to establish relations between them and policy communities, especially in areas such as the environment, the Kyoto Accord and sustainable consumption. However, the nurturing of democratic relationships of reciprocal elucidation, in which people involved in alternative economic practices have an open and effective say in official economic policy discussions without being constrained to speak within the limits of neo-liberal or Keynesian economics, is still a novelty and faces all the well-known obstacles that entrenched interests can place in its way. Yet, if there is to be an orientation to economic integration in Europe that does not destroy the environment, deepen inequalities both within Europe and globally, remain alienated from the people who are subject to its effects, and so lead to deeper divisions and disintegration, then there is no alternative to a more open-ended democratic approach.[17]

4 FOREIGN POLICY INTEGRATION

The integration of the EU and its partners into a new foreign policy regime is one of the most discussed and contentious issues today. On the one hand, a number of member states support the coalition headed by the United States and the United Kingdom, their global War on Terror and their continuing wars against and occupations of Afghanistan and Iraq. Even those who have disagreed with the United States over the war in Iraq have not deviated that far from US foreign policy in other respects. Moreover, Europe has followed the United States in the implementation of massive regimes of securitisation and surveillance since 9/11. On the other hand, millions of European citizens have protested against the coalition and especially the war in Iraq. The anti-war demonstrations are the largest protests in the history of the European Community. Yet, when one asks what the protesters might propose as an alternative, the dominant response is not the democratic one of actually asking the protesters. Rather, a ready-made

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[17] For a critical survey of the literature on alternative economic and environmental futures, I am indebted to Noah Quastel, 'Contract, Sustainability and the Ecology of Exchange' (LLM dissertation, Faculty of Law, University of Victoria, 2006).

alternative foreign policy is given as the answer, and it is often presented as the answer that the protesters themselves would give. Thus, as in the case of economic integration, the discussion in the official public sphere is dominated by two hegemonic models of foreign policy integration, coupled with a corresponding disregard of a more dialogical and democratic approach grounded in a wider and more open array of public spheres.

The main features of this alternative foreign policy under which the EU should be integrated are usually the following. It is presented as a point-by-point alternative and counter-weight to the imperial foreign policy of the United States. It would be multilateral rather than unilateral; work through the UN and international law rather than bypassing or undermining them; and aim to constitutionalise the existing Charter of the United Nations as the constitution of the international society. It would also promote the building of other continental, transnational, constitutional regimes on the model of the EU throughout the world, advance a more social-democratic alternative to global neo-liberalism through the WB, IMF and WTO, and support humanitarian intervention and international individual human rights. Versions of this elite alternative have been advanced by Jürgen Habermas and Ulrich Beck, among several others.[18] Peter Swan describes it with approval as a 'counter-empire' to US imperialism and finds the prototype of it in a proposal by Carl Schmitt in 1955 and especially a plan for a new European empire presented by Alexandre Kojève to the French government in 1945.[19]

It is difficult to see how this alternative foreign policy would be any more integrative and less contentious than joining the United States' coalition. Its formulation has not passed through any kind of open democratic negotiation of the people of Europe, let alone of the non-European peoples who are supposed to welcome it with open arms, and nothing more than a low-intensity form of restricted democratic negotiation, with all four limits in place, appears to be envisioned. The central difference from current US imperial foreign policy is that the EU and other great powers (the G8) would work together rather than unilaterally and through transnational and international law rather than outside the law. But, the present Charter of the United Nations is hierarchical and exclusionary; many features of international law have been criticised by the former colonies since decolonisation as

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[18] Habermas and Derrida, 'February 15'; Habermas, 'The Kantian Project'; Ulrich Beck, 'American Empire, Cosmopolitan Europe', *Europe Review* (Spring 2003), available at: www.times-publications.com/publications/ERSpring03/ER 29.htm [Accessed 30 October 2006]; Ulrich Beck, 'The Truth of Others: A Cosmopolitan Approach', *Common Knowledge* 10(3), 2004: 430–49.

[19] Swan, 'American Empire or Empires?'.

continuing Western imperialism by juridical means; the Bretton Woods' institutions are seen by millions of protesters as establishing an informal type of post-colonial imperial governance; and none of these institutions has ever been subject to the democratic negotiation of the billions of people who are subject to their laws and policies.

The European global juridicalisation of the massively unequal institutions of the present international order and remaking the major regions in the image of the EU would be no less imperial and anti-democratic than the foreign policy it is designed to challenge. It is not very different from the liberal imperialism of the last two centuries.[20] Neil Walker's conclusion to his judicious critique of this alternative is that there is 'one final and perhaps fatal objection'. The project rests on a grand narrative of a particular set of teleological processes of modernisation and juridicalisation that are presented as universal but that are deeply embedded in historical phases of Western domination. The very peoples who have been historically disempowered and disadvantaged by these processes are then asked to trust in their eventual democratisation-to-come when they have no reason to do so and every historical reason to dissent.[21]

The hegemonic debate between the two elite models of foreign policy integration in their various iterations either disregards the open-ended democratic alternative altogether or, if it is noticed, treats it as beyond the pale of public reason, since the limits of public reason are defined by the four types of restriction these two models uphold. As a result, the open-ended alternative is construed as some form of unreasonable 'radical' democracy, whereas, once the hegemonic orientation is seen as simply one limited orientation among others in a broader field of creative arts of public reasoning, the open-ended approach appears as a reasonable and indeed practicable alternative.[22] As in the cases of cultural and economic integration, the open-ended approach recommends a wider and deeper discussion of a possible European foreign policy. This would bring to light what the official debate overlooks: there are already a multiplicity of local–global relationships between Europeans and non-Europeans that do not conform to either of the elite models but that exist in practice among distant neighbours in the global village. Millions of ordinary, concerned

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[20] Koskenniemi, *The Gentle Civilizer of Nations*; Anghie, *Imperialism*; Simpson, *Great Powers and Outlaw States*; Deppe, 'Habermas' Manifesto for a European Renaissance'.

[21] Walker, 'Making a World of Difference?'. This chapter by Walker is a response to Habermas, 'The Kantian Project', which is a concise statement of Habermas, *Der gespaltene Westen*. In this section, I draw on Chapters 5 and 7, this volume.

[22] Toulmin, *Return to Reason*; Tully, *Volume I*, Chapter 9.

Europeans are deeply involved in networks of the international peace and non-violence movements, alternative dispute-resolution initiatives, support networks for local forms of democratic empowerment rather than the imposition of structural adjustment, Western law and low-intensity democracy, fair trade rather than free trade, mutual aid rather than a race to the bottom, the World Social Forum and so on.[23]

The distinctive feature of these local–global alternative foreign policy networks is that they are democratic and anti-imperial. They are based on dialogical relationships that are worked up and continuously negotiated democratically by European and non-European partners over generations. They thus exemplify in concrete practice, in actuality, the basis of an open-ended democratic foreign policy for the EU; one that would pass through the democratic negotiation not only of Europeans but also of non-Europeans who would be both subject to and co-authors of it. The foreign relations that Europe would establish with others would not be pre-structured around one Western model of modernity and cosmopolitan order, but through dialogues of many existing civilisations, alternative modernities and cosmopolites.[24] These pacific foreign relationships are not based on the fear-based presumption that the other exists in a lawless 'state of nature' and is ill-disposed towards us, and so on the imposition of Western law and order *before* a 'civilised' dialogue can begin, as in the case of the two dominant Western models (with their roots in Hobbes' and Kant's articulation of this structure of argument). They are based on the opposite, trust-engendering presumption of disarming openness to diversely cultured others and the primacy of critical dialogue. In most of the great religions, ethical traditions and peacemaking practices of the world, this Gandhian path has always been seen as the real means to peace on earth.[25] One can hope that initiatives like the Alliance of Civilizations and the World Social Forum are means of bringing these actual alternative practices of democratic and peaceful foreign relationships into critical dialogue with the two dominant approaches to foreign policy integration.[26] For, as Nietzsche argued perceptively in response to the crisis of European historical and political

[23] Seabrook, *The No-Nonsense Guide to World Poverty*; Graham Dunkley, *Free Trade: Myth, Reality and Alternatives* (London: Zed Books, 2003); Hans von Sponek, 'The Conduct of the UN Before and After the 2003 Invasion', in *Empire's Law: The American Imperial Project and the War to Remake the World*, ed. Amy Bartholomew (London: Pluto Press, 2006).

[24] Latour, 'Whose Cosmos, Which Cosmopolitics?'.

[25] Peter Ackerman and Jack DuVall, *A Force More Powerful: A Century of Non-Violent Conflict* (New York: St Martins Press, 2000).

[26] Mastnak, 'Working Paper for the High Level Group'; Santos, *The World Social Forum: A User's Manual*.

culture in the 1870s and as the critics of the same ruling ideology of 'democratic peace' argue today, the last thing the two dominant approaches will ever bring is peace.[27]

I have proposed a more democratic and open-ended approach to cultural, economic and foreign policy integration in the EU. I have also suggested that this approach already exists to some extent in the daily practices of democratic negotiation and conviviality among millions of Europeans and non-Europeans within the field of the dominant norms of integration. These practical arts of democratic integration are often overlooked, but they could be an actual source of legitimate and effective integration if they were given prominence in the official policies of integration.

The central problem is one of overlooking and overriding these sources of democratic integration. James Scott diagnoses this type of problem as 'seeing like a state': overlooking the multiplicity of existing practical arts of interaction and integration of diverse citizens, involving non-theoretical embodied savoir-faire, by seeing them as an unorganised field that needs to be organised in accordance with a master plan of abstract rules and procedures.[28] This type of 'seeing' is not restricted to states and large entities like the EU. It also informs 'seeing like a corporation', where the activities of citizens are seen as inchoate patterns of production and consumption open to organisation under a system of contract and commodification rules.[29] Unfortunately, the main tendency of the EU at present seems to be a combination of these abstract rationalities – legal juridification, governmental planification and corporate commodification – across all three areas of integration.

If this diagnosis is correct, then the task for researchers is, firstly, to study the practices of cultural, economic and foreign policy integration that exist beneath the paramount way of looking at and organising citizen activities, and, secondly, to link these practices to official policies of integration by means of democratic negotiation forums, in which citizens, policy makers and researchers can work together and learn from each other without the

[27] Nietzsche, 'The Means to Real Peace'; Christian J. Emden, *Friedrich Nietzsche and the Politics of History: Historical Thought and Political Culture in Nineteenth-Century Germany* (Cambridge: Cambridge University Press, 2008); Alvarez, 'Do Liberal States Behave Better?'; Lawrence, 'Peace of Imperial Method?'.
[28] Scott, *Seeing Like a State*.
[29] Quastel, 'Contract, Sustainability and the Ecology of Exchange'.

subordination inherent in the restricted model. The traditional forum for linking citizen practices with policy makers has been the political party, but, as Peter Mair argues, political parties are failing at this task, not only in the European Parliament, but more generally.[30] One explanation for this might be the thesis advanced by Manuel Castells. He argues that over the last thirty years societies and their institutions have undergone a transformation in their form of organisation that he calls networkisation. The dominant 'social morphology' of almost all organisations now, from multinational firms, military–industrial complexes, EU and global governance to the smallest volunteer organisation is the network form.[31] If this is correct, then one of the reasons for the crises of political parties may be that, while citizens' grass-roots democratic practices of integration have made the transition to networkisation, parties have not. The task then is to networkise European political parties so they can mediate more effectively between citizens and policy makers, but also to invent new types of democratic networks of negotiation that are tailor-made to mediate in an open-ended democratic way in the network age.[32]

I think we need to turn to the everyday practices of democratic integration for guidance here as well, for there are already creative experiments in such mediating networks available in the practices I have referred to across the three fields of integration. Furthermore, one of the most promising research methods in Europe today can be used to study existing networks from the critical perspective of open-ended democracy, namely the actor-network approach of Bruno Latour and his colleagues, and related approaches.[33] Actor-network research shows that most of the existing networks that link citizens with policy makers are composed of unequal relationships of hegemonic actors who set the conditions of negotiations and subalterns who are constrained to comply.[34] Notwithstanding, research also shows that the multilayered networks of communication, power and law are not closed structures of domination. Rather, they are, to varying

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[30] Peter Mair, 'Popular Democracy and the European Union Polity', *European Governance Papers* (18 May 2005), available at: www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/wp/abstract/C-05-03.htm [Accessed 30 October 2006].

[31] Castells, *The Rise of Network Society*. See Chapter 6, this volume.

[32] Richard Bellamy and Alex Warleigh, 'Introduction: The Puzzle of EU Citizenship', in *Citizenship and Governance in the European Union*, eds. Richard Bellamy and Alex Warleigh (London: Continuum, 2001).

[33] John Law and John Hassard, eds., *Actor Network Theory and After* (Oxford: Blackwell, 1999); Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford: Oxford University Press, 2005); Quastel, 'Contract, Sustainability and the Ecology of Exchange'.

[34] Von Bernstorff, 'Democratic Global Internet Regulation?'

degrees, open to the negotiation and modification, and even occasional transformation, of the subaltern actors who are subject to them yet also actors in them.[35] So, here again – in linking everyday practices of democratic integration with official policies at multiple levels by means of networks – there are good reasons for applying the open-ended approach and some modest grounds for hope. These are examples of linking public philosophy and citizen practices.

A European Union that had the courage and humility to turn to the practical wisdom of its sovereign citizens for guidance in this critically reflexive and experimental way would be a new and democratic Europe. It would not be a union that brought its *demos* into being at the end of the day but one that brought itself into a conversation of reciprocal elucidation and co-articulation with the demoi who have been there since daybreak. This, if I am not mistaken, *is* the democratic relation between the people and their governors.[36]

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[35] Walker, 'The Idea of Constitutional Pluralism'; Wiener, 'The Dual Quality of Norms'; Chapters 4 and 6, this volume.

[36] For the deep problems in conceptualising this relationship between the people and the EU, I am indebted to Christodoulidis, 'Constitutional Irresolution'; and to Hans Lindahl, 'Acquiring a Community: The Acquis and the Institution of European Legal Order', *European Law Journal* 9(4), 2003: 433–50; and Hans Lindahl, 'Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood', in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, eds. Martin Loughlin and Neil Walker (Oxford: Oxford University Press).

On local and *global citizenship: an apprenticeship manual*

INTRODUCTION: GLOBAL CITIZENSHIP AS NEGOTIATED PRACTICES

This concluding chapter draws together the strands of argument throughout the two volumes of *Public Philosophy in a New Key*. It weaves these diverse strands into a sketch of a new kind of local *and* global citizenship I call 'glocal' citizenship. This mode of citizenship has the capacity to overcome the imperialism of the present age and bring a democratic world into being.

'Global citizenship' has emerged as the locus of struggles on the ground and of reflection and contestation in theory.[1] This is scarcely surprising. Many of the central and most enduring struggles in the history of politics have taken place in and *over* the language of citizenship and the activities and institutions into which it is woven. One could say that the hopes and dreams and fears and xenophobia of centuries of individual and collective political actors are expressed in the overlapping and conflicting histories of the uses of the language of citizenship, the forms of life in which they have been employed and the locales in which they take place. This motley ensemble of contested languages, activities and institutions constitutes the inherited field of citizenship today.[2]

The language of 'global' and 'globalisation' and the activities, institutions and processes to which it refers and in which it is increasingly used, while

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[1] For an introduction to this broad field, see McKinnon and Hampsher-Monk, eds., *The Demands of Citizenship*; Nigel Dower and John Williams, eds., *Global Citizenship: A Critical Introduction* (New York: Routledge, 2002); Nigel Dower, *An Introduction to Global Citizenship* (Edinburgh: Edinburgh University Press, 2003); Held and McGrew, eds., *The Global Transformations Reader*; Janine Brodie, 'Introduction: Globalization and Citizenship Beyond the Nation State', *Citizenship Studies* 8(4), 2004: 323–32; Helmut Anheier, Marlies Glasius, Mary Kaldor and Fiona Holland, eds., *Global Civil Society 2004–2005* (London: Sage, 2005); Amoore, ed., *The Global Resistance Reader*.

[2] I mean by 'field' the field of human action, the field of academic research and the ecological field in which these are carried on. Similarly, 'language of citizenship' refers to the broad range of vocabularies or discourses of citizenship practices, policies and theories.

more recent than citizenship, comprise a similarly central and contested domain. Globalisation has become a shared yet disputed vocabulary in terms of which rival interpretations of the ways in which humans and their habitats are governed globally are presented and disputed in both practice and theory. It thus constitutes a similarly contested field of globalisation.

When 'globalisation' and 'citizenship' are combined, they not only bring their contested histories of meanings with them. Their conjunction brings into being a complex new field that raises new questions and elicits new answers concerning the meaning of, and relationship between, global governance and global citizenship. When we enquire into global citizenship, therefore, we are already thrown into this remarkably complex inherited *field* of contested languages, activities, institutions, processes and the environs in which they take place. This conjoint field is the problematisation of global citizenship: the way that formerly disparate activities, institutions, processes and languages have been gathered together under the rubric of 'global citizenship', become the site of contestation in practice and are formulated as a problem in research, policy and theory, to which diverse solutions are presented and debated.[3]

The reason why the uses of 'citizenship', 'globalisation' and 'global citizenship' are contestable, rather than fixed and determinant, is, as Wittgenstein classically argued, that there is neither an essential set of necessary and sufficient criteria for the correct use of such concepts nor a calculus for their application in particular cases. The art of understanding a concept like 'global citizenship' is *not* the application of a universal rule to particular cases. Rather, the uses of such complex concepts in different cases and contexts do not have one set of properties in common, but – from case to case – an indeterminate family of overlapping and criss-crossing 'similarities, relationships, and a whole series of them at that'. What 'we see', therefore, is not a single rule (definition or theory) being applied in every case, but, rather, 'a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail'.[4] A language user learns how to use a concept by apprenticeship in the practice of use and discrimination in everyday life, by invoking (defeasible) similarities and dissimilarities with other cases and responding to

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[3] See *Volume I*, Chapters 1 and 3 for this approach.

[4] Wittgenstein, *Philosophical Investigations*. See *Volume I*, Chapter 2 for an exploration of this account of learning and understanding language.

counter-arguments when challenged, and thereby gradually acquiring the abilities to use it in normative and critical ways in new contexts.[5]

Since the use of concepts with complex histories 'is not everywhere circumscribed by rules', Wittgenstein continues, 'the extension of the concept is *not* closed by a frontier'.[6] It is almost always possible, to some indeterminate extent, to question a given normal use, invoke slightly different similarities with other historical uses or interpret a shared criterion differently, argue that the term can be extended in an unexpected and unpredictable way, which is nevertheless 'related' to other familiar uses, and to *act* on it (and sometimes the act *precedes* the argumentation for the novel use).[7] Use, and therefore meaning, is not the application of a transcendental or official theory of citizenship. It is an indeterminate spatial-temporal 'negotiated practice' among partners in relations of dialogical interlocution and practical interaction in which the possibility of going on differently is always present.[8] This pragmatic linguistic freedom of enunciation and initiation – of contestability and speaking otherwise – within the weighty constraints of the inherited relations of use and meaning is, as we shall see, internally related to a practical (extra-linguistic) freedom of enactment and improvisation within the inherited relations of power in which the vocabulary is used.[9] It is the reason why the history of citizens and citizenship is not the unfolding of some trans-historical definition that the grand theories claim it to be. It is not the endless repetition of the same formula, stages of historical development towards a predictable end, an instrument controlled by the hegemonic class, or the dialectical overcoming of antagonistic forces. Unfortunately for theorists and fortunately for human beings, it is precisely the unpredictable 'deeds and events we call historical'.[10]

The creation of the conjunction 'global citizenship' could be seen as a prime exemplar of the innovative freedom of citizens and non-citizens to contest and initiate something new in the practice of citizenship. The multiplicity of contests that extend citizenship into the field of globalisation (conceived formerly as a realm of predictable historical processes impervious

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[5] Wittgenstein, *Philosophical Investigations*, §75.

[6] *Ibid*., §68.   [7] *Ibid*., §68 note, and §75.

[8] See José Medina, *The Unity of Wittgenstein's Philosophy: Necessity, Intelligibility, and Normativity* (Albany: SUNY Press, 2002), pp. 141–94; and Medina, *Language* (London: Continuum, 2005), pp. 139–67.

[9] This contextual freedom of enunciation and enactment (words and deeds) is an aspect of civic freedom (section 4 below).

[10] Hannah Arendt, 'What is Freedom?', in *Between Past and Future: Eight Exercises in Political Thought* (Harmondsworth: Penguin, 1977), p. 169; and see *Volume I*, Chapter 4.

to civic action) could be construed as the initiatory act of global citizenship that opens a new field of possibilities of another, more democratic, world. While partly true, the actual existing inherited field of global citizenship is much more complex, and the possibilities of initiating and carrying on civic action much more contextually situated within the field, than this abstract formulation could unintentionally lead one to believe. If we wish to become effective global citizens, then there is no alternative to undergoing the apprenticeship of learning our way around this complicated field and coming to acquire the practical abilities of thinking and acting within it and the critical abilities of seeing the concrete possibilities of going beyond its limits. This exploration of the field is thus an apprenticeship manual in becoming who we can be – local *and* global citizens.

I TWO MODES OF CITIZENSHIP: PRELIMINARY SKETCH

Among the many contested meanings and corresponding practices of global citizenship, I would like to focus on two and their traditions of interpretation. Many of the most important struggles around the globe today are *over* these two modes of global citizenship, and the struggles themselves consist in the enactment *of* them. Here a 'mode of citizenship' refers to the ensemble composed of a distinctive language of citizenship and its traditions of interpretation on the one hand, and the corresponding practices and institutions to which it refers and in which it is used on the other.[11] The two I wish to examine have been interpreted in different ways and related to different traditions of citizenship under different names in a wide variety of academic and activist literature: for example, global citizenship from above versus global citizenship from below, low-intensity versus high-intensity global citizenship, representative versus direct, hegemonic versus counter-hegemonic, cosmopolitan versus place-based, universal versus multiversal. I call these two families 'modern' and 'diverse' citizenship. I call modern citizenship in a modern state 'civil' citizenship and in a global context 'cosmopolitan' citizenship. The corresponding names of diverse citizenship are 'civic' and 'glocal'. 'Glocal' and 'glocalisation' in the diverse citizenship tradition refer to the global networking of local practices of civic citizenship in contrast to the use of 'global' and 'globalisation' in modern/cosmopolitan

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[11] This account of modes of citizenship is adapted from Wittgenstein's concept of language games and Foucault's concept of practical systems (see *Volume I*, Chapters 1–3). In earlier chapters I have used the general category of practices rather than modes. However, in this case, citizenship is taken as a practice in one tradition and an institution in the other, so the use of practice as the generic term would elide this crucial difference.

citizenship.[12] The comparative explication of these two historical and contemporary vocabularies and the practices in which they are used aims to bring to light the shared field of citizenship from their different orientations. I begin with a preliminary sketch of two general aspects of citizenship as a way of introducing them.[13]

The first and most familiar aspect is that modern citizenship is the modular form of citizenship associated with the historical processes of modernisation and colonisation: that is, (i) the modernisation of the West into modern nation-states with representative governments, a system of international law, the decolonisation of European empires, supranational regime formations and the development of global civil society; and, in tandem, (ii) the dependent modernisation and citizenisation of the non-West through colonisation, the Mandate System, post-decolonisation nation-building and global governance of the former colonies. The language of modern citizenship, in its civil and cosmopolitan forms, presents successive idealisations of modern Euroamerican citizenship as the uniquely universal module for all human societies. This allegedly universal mode of citizenship is also presented as the product of universal historical processes or stages of development under successive discourses of progress – civilisation, modernisation, constitutionalisation, democratisation and now globalisation – that began in Europe and have been spread around the world by Euroamerican expansion and continuing hegemony. These two features of modern citizenship – a universal *institutional* form of citizenship conjoined with a universal set of historical processes that bring it to the non-West under Western tutelage – are articulated and debated in, respectively, modern normative theories of citizenship and social scientific theories of modernisation from the eighteenth century to today.

In contrast, diverse citizenship is associated with a diversity or multiplicity of different *practices* of citizenship in the West and non-West. The language of diverse citizenship, both civic and glocal, presents citizenship as a situated or 'local' practice that takes countless forms in different locales. It is not described in terms of universal institutions and historical processes, but in terms of grass-roots democratic or civic *activities* of the 'governed' (the people) in the specific relationships of governance in specific locales and the glocal activities of networking with other local practices. Whereas

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[12] I am indebted to Warren Magnusson for introducing me to the concept of and literature on glocal citizenship.

[13] This preliminary sketch is developed in more detail in the following sections on the basis of the themes of these two volumes.

modern citizenship focuses on citizenship as a universalisable legal status underpinned by institutions and processes of rationalisation that enable and circumscribe the possibility of civil activity (an institutional/universal orientation), diverse citizenship focuses on the singular civic activities and improvisations of the governed in any practice of government and the diverse ways these are more or less institutionalised or blocked in different contexts (a civic activity/contextual orientation). Citizenship is not a status given by the institutions of the modern constitutional state and international law, but negotiated practices in which one becomes a citizen through participation.

The second aspect of the language of modern citizenship, especially the theories, histories and comparative taxonomies, not only elaborates a theory of modern citizenship with its membership codes, rights and duties, and corresponding institutional preconditions. It also characterises all other practices of citizenship in relation to its unique form as the universal standard. Other modes of citizenship are classified either as not really citizenship at all (not meeting any of the modern criteria) or, if some modern criteria are present, as primitive, pre-modern, traditional or customary stages of proto-citizenship on the historical path (cultural, economic, cognitive, political) to full modern citizenship as the *telos*, and as requiring some form of direct or indirect guidance from the self-described, more advanced, civilised or developed races, nations or peoples. That is, the kind of *critical theory* that has accompanied modern citizenship since the eighteenth century critically organises all other forms of citizenship in the world as 'lower' or 'inferior' in relationship to its form as the regulative ideal. This feature of the language of modern citizenship is called the 'subalternisation' or colonisation of other forms of citizenship: bringing them to language under a description of their subalternity or coloniality relative to modern citizenship.[14]

The language of diverse citizenship, in contrast, characterises other forms of citizenship as singular and historically contingent and critically compares them in terms of various similar and dissimilar aspects and from the perspectives and normative criteria of each.[15] From these perspectival and critical comparisons, modern citizenship (like all forms of citizenship) is seen as one singular, historical form of citizenship among others, with its

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[14] Walter D. Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges and Border Thinking* (Princeton: Princeton University Press, 2000).

[15] That is, the diverse tradition studies citizenship in the comparative and analogical way that Wittgenstein outlines in the introductory section. For these two contrasting genres of reasoning, the modern and the diverse, see *Volume I*, Chapter 1.

strengths and weaknesses relative to others, yet presenting itself in false (circular) claims to universality (formulated in different ways over the last two hundred years) that legitimate its global imposition. That is, the kind of *critical attitude* that accompanies practices of diverse citizenship contextualises or 'provincialises' modern citizenship and its universalising language, usually but not necessarily by a historical or genealogical contextualisation.[16] The aim of this critical attitude is to free us from the hold of the globally dominant language of modern citizenship as the pre-emptive language of disclosure of all forms of citizenship and enable us to see it as one language among others. In so doing, it de-universalises modern citizenship (for, as we have seen, its claim to universality is internal to the globally dominant language of modern citizenship) and de-subalternises other modes of citizenship (discloses them in their local languages and histories). Modern citizenship can thus be put in its place as one singular (and imperious) mode in a global field of diverse alternatives and the critical work of comparisons and contrasts from different perspectives and norms of assessment can begin. This difficult practice of situated critical freedom is not a change in theory but in attitude or ethos – in the way one sees and acts on the possibilities available in the world of citizenship.[17]

MODERN CITIZENSHIP

2 MODERN CIVIL CITIZENSHIP

The tradition of modern citizenship takes as its empirical and normative exemplar the form of citizenship characteristic of the modern nation-state.[18] Citizenship (both civil and cosmopolitan) is defined in relation to two clusters of institutional features of modern nation-states: the constitutional rule of law (*nomos*) and representative government (*demos*). The constitutional rule of

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[16] See Chakrabarty, *Provincializing Europe*, and Dipesh Chakrabarty, *Habitations of Modernity: Essays in the Wake of Subaltern Studies* (Chicago: University of Chicago Press, 2002).

[17] For the contrast between a 'critical theory' and a 'critical attitude', see *Volume I*, Chapter 3.

[18] For the background to section 2 see Tully, *Strange Multiplicity*, as well as *Volume I*, Chapter 6, and Chapters 1, 2, 4 and 7, this volume, and the references at note 1 above. See also Ellen Meiksins Wood, *Democracy Against Capitalism: Renewing Historical Materialism* (Cambridge: Cambridge University Press, 1995); Quentin Skinner and Bo Stråth, eds., *States and Citizens: History, Theory, Prospects* (Cambridge: Cambridge University Press, 2003); Sandra Halperin, *War and Social Change in Modern Europe: The Great Transformation Revisited* (Cambridge: Cambridge University Press, 2004); Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004); John Dunn, *Democracy: A History* (Toronto: Penguin Canada, 2005); Held, *Models of Democracy*; and Charles Tilly, *Democracy* (Cambridge: Cambridge University Press, 2007).

law is the first condition of citizenship. The 'civil' law (a formal legal order) and its enforcement by a coercive authority establishes (literally 'constitutes') the conditions of civilisation, the city (*civitas*), citizenship, civil society, civil liberty and civility (hence 'civil' citizenship). By definition the 'outside' is the realm of the uncivilised: barbarism, savagery, the state of nature or war, or the uncertainty of informal, customary law and unenforceable natural law. A person has the status of citizenship in virtue of being subject to civil law in two senses: to an established and enforced system of law and to the 'civilising', pacifying or socialising force of the rule of law on the subjectivity (self-awareness and self-formation) of those who are constrained to obey over time. This is why cosmopolitan citizenship and global civil society depend on some form of legalisation or constitutionalisation of the global order analogous (in various ways) to the modern nation-state.

Relative to the constitutional rule of law, modern citizenship is defined as a status (state or condition). This civil status is usually explicated and defined in terms of the historical development of four rights (liberties) and duties of formally equal individual subjects of an association of constitutional rule of law and representative government. The association can be either the modern nation-state, including its subordinate provinces and cities, or its analogous associations for cosmopolitan citizenship (international law, the United Nations, global governance institutions). I will start with the four tiers of citizenship rights and duties within modern nation-states as they are the basis of modern/cosmopolitan global citizenship.

(1) *Civil liberties*. The first and indispensable tier of rights is the set of 'civil liberties' (the liberties of the moderns or private autonomy) of the modern liberal tradition. This set includes the liberty of the person and of speech, thought and faith, the right to own private property and enter into contracts, and the right to formal equality before the law. Citizens are 'at liberty' to engage in these activities if they choose (an opportunity status) because of these civil liberties and are protected by the law from 'interference' in the spheres where these rights can be exercised: of free speech and voluntary association, the market, and the law. They are classic 'negative' liberties, protecting citizens from interference in these spheres.

Civil liberties and the rights of the person thus presuppose and are predicated on a human being with a distinctively modern or 'juridical' form of subjectivity situated in a set of modern institutional and educational preconditions. A modern person must be able to see him- or herself and others from the 'universal' standpoint of abstraction and freedom from relationships with others and, as such, independent rather than dependent (in relationships with others) or autonomous rather than 'heteronomous'

(determined by something other than one's self-legislating will). This modern subjectivity of civil personhood developed historically from the Roman legal dichotomy between the master, who possesses liberty because he is subject to his own will, and the slave, who lacks liberty because he is subject to the will of another. From the standpoint of formal and abstract independence and equality, civil persons are then at liberty to enter into relationships with each other on the basis of consent and contracts (irrespective of substantive inequalities). These relationships are 'free' relationships because the contracting parties give their consent. The collective analogue is the civil understanding of the right of self-determination of peoples. A people is said to be able to stand back and abstract itself from inherited relationships both among its individual members and between it and other peoples and – in a mythologised, historical, constitutional convention or a hypothetical thought experiment – reach agreement on the basic laws they will subject themselves to and the international laws they will enter into with other peoples. In obeying the law, they obey their own will and remain at liberty.

At the centre of these civil liberties is the modern liberty to participate in the private economic sphere and not to be interfered with; the right to own property and enter into contracts. This is the modern liberty to engage in the capitalist economy (market freedoms and free trade): to sell one's labouring abilities on the market for a wage to a corporation or, for those with the capital, to establish a corporation, hire the labour of others and sell competitively the products on the free market to consumers. Private corporations gained recognition as 'persons' with the corresponding civil liberty of private autonomy (negative liberty) in the late nineteenth century. Thus, paradoxically from a civic perspective, the first right of modern citizenship is to participate in the private realm and to be protected from interference by the citizenry and its representatives. This form of participation in the economic sphere ('commercial society') is primary – *the* liberty of the moderns.

The modern civil liberty of private property and contracts accordingly presupposes the historical dispossession of people from access to land and resources through their local laws and non-capitalist economic organisations; the enclosure of the commons; the accumulation of dispossessed workers into a 'free' market of wage labourers and consumers; the concentration of the means of production in private corporations; and the imposition of modern legal systems of property law, contract law, labour law and trade law that constitute and protect the system of free markets and free trade. Thus, modern citizenship, in its basic commitment to the civil liberty

of private property and contracts, is grounded in and dependent on the spread of these institutions of capitalism.[19] It is also the major justification for the spread of these institutions – as the basis of modern liberty. Accordingly, it is not only the coercive imposition of civil law acting alone that is said to civilise the uncivilised natives. Capitalist 'commerce', which, by rendering every person and society economically interdependent and competitive within an imposed structure of law and contractual relationships, pacifies, refines, polishes, makes predictable and – in concert with the law and representative governments – leads a crooked humanity, behind its back and despite its natural asociality, towards perpetual peace.

   (2) *Liberties to participate*. The second tier of liberties of modern citizenship is defined in relation to the second cluster of modern institutions: representative government. They consist in the rights to participate in these institutions if one chooses. In the language of modern citizenship, 'democracy' and 'democratic' are equated with and restricted to 'representative government' and 'democratisation' with the historical processes that bring these representative institutions and participatory rights into being. Other forms of democracy, if they are discussed *as* democracies, are described and subalternised in relation to representative government as the universal and regulative ideal of democracy. These rights of the modern democratic tradition are called public autonomy or the liberties of the ancients. They comprise the ways the *demos* – the citizenry of a nation-state as a whole – legally exercise their popular sovereignty. The exercise of these 'democratic' rights enables the people to have a democratic say with respect to the laws and constitutions to which they are subject (and from which their citizenship derives), and thereby to balance the constitutional rule of law with the demands of democracy (the rule of the people) in a modern (representative) form. This representative form of democratic participation is contrasted with direct democracy, which is characterised as an 'earlier' form, incompatible with the size, complexity and individual liberties of modern polities. Modern democratic rights include the right to vote for representatives in elections, join parties, interest groups, NGOs and social movements, stand for election, assemble, dissent and demonstrate in the civil or public sphere, have the freedom of the (private) press, engage in democratic deliberations, litigate in the courts, exchange public reasons over ratifying constitutional amendments or participate in a constituent assembly, and engage in civil disobedience and accept the punishment.

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[19] This summary draws on both Adam Smith and Karl Marx on what they called 'primitive accumulation'. See Marx, *Capital*, pp. 873–940. For the recent literature, see note 18 above.

Like civil liberties and their institutional preconditions, these democratic liberties presuppose historically the dispossession of people from access to political power through pre-existing local forms of citizenship and the channelling of democratic citizenship into participation in the official public sphere of modern representative governments in the West and their global analogues. These historical 'processes' are described as freeing people from pre-modern forms of subjection and bringing democratic citizenship to them. Participation is equated with activities of public arguing (deliberating), bargaining (organising, negotiating and protesting) and litigating over changing the laws, since political power, the object of democratic participation, is presumed to be exercised through the rule of law. The aim is to ensure that the law is not imposed unilaterally on those subject to it, but that they may, if they choose, have a representative say in making or amending the laws, and thus see themselves, abstractly and representatively, as co-articulators of the laws. This form of participation thus takes place (in both practice and theory) within and reproduces the ground plan of modern citizenship because the people participate *as* juridical citizens exercising democratic rights within modern institutions and under the priority of first-tier civil liberties.[20]

The second-tier democratic liberties are circumscribed by the first-tier civil liberties in three main ways. Firstly, their exercise is optional. Members of a modern political association are citizens and the association democratic whether or not they exercise their participatory rights. To make participation a requirement of citizenship is to violate the civil liberty not to be interfered with and thus is inconsistent with modern liberty. Secondly, the primary use and justification of these rights in the modern tradition is to fight for laws that protect the private autonomy of the moderns from too much governmental interference or domination – to protect the private liberty of the modern individual. Thirdly, these rights cannot be extended and exercised in the private sphere (as in economic democracy in the workplace) for this would interfere with tier one liberties. When the leaders of the great powers today (the G8) speak in sound bites of the spread of 'freedom' and 'democracy' in Afghanistan, Iraq and elsewhere, they are referring to the module of tier one (freedom) and tier two (democracy)

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[20] This juridical framework of individual democratic participation also enframes the modern collective right of self-determination in which a people have the right to form a modern state with the characteristic institutions and within the international state system (or, if they are a people within a modern state, then they must determine themselves within the constitutional constraints of that state – 'internal' self-determination). See section 3 below, *Volume I*, Chapter 8; and Chapter 5, this volume.

rights of citizenship and their underlying institutions of the rule of law, markets, eventual representative government and the military as the imposition and enforcement institution.

(3) *Social and economic rights*. The third and weakest tier of modern rights of citizenship comprises the social and economic rights of the modern social-democratic tradition. These are the citizenship rights won by working-class movements struggling within the historically established priority and constraints of the first two tiers of liberties over the last two centuries in nation-states and international law. They are a response to the horrendous substantive inequalities in wealth, wellbeing, living conditions and forms of social power that go along with the unrestrained formal independence and equality of first-tier civil liberties and the limited democratic rights of the second tier. The modern social-democratic argument for them is that they are the minimum conditions of the worst off actually being able to exercise their civil and democratic liberties.[21] The argument against them is that they violate the economic liberties of the moderns by interfering in the private sphere and economic competition, and thus must be subordinated to tier one civil liberty and the limits of tier two. When the capitalist countries triumphed over the socialist countries at the end of the Cold War, the bargaining power of Western socialist and social-democratic movements was undermined and neo-liberal governments were able to dismantle many hard-won social and economic rights nationally and internationally in the name of spreading market freedoms and democratic freedoms.

(4) *Minority rights*. The fourth tier of citizenship rights consists of modern minority rights of multiculturalism, religious and ethnic groups, multiple nations within states, and Indigenous peoples. These rights appear to some modern theorists to violate one premise of modern citizenship, the primacy of the individual legal subject. However, minority rights can be defined as rights that, firstly, protect the individual members of minorities from interference or dominance by the majority (and by the powerful within the minority) and, secondly, empower members of minorities to exercise their civil and democratic liberties in more effective ways than through the institutions of the majority society. They thus can be designed to enhance, rather than to challenge, the spread of modern citizenship. This

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[21] The substantive inequalities across class, gender, race, ethnicity, regions and the North and global South open up an enormous gap between the formal possession of a legal right and the actual wherewithal to exercise it effectively, yet the possession of the right is often equated with 'being able to' exercise it or being 'at liberty' to exercise it, thereby eliding this de facto disenfranchisement of millions of human beings.

is the major way that they have been implemented within modern nation-states and international law. That is, they too presuppose the dispossession of 'minorities' of their diverse forms of legal, governmental and economic organisation and the integration of them into replication forms of modern citizenship.

Within Europe, this modular form of modern citizenship became paramount during the centralisation and consolidation of the modern constitutional, representative nation-state and the capitalist economy. Diverse local and regional forms of laws, governments and citizenship – of village commons, urban communes, counties, regional leagues – where they were not destroyed completely were marginalised or transformed and subordinated as they were brought under the rationalisation of the central institutions of the modern nation-state. Modern citizenship was nationalised as local citizenship was subalternised. Generations of 'locals' were gradually socialised by education, urbanisation, military duty, industrialisation and techniques of citizenisation to see themselves first and foremost as members of an abstract and disembedded imaginary community of nation, *demos* and *nomos* of formally equal citizens. In virtue of possessing the individual liberties of modern citizenship attached to the central legal and representative institutions, they were encouraged to see themselves as participating in a similarly abstract imaginary of the sovereignty of the people. The violent dispossessions and transformations, and the countless civic resistances to them, were described and justified in the social-scientific and normative theories and traditions of modern, state-centred citizenship as processes of modernisation and making the modern identity. These 'uneven' processes are said to free individuals from dependency on unfree pre-modern ways and progressively make him and then her free and equal citizens with four tiers of rights and duties, correlative to the four aspects of a fully modern identity, and with the corresponding differentiation of institutionalised value spheres in which to exercise them.

Citizens and especially non-citizens – such as the poor, the property-less, women, immigrants, excluded 'races', and others – struggled and continue to struggle within and against these 'civilising processes' in Europe. When they were not struggling for local forms of self-government, they fought to be included in modern citizenship, to extend the use of political rights beyond the official public sphere, to gain social and economic rights that do more than prepare one for the market, and for minority rights that protect alternative cultural, legal, political and economic organisation. These struggles were and are against the powerful actors who strive to circumscribe citizenship to tier one civil liberties and a limited module of democratic

rights.[22] Since these types of struggles are *for* new kinds of citizenship and by means of people who are not official citizens, or official citizens who often act beyond the official limits of citizenship of their generation, they cannot be called practices of citizenship in the modern tradition. They are classified as acts of civil disobedience or rebellion. If these illegal struggles are successful and the extensions institutionalised, then the extensions are redescribed retrospectively as stages in the development of modern citizenship and incorporated within its framework, as in the cases of working-class struggles giving rise to social and economic rights, women gaining recognition as citizens, civil rights movements and recognition of cultural minorities. Thus, what are seen as activities *of* citizenship by the civic tradition – struggles for new forms of recognition and extensions of citizenship – fall outside of modern citizenship with its institutional/status orientation.

3　THE GLOBALISATION OF CIVIL AND COSMOPOLITAN CITIZENSHIP

I want now to examine how the modular form of modern citizenship has been spread around the globe as 'global citizenship'. It has been and continues to be globalised in two forms. Firstly, the tripartite module – of a modern nation-state, the underlying institutions that modern citizenship presupposes and, once these preconditions are in place, the specific institutions of modern *civil* citizenship – has been and continues to be spread around the world, at various stages of development, as the universal form of political association recognised as the bearer of fully legitimate political authority (sovereignty) under international law. Secondly, a modular form of modern *cosmopolitan* citizenship has been and continues to be spread as the universal form of global citizenship recognised as legitimate under international law and global institutions.[23]

　　During the long period when Europeans were building modern nation-states with the underlying institutions of modern citizenship, they were also, and simultaneously, building these states as competing *imperial* modern nation-states. As imperial states they built and defended vast overseas empires that colonised (in various ways) 85 per cent of the world's population by 1914. The imperial 'great game' of competing economically and militarily against other European great powers over the control and

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[22] Ishay, *The History of Human Rights*, pp. 63–244.

[23] Section 3 is based on the detailed studies and references to the scholarly literature in Chapters 1, 4, 5 and 7 of this volume. I have not repeated all these references here except for a few cases.

exploitation of the resources, labour and markets of the non-European world *and* the counteractions of the non-European peoples co-created the modern West and the modern colonised non-West. After decolonisation, this great game continues, between the former imperial powers (renamed the G8), exercising 'hegemony' rather than 'imperium' through the post-Second World War Bretton Woods institutions of global governance, and over the renamed 'post-colonial' world of more than 120 nominally free and equal (sovereign), yet substantively still dependent and unequal, new modernising nation-states, constructed on the foundations of the former colonies and protectorates. The spread of modern citizenship and its institutional preconditions beyond Europe can be understood only in the context of this immensely complex contrapuntal ensemble of Western strategies of expansion and non-Western strategies of counteraction, and the effects of their interaction over the last half millennium.

3.i *Genealogies of global civil citizenship*

The module of institutional preconditions of modern citizenship was implanted abroad in the course of European expansion by a deceptively innocuous apparatus that linked a right of global citizenship to imperial power in a circular relationship. Formulated and exercised in different ways by the different European powers in the early-modern period, the imperial right of *cosmopolitan citizenship* for Europeans is called the right of commerce (*ius commercium*) or 'cosmopolitan' right. From the earliest phase of European expansion under Portugal and Spain to today, the great powers have claimed the cosmopolitan right of their citizens, trading companies, monopoly companies and multinational corporations to travel to other countries and attempt to engage in 'commerce' in two early-modern senses of this term. The first is to travel the globe freely and converse with the inhabitants of other societies. This covers such activities as the right – and duty – of Western explorers, missionaries, religious organisations, voluntary associations and academics to travel to non-Western countries in order to study and classify their different customs and ways into developmental stages of different societies and races; and then try to free them from their uncivilised ways and teach them the uniquely civilised ways of the West. This cosmopolitan right is the historical antecedent of the right of modern cosmopolitan citizenship of civil society associations (modern NGOs) to modernise and democratise people in the post-colonial world today. The second sense of this cosmopolitan right is to travel and attempt to engage in 'commerce' (trade) with the inhabitants. This includes such

commercial activities as entering into contracts and treaties, gaining access to resources, buying slaves, hiring and disciplining labourers, establishing trading posts, making investments, establishing plantations and so on. At first it was used by the European powers to establish imperial monopolies over the exploitation of the resources and labour of non-European societies, but monopoly imperialism gradually gave way to 'free trade' or 'open door' imperialism in the nineteenth and twentieth centuries.

This cosmopolitan right correlates with the duty of 'hospitality' of the host country to open their doors to free commerce in this dual sense. If they inhospitably close the door to entry, break the contract or expropriate the property of a foreigner who has engaged in commerce, or if they expel the missionaries and voluntary societies, then the appropriate recognised legal authority – under the old law of nations, or imperial law of the respective empire, or, later, international law – has a reciprocal right to open the door by diplomacy or military intervention (gunboat diplomacy), punish the violation of the cosmopolitan right and demand reparations or compensation. The correlative duty of hospitality – openness to free commerce – holds even if the cosmopolitan right was initially exercised unjustly: that is, where a trading company used force and fraud to establish trade relations and contracts in the first place. The early-modern duty of non-European societies to open their resources to commerce dominated by the West continues to be one of the core duties of transnational trade law agreements today.

As with civil liberty within a modern state, this cosmopolitan right presupposes a number of institutions. The host country must have or adopt the legal, economic and cultural institutions that make possible commerce in this broad sense (private property, foreign corporations, contracts, wage labour, dependence on the international market dominated by the West, openness to cultural conversion, protection of foreigners and so on). The imperial power must either submit to and modify the local laws and institutions or impose a structure of commercial law that overrides and restructures them, such as Merchant's Law (*lex mercatoria*), the vast global system of trade law that developed in conjunction with Western imperialism.

We can see that this cosmopolitan right is a right of citizens of the civilised imperial states to exercise the first right of modern citizenship (civil liberties of private autonomy) and a version of the second right (to participate) beyond their nation-state and to be protected from interference in doing so. The two rights – of the trading company to trade and the voluntary organisations to converse and convert – also fit together in the same way as within the nation-state. The participatory right to converse

with and try to convert the natives complements the primary right of commerce since the inhabitants are taught the requisite forms of subjectivity and modes of civil conduct that go along with the commercialisation of their society and its gradual civilisation. The discipline of slavery and indentured labour on the plantations, the various forms of religious and occupational education, and the military and civil training of dependent elites at the top were seen as steps in the civilising process. From the modern perspective, these two rights of cosmopolitan citizenship linked to imperial power appear to bring the gift of the civilising institutions of law, commerce and Western civility to a closed, uncivilised or semi-civilised world, gradually removing all 'savage' (insubordinate) alterity and remaking it as the subordinate image of the modern West. From the perspective of non-Western civilisations and diverse citizenship, this 'cosmopolitan' apparatus of free trade appears as the Trojan horse of Western imperialism.[24]

In practice, this apparatus was used in three main strategies to globalise the underlying institutions of modern civil and cosmopolitan citizenship. Firstly, settler colonies were established that *replicated* the basic legal, political and economic institutions of the imperial country in the Americas, Australia and New Zealand. The settlement of these 'new Europes' involved the dispossession of the Indigenous peoples of their diverse civilisations, territories and resources, the genocide of 80 to 90 per cent of the population, the marginalisation of those they could not enslave or assimilate (ethnocide), the transportation of 12 million Africans as slaves to plantations in the Americas, and the imposition of Western institutions of property and rudimentary representative government (colonial legislatures). The colonies gained independence from their empires by revolution or devolution and developed the institutions of modern civil citizenship in ways similar to Europe.[25] After the Second World War, they developed modern minority rights in domestic and international law as a tactic of 'internal colonisation' in response to the continuing struggles of 300 million Indigenous peoples for their unceded sovereignty over their traditional territories; the very territories over which these modern states claim to exercise unquestionable sovereignty.

Secondly, 'indirect' imperial rule opened non-Western societies to commerce by establishing a small colonial administration, often run by trading companies, to rule indirectly over a much larger Indigenous population.

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[24] See especially Anghie, *Imperialism*; and David B. Abernathy, *The Dynamics of Global Dominance: European Overseas Empires, 1415–1980* (New Haven: Yale University Press, 2000).
[25] As in section 2.

A centralised system of Western colonial law was used to protect the commercial rights of their citizens and traders, while also preserving and modifying the local customary laws and governments so that resources and labour were privatised and subject to trade, labour discipline and investment dominated by the Western trading companies. Local rulers were recognised as quasi-sovereigns in their regions and unequal treaties were negotiated. The local elites were made dependent on Western economic and military power, undermining their accountability to local citizens, and were employed to introduce modernising techniques of governance and train the local army to protect the system of property, often against the majority of their own population. This was the main way in which the institutional preconditions of modern citizenship (and actual modern citizenship for European colonials) were introduced in India, Ceylon, Africa and the Middle East in the twentieth century.

The third and most recent strategy is informal or free trade imperialism. Here the imperial power permits local self-rule, and eventually self-determination, but within a protectorate or sphere of influence over which they exercise informal 'paramountcy' (now called hegemony and dominance). By informal means they induce the local governments to open their resources, labour and markets to free trade and liberalisation by establishing the appropriate modern institutions. These provide the foundations for eventual modern citizenship with tier one market liberties preceding and circumscribing the others. The means include structural dependency on economic, military, technological and educational aid; the modernisation of the population by Western experts and civil society organisations; bribes and threats; training and arming local militaries and counter-insurgency units (death squads); and low-intensity military interventions. This requires in turn small but effective military bases strategically located around the world, linked together by a global navy and (since the Second World War) air force. These bases, originally coaling stations for the British navy, are used to arm and train the local militias or to intervene themselves whenever local citizens try to take control of their own economic and political affairs and thereby violate their duty of openness to free trade.

This strategy of informal intervention imperialism was developed by the British in the nineteenth century. However, it is the United States that has taken the global lead, first in Latin America under the Monroe Doctrine and then throughout the world by the end of the Cold War. Beginning with over 1,000 interventions in sovereign Latin American countries in the nineteenth and early twentieth centuries and the establishment of military/training bases such as Guantánamo Bay (1901), the United States now

has over 725 bases beyond its state borders. These are connected by a network of navy, air force, satellite systems and the weaponisation of space that continuously surveils and patrols the planet. Similar to the pro-consuls of the Roman empire and the governors-general of the British, the whole world is divided into four regions under the command of four regional Commanders-in-Chief (CINCs) who report directly to the Joint Chiefs of Staff. According to the Pentagon, this worldwide military empire exercises 'full spectrum dominance' over the informal global system of 'open commerce and freedom'.[26]

The cosmopolitan apparatus and its three strategies were gathered together and formalised as the 'standard of civilisation' in the creation of modern international law during the nineteenth century. The European imperial nation-states (and the United States after 1895) declared themselves to be 'civilised states' in virtue of their institutions of modern statehood and citizenship (the modern rule of law, openness to commerce, representative government and modern liberty were the main criteria). As such they were the sole bearers of sovereignty and subject only to the laws they could agree to among themselves, which they called modern 'international' laws. Their modern institutions provided a standard of civilisation in international law by which they judged all other civilisations in the world as 'uncivilised' to varying degrees (depending on their stage of development) and thus not sovereign subjects of international law, but subjects of the sovereign imperial powers through colonies, indirect protectorates and informal spheres of influence.[27] They asserted a right and duty of civilisation under international law. 'Civilisation' referred to both the historical processes of modernisation and the normative end-point of a modern civil state. The duty to civilise consisted in the consolidation and international legalisation of the imperial strategies they began in the earlier period. The opening of non-European societies to European-dominated commerce and property law, the exploitation of their resources and labour, and the removal of uncivilised customs that blocked progress were seen as the first steps of the civilising mission. The second and equally important duty was to introduce into the colonies and protectorates more systematic and effective forms of colonial

[26] Joint Chiefs of Staff, *Joint Vision 2020*, available at: www.dtic.mil/jv2020/jvpub.htm [Accessed 19 September 2007]. See the discussion and references in Chapter 5 of this volume, especially Bacevich, *American Empire*. For the most recent account, see Greg Grandin, *Empire's Workshop: Latin America, the United States and the Rise of the New Imperialism* (New York: Metropolitan Books, 2007). The classic is Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (New York: Monthly Review Press, 1997). See Chapter 5, this volume.

[27] The classification of non-Western societies followed the subalternising logic mentioned in section 1.

governance (or *governmentalité*) that would shape and form the dependent peoples and races into civilised subjects eventually capable of modern self-government.

This global civilising project under international law lacked an enforcement mechanism, and the civilising duty was left to the sovereign empires and their voluntary organisations. The destruction, exploitation, oppression, despotism, genocide, and wars of imperialism and anti-imperial resistance continued apace. They increased after the failure of the Berlin Conference (1884) and the 'scramble for Africa', culminating in the barbarism of the First World War – the 'great war of civilisation'. In response to these horrors and to contain increasing demands for decolonisation, the first concerted attempt to operationalise the civilising duty under international law was set up under the Mandate System of the League of Nations. The League classified the subject peoples into three categories according to their aptitude for tutelage in modern citizenship and gave the respective imperial powers the mandate to civilise them as they increased their economic exploitation, especially in the oil-rich Middle East.[28]

This citizenising project was interrupted by the decolonisation movements of the middle of the century. Although the overwhelming majority of people fought for freedom from imperial dependency on the West or the Soviet Union and for their own modes of government and citizenship, the westernised and nationalising elites (subject to intensified economic and military dependency) and the informal means of the great powers brought about the continuity of the imperial processes of development. During the Cold War and post-independence state formation in conditions of neo-colonial dependency, the nation-building elites were constrained to destroy or subordinate local economies and governments, enforce the artificial colonial boundaries, centralise government, open their resources to free trade, accept constitutions designed by experts from the imperial metropoles and promise minimal institutions of modern citizenship, or face sanctions and military intervention. The result tended to be constitutional and institutional structures that either concentrated power at the centre or, as in Africa, in both the urban and rural regions, replicating the worst features of colonial administration in both types of case.[29]

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[28] Middle Eastern peoples were classified as capable of modern self-government and citizenship after a period of 'tutelage'; tropical Africans after a longer and more despotic period of 'guardianship'; and South Western Africans, Pacific Islanders and Indigenous peoples were classified as too 'primitive' ever to be civilised. See Callahan, *Mandates and Empire*, and Chapter 7, this volume.

[29] Mahood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1995); and for a comparative survey of constitutionalisation

During the same period, the cooperating great powers set up the institutions of global governance through which informal imperial hegemony and post-colonial subalternity could be continued. These are the concentrations of power in the permanent members of the Security Council of the UN, the WB, IMF, GATT, the WTO after 1995 and its transnational trade agreements (such as TRIPS and GATS), modernising NGOs, NATO and, emerging as the indispensable leader and guarantor after 1989, the United States with its global system of military dominance.

At the request of the newly independent states, the language of civilisation was removed from international law and the UN.[30] However, it was immediately replaced with the language of modernisation, marketisation, democratisation and globalisation with the identical grammatical structure. This language signifies universal processes of development with the single end-point of modern citizenship and its institutions, and it ranks all alternatives in relation to its regulative ideal. These processes are now to be brought about, not by a civilising mission, but by the 'global governance' of the informal coalitions of the modern (or post-modern) states and their multinational corporations imposing 'good governance' through the global institutions (WB and IMF), and by modern cosmopolitan NGOs building civil societies and making civil subjects in the less developed states. This is all backed up by the US military networks and alliances, for, as its neo-imperial proponents forthrightly explain, the 'hidden hand' of the market, given its intolerable exploitations and inequalities, always needs to be protected by the 'hidden fist' of the military, and the 'savage wars of peace'.[31] As the leaders of decolonisation movements recognised shortly after independence, they were conscripted into an all-too familiar script, but now in a new language of an abstract modern world system of free and equal nation-states and global governance that was said to have come into being in 1648 (the Westphalian system), thereby concealing the imperial construction of this world and its persisting relationships of dependency, inequality and exploitation.

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since the Second World War, see Miguel Schor, 'Mapping Comparative Judicial Review', *Comparative Research in Law and Political Economy Research Paper Series* 3(4), 2007, available at: www.comparativeresearch.net [Accessed 31 August 2007].

[30] See Anghie, *Imperialism, Sovereignty and the Making of International Law*, pp. 196–235; and Chapter 5, this volume. However, a reference to the authority of the 'general principles of law recognised by the civilized nations' appears in International Court of Justice, *Statute of the International Court of Justice*, §38.1.c., available at: www.icj-cij.org/documents/index.php?p1 4&p2 2&p3 0 [Accessed 30 July 2007].

[31] The 'hidden hand' and the 'hidden fist' are from Thomas Friedman, *The Lexus and the Olive Tree* (New York: Farrar, Strauss, Giroux, 1999), cited in Boot, *Savage Wars of Peace*, p. xx.

3.ii Unequal conscripts

The difference from the old colonial strategies of spreading modern citizenship is that the formerly colonised peoples are now seen as active, self-governing agents in these processes at home and in the institutions of global governance (the G120). They are now bearers of modern civil and cosmopolitan citizenship, yet still under the enlightened leadership of the more advanced or developed peoples. International law provides the basis for this by promoting a 'right to democracy'. Democracy and democratisation projects are equated with first-tier civil liberties (neo-liberal marketisation) and a short list of democratic rights (primarily elections). However, if citizens become too democratic and seek to exercise their right of self-determination by taking democratic control of their own government and economy, and thus violate their duty to open their doors to the global economy and its laws, multinational corporations and democratisation from above, one of two strategies follows. Either they are repressed by their own dependent elites, democratic rights are further reduced or eliminated, and the governments become more authoritarian. Or, if the people manage to gain power, the repertoire of covert and overt informal means available to the great powers is employed to destabilise and undermine the government, bring about regime change and institute neo-liberal structural adjustment policies that promote tier one civil liberties of individuals and corporations. As in the colonial period, the imposition of market discipline is said to come first and lay the foundation for democratic rights. The result in either case is the suppression or severe restriction of democratic citizenship, the corresponding rise of militarised rule and market freedoms on one side and increasingly violent and authoritarian resistance movements on the other. The countries that are subject to these horrendous oscillations are described as 'failed' or 'terrorist' states, covert or overt military intervention follows, resistance intensifies and instability persists.[32]

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[32] The recent 'War on Terror' can thus be seen as the continuation of a much longer trend as many scholars have argued. See Chapters 5 and 7, this volume; Rashid Khalidi, *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East* (Boston: Beacon Press, 2004); and Rory Skidelsky, *The Prince of the Marshes and Other Occupational Hazards of a Year in Iraq* (London: Harcourt, 2006), for the continuity with earlier British indirect rule in the Middle East; Tony Smith, *A Pact with the Devil: Washington's Bid for World Supremacy and the Betrayal of the American Promise* (London: Routledge, 2007), for its continuity with Wilsonian intervention imperialism; Grandin, *Empire's Workshop*, for its continuity with US imperialism in Latin America; and Anghie, *Imperialism*, for its longer continuity. Osama bin Laden also places the rise of al-Qaeda in the broad historical context of Muslim resistance to Western imperialism: Osama bin Laden, *Messages to the World: The Statements of Osama bin Laden* (London: Verso, 2005).

The consequence is that a restricted or 'low-intensity' form of modern civil citizenship is promoted or promised at the national level with an equally low-intensity form of modern cosmopolitan citizenship of individuals and NGOs at the international level. The first wave of international human rights after the Second World War sought to give protection to the individual person from the worst effects of these processes (civil liberties) and to elaborate a set of global democratic, social and economic, and minority rights similar to those at the national level. However, these are hostage to implementation by nation-states and thus subject to the processes described above. The second wave of international law brought into force a vast array of transnational trade law regimes (under GATT and the WTO) that override national constitutions and constrain the weaker and poorer countries (which contain the majority of the world's population) to open their economies to exploitation and pollution dumping in order to gain loans, aid and debt relief. The third wave of international law after the al-Qaeda attack on the World Trade Center and the Pentagon of 9/11 consists of Resolutions of the Security Council of the UN promoting international security. These global securitisation regimes, which protect the security and liberty of modern citizens, often override the first wave of international human rights, force national governments to enact security legislation that rolls back hard-won democratic rights, thereby circumscribing democratic opposition to the War on Terror and neo-liberal globalisation, and secure civil and cosmopolitan market liberties of individual and corporate citizens in national and transnational law.[33]

This new articulation of the old cosmopolitan Trojan horse is now the major justification for the continuation of Western informal imperialism, as we see in Iraq and Afghanistan today. The opposition parties on the left criticise neo-liberal and neo-conservative policies and offer a more social-democratic and multilateral alternative strategy, yet they do so entirely within the shared languages and institutions of modern citizenship. The result is not only continued popular resistance, escalating militarisation and instability, as above, but escalating global inequalities between the West and the non-West that are worse now than at the height of the ruthless phase of Western imperialism at the turn of the nineteenth century.

Approximately 840 million people are malnourished. There are 6 million children under the age of five who die each year as a consequence of

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[33] For these three waves of international law, see Ishay, *The History of Human Rights*, pp. 173–356; Kim Lane Scheppele, 'The International State of Emergency: Challenges to Constitutionalism After September 11' (Unpublished Manuscript, Princeton University, 2007); and Chapter 7, this volume.

malnutrition. Roughly 1.2 billion people live on less than $1 a day and half the world's population lives on less than $2 a day. Ninety-one out of every thousand children in the developing world die before they reach the age of five. Twelve million die annually from lack of water, and 1.1 billion people have no access to clean water. About 2.4 billion people live without proper sanitation, while 40 million live with AIDS, and 113 million children have no basic education. One in five does not survive past forty years of age. Of the 1 billion non-literate adults, two-thirds are women and 98 per cent live in the developing world. In the least developed countries, 45 per cent of the children do not attend school. In countries with a literacy rate of less than 55 per cent, the per capita income is about $600.

In contrast, the wealth of the richest 1 per cent of the world is equal to that of the poorest 57 per cent. The assets of the two hundred richest people are worth more than the total income of 41 per cent of the world's people. Three families alone have a combined wealth of $135 billion. This equals the annual income of 600 million people living in the world's poorest countries. The richest 20 per cent of the world's population receive 150 times the wealth of the poorest 20 per cent. In 1960, the share of the global income of the bottom 20 per cent was 2.3 per cent. By 1991, this had fallen to 1.4 per cent. The richest fifth of the world's people consume 45 per cent of the world's meat and fish; the poorest fifth consume 5 per cent. The richest fifth consume 58 per cent of total energy, the poorest fifth less than 4 per cent. The richest fifth have 75 per cent of all telephones, the poorest fifth 1.5 per cent. The richest fifth own 87 per cent of the world's vehicles, the poorest fifth less than 1 per cent.[34] As a result of the globalisation of modern citizenship and its underlying institutions, the majority of the world's population of landless labourers are thus at liberty to exercise their modern liberties in the growing sweat shops and slums of the planet.[35]

We can see that the globalisation of modern citizenship has not tended to democracy, equality, independence and peace, as its justificatory theories proclaim, but to informal imperialism, inequality, dependence and war. This tendency is intrinsic to the modern mode of citizenship as a whole. From within its institutions, modern citizens see their citizenship as universal, superior and what everyone else would assent to if they were only freed from their particular and inferior ways. Accordingly, they see

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[34] Seabrook, *The No-Nonsense Guide to World Poverty*, p. 53. See Chapter 7, this volume. For the measurement of global inequalities, see Branko Milanovic, *Worlds Apart: Measuring International and Global Inequality* (Princeton: Princeton University Press, 2005).

[35] Mike Davis, A *Planet of Slums* (London: Verso, 2005).

themselves as having the cosmopolitan right and duty to enter into other societies to free them from these inferior ways, impose the institutional preconditions of modern citizenship, which bring obscene profits to their corporations and unconscionable inequality to the people they are modernising, and remove the obstacles and resistances to progress. The background languages of universal and necessary modernisation and of universal and obligatory norms and institutions of the four tiers of modern citizenship that they project over the global field render the whole ensemble self-validating in theory and practice. In carrying it forward, modern citizens are only doing what is both inevitable and right. When others resist, this proves that they are not yet fully civil and rational and legitimates the use of more coercion in response, thereby creating the conditions of its validation and expansion.

From the perspective of diverse citizenship, this mode of citizenship is neither freedom nor democracy but the culmination of five hundred years of relentless 'tyranny' against local citizenship and self-reliance. It is the undemocratic imposition of a low-intensity mode of citizenship over others, in which the people imposed upon have little or no effective democratic say as citizens, and under which they are not free and equal peoples but subjects of imperial relationships of inequality, dependency and exploitation.

DIVERSE CITIZENSHIP

4 DIVERSE CIVIC CITIZENSHIP

I want now to move around and survey the same contested field of global citizenship from the orientation and practices of the other, diverse mode of citizenship. To begin this difficult movement, I start from a brief synopsis of the globally predominant modern mode of citizenship we examined in the first part of this chapter on civil citizenship. I then show how diverse citizens apply their critical attitude to free themselves from taking its language as the comprehensive language of citizenship. They thus enable us to disclose and to see the field of citizenship and the place of modern citizenship within it from the comparative perspectives provided by other languages of citizenship.[36]

Synoptically, modern citizenship is a status consisting of four ranked tiers of rights and duties that make sense and are exercised within a canonical set of underlying legal, political, economic, educational and military institutions of the modern nation-state, international law and global

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[36] Section 4 draws on the detailed discussion of the civic tradition in all the chapters in the two volumes.

governance. Modern citizenship is presented as the institutionalisation of civil liberty or freedom (freedoms of the person and the market) and democracy (representative government and participation in the public sphere). It is universal in virtue of three constitutive languages: world-historical processes of modernisation that bring these institutions into being through stages; the normative ideal of modern citizenship and its institutions presented as the universal form of citizenship for every human being and as the *telos* of the causal processes; and the comprehensive disclosure and ranking of all other modes of citizenship as either not really citizenship or historically and culturally inferior relative to modern citizenship. Because it is the universal form and the Western states are closer to realising its ideal form (more developed), they have a right and duty to bring its underlying institutions, beginning with tier one institutions, to the less developed by means of the 'civilising apparatus' and its many strategies. They also have the duty to defend this unfinished project against those who fail to conform, for it is the mode of citizenship everyone would assent to if and when they exchange public reasons and reach agreement within the universal civil institutions of modern citizenship.

The discussion and criticism of citizenship takes place within these background languages of disclosure of the field of citizenship and the corresponding modern institutions. Questions of citizenship always lead back to the juridical subject with rights and underlying institutions, the social-scientific theories of historical processes that bring them about, and the normative theories of its ideal universal form and justifications for its globalisation. As it is spread around the globe, this particular world picture in all its complexity becomes the living identity of modern citizens and of those who see themselves as on their way to becoming modern. It is difficult to free moderns from this world picture, for it lies in the languages they use and the globalised institutions in which they use them and project them over others. One thinks that one is thinking and acting critically with respect to the very essence of citizenship, yet one is predicating over and over again the modern representation of citizenship onto the field of citizenship.

Members of the tradition of diverse citizenship see this self-described universalism and cosmopolitanism as one of the most dangerous forms of circular parochialism and fear of alterity. It appears as the prejudice of taking one's familiar form of national citizenship as the only acceptable form, projecting its hierarchical classifications over others and trying to make them over in one's own parochial image, with the disastrous effects we have surveyed. How, then, do diverse citizens avoid being taken in by this captivating world picture, exercise their critical attitude on it, and sustain

a multiplicity of alternative forms of citizenship, thereby making the actual contrapuntal global field of citizenship qualitatively different from the subordinate mirror-image of themselves that the modern mode of citizenship presents to its captivated citizens? I think the answer is a practical one. They avoid assimilation and sustain alternative worlds by *acting otherwise* – by participating in other practices of citizenship (often in the same institutions). I will try to elucidate these alternatives by comparing and contrasting fifteen aspects of diverse civic citizenship with modern civil citizenship in this section and six aspects of diverse glocal citizenship with modern cosmopolitan citizenship in section 5. Many of the aspects of civic citizenship are aspects of glocal citizenship as well.

(1) *Praxis*. The first and fundamental difference between the two traditions is their basic orientation. Rather than looking on citizenship as a status within an institutional framework backed up by world-historical processes and universal norms, the diverse tradition looks on citizenship as *negotiated practices*, as praxis – as actors and activities in contexts. Civic activities – what citizens do and the ways they do them – can be more or less institutionalised and rationalised (in countless forms), but this is secondary. The primary thing is the concrete games of citizenship and the ways they are played.[37] The modern tradition in social science and political theory overlooks these activities because it presupposes that the rights, rules, institutions and processes must be primary (the conditions of civilisation) and human actors and activities secondary (what happens within the civil space constituted by the civilising rights, institutions, rules and processes). The diverse tradition reverses this modernist, institutional orientation and takes the orientation of citizens in civic activities in the habitats in which they are enacted and carried on. Institutionalisation is seen and analysed as coming into being in unpredictable and open-ended ways out of, and in interaction with, the praxis of citizens – sometimes furthering, strengthening and formalising these activities; at other times dispossessing, channelling, dominating, cancelling, downsizing, constraining and limiting.

Civic citizenship does not take a 'practice' of civic activity as a *form* of organisation within which civic activity takes place, for this would be to treat civic activity as resting on some proto-institutional background (rules,

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[37] As I intimated in the introductory section, my formulations of several aspects of civic citizenship, including this one, draw on Wittgenstein's complementary work on explicating language from the perspective of the activities of language users in the *Philosophical Investigations*. His central insight that it 'is our *acting*, which lies at the bottom of the language game' is at one with the civic orientation (Ludwig Wittgenstein, *On Certainty*, eds. G. E. M. Anscombe and G. H. von Wright (Oxford: Blackwell, 1974), §204).

conditions, processes). Rather, civic citizenship consists of *negotiated* practices all the way down. It comprises civic activities and the on-going contestation and negotiation of these practices by the participants and by those subject to and affected by yet excluded from them, and so on in turn. There is never the last voice or word. The form of a civic practice is never closed by a frontier but always open to negotiation. The skills of civic citizenship consist in learning not only how to play by the given rules of a civic practice but also how to enunciate a critical question about the rules (and their theoretical justifications) and to listen attentively for voices that are silenced or misrepresented by the official rules or the most powerful critics. These continuing negotiations of practices of civic citizenship are themselves activities of civic citizenship that keep the internal organisation of civic activities open and democratic. As we saw in the introductory section, this is just to acknowledge and build into the practice of citizenship a repressible yet irreducible feature of it.[38]

(2) *Diversity.* The second way the diverse tradition avoids the prejudice of mistaking one institutionalised form of citizenship as the model for all possible forms is to take any specific civic activity in context as one local negotiated practice of citizenship among many. The way that diverse citizens do this is always to keep the multiplicity of games of citizenship in view (even within their own civic organisations). This enables them to resist (and refute) the temptation to generalise or universalise from a small number of cases and the corresponding contempt for the particular case. They can thus avoid (and deflate) universalising questions such as 'What is citizenship?' and the presumption that there must be one general answer; usually, as we have seen, simply the projection of one's own familiar example. Diverse citizens take any example of citizenship – no matter how universal or global its own language of self-description and justification claims to be – *as an example*, a particular and local form of citizenship in its environs (as I have tried to do for modern citizenship). In contrast to the universalising rationalities of modern citizenship, diverse citizens employ contextual and comparative genres of reasoning (section 1 above). They start from the local languages and negotiated practices of citizens on location and compare and contrast their similarities and dissimilarities with each other from various standpoints, either by engaging in other forms of citizenship or by civic dialogues among diverse citizens. There is thus no comprehensive and universal language of citizenship that defines all others in relation to one ideal form, but, rather, a multiplicity of criss-crossing and overlapping partial

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[38] See *Volume I*, Chapters 6 and 9 for how this is being done.

and always-incomplete languages of similarities and dissimilarities woven into their practices, employed for various purposes, of which the language of modern citizenship can be seen to be one singular example masquerading as comprehensive. By these situated alternative means, genres of comparative reasoning and critical dialogues, citizens disclose the civic world as a diverse multiverse, and their civic attitude is one of diversity awareness.[39]

(3) *Participatory freedom.* Since civic activities are primary, people do not become civic citizens in virtue of a status defined by rights and guaranteed by the institutions of the constitutional rule of law. From the civic perspective, civil citizenship indicates that one is a 'subject' of a system of laws and a 'member' of that association. Rather, agents (individual or collective) *become* civic citizens only through actual participation in civic activities. It is only through apprenticing in citizenship practices that one comes to acquire the characteristics of a citizen: linguistic and non-linguistic abilities, modes of conduct and interaction in relationships with others, forms of awareness of self and other, use of equipment, the abilities of questioning and negotiating any of these features and of carrying on in new and creative ways. This distinction between citizenship primarily as an institutional status and as a negotiated practice is made in a number of different ways. Let me mention three.

The most familiar way is the linguistic distinction between 'civil' (law-based) and 'civic' (activity-based). Whereas civil citizens have the legally guaranteed opportunity to participate in the civil sphere if they choose, civic citizens engage in and experience 'civics' – the activities and practical *arts* of becoming and being a citizen, referred to as 'civicism'. Civic citizenry are not seen as the bearers of civil rights and duties but of the abilities, competences, character and conduct acquired in participation, referred to as 'civic virtues'.[40] Civil citizens are civilised by the institutional rule of law, commerce and anonymous processes of civilisation, whereas civic citizens criticise and reject this disempowering picture that conceals the real world of

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[39] For this mode of reasoning together, see *Volume I*, Chapter 2, and for its history see Tully, *Strange Multiplicity*.

[40] It is tempting to say that the tier two rights of participation of civil citizenship might be thought of as 'equipment' *for* a certain type of civic citizenship (in the civil sphere of modern states and global civil sphere), and so they overlap to this extent. But, even here, this is not completely accurate, as you can have these rights and not be able to exercise them for all sorts of reasons (financial, time constraints, lack of knowledge, fear of consequences, etc.) and thus not even reach the stage of developing the corresponding abilities through practice. And, of course, this particular equipment, as important as it is, is not necessary for participation, since millions participated and continue to participate in civic struggles for rights of this kind and for extending them without having them. Rights are neither necessary nor sufficient conditions of citizenship.

histories of civic struggles. They 'civicise' themselves. They transform themselves into citizens and their institutions into civic spaces and free 'cities' by civic activities and the arts of citizenship, whether or not these activities are guaranteed by the rule of law or informal customs, or neither. Civic citizenship is not brought into the world by coercion, the institutions of law, the nation-state or international law, but by citizens engaging in civic activities and creating civic worlds. As a consequence, participation in civic activities cannot be a duty enforced by a coercive authority, for this would be to put a civil institution prior to civic activities.[41]

Secondly, one of the oldest distinctions is between 'libertas' – liberty and liberties – of civil citizens and 'freedom' of civic citizens. It is impossible to predicate 'liberty' on human action ('liberty action' makes no sense). Rather, the formal grammar of 'liberty' refers to a condition of being 'at liberty' (not under the will of another) that a subject has thanks to a law. The civil citizen is at liberty *to* participate or not as he or she wills. In contrast, the informal vernacular term 'freedom' (*freo*, *das Frye*) is predicated primarily on agents, action, activities and fields of activity throughout its long history.[42] The civic citizen manifests the freedom *of* participation. The free citizen is free in engaging in civic activities and, *eo ipso*, making these activities free. Civic freedom is not an opportunity but a manifestation; neither freedom *from* nor freedom *to* (which are often absent or suppressed), but freedoms *of* and *in* participation, and *with* fellow citizens. The civic citizen is not the citizen of an institution (a nation-state or international law) but the free citizen of the 'free city': that is, *any* kind of civic world or democratic 'sphere' that comes into being and is reciprocally held aloft by the civic freedom of its citizens, from the smallest *deme* or commune to glocal federations. It is not a matter of official civil liberties and offices being open to participation, as civil theorists construe a free city, but of the citizenry *experiencing* the civic way of life that makes it a free city, including engaging in opening offices in the first place, as the civic theorists character-ise it. Hence, the civic tradition finds one exemplar in the experience of

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[41] I thus see the coerced duty to participate as an (optional) instrument of the civil tradition and incompatible with the civic, although some theorists who are classified as civic have seen it otherwise (see below). My understanding of these two intertwined traditions is indebted to the invaluable scholarship of John Pocock and Quentin Skinner and the wealth of scholarship their work has inspired. For recent reflections, see Annabel Brett and James Tully, eds., *Rethinking the Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 2006).

[42] Hanna Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought* (Berkeley: University of California Press, 1973), pp. 10–11; and Pitkin, 'Are Freedom and Liberty Twins?', *Political Theory* 16(4), 1988: 523–52. This distinction is at the heart of Arendt's history of freedom (see *Volume I*, Chapter 4).

Athenian democracy as a civic way of life reciprocally sustained by demo-
cratic citizenship as the freedom of participation (*isegoria*).[43]

Finally, the priority of civic activities to civil institutions is marked by one
of the enduring conventions of Western law. This is the convention that
long use (*usus*) and practice brings into being the 'right' (*ius*) to engage in
that activity, not vice versa. This is true not only of the origin of common
and private property and of the rule of law itself, but also of the right of
people to govern themselves over a territory. This right of self-government –
the very normativity we are trying to understand – comes from citizens
governing themselves over a long period of time and being acknowledged by
others. This sturdy structure of normativity is so indestructible that even
conquest and usurpation by the most institutionalised imperial states in the
world cannot extinguish it unless the citizens and descendants either con-
sent to surrender the right (i.e. another citizen activity) or entirely give up *all*
the activities of governing themselves after generations of repressive and
assimilative occupation (which rarely happens).[44] Institutionalised rights
come into being from the practice of corresponding activities and are
continued and guaranteed in the final analysis by the on-going activities.
This is precisely the civic view of the relation between citizenship activities
and citizenship rights.[45] As we have seen, the civil tradition reversed this
orientation, for reasons we will see below (aspect 10).

Of course there is a Western tradition that also places a high value on
civic activity but presupposes that it has to take place within a canonical
institutional setting. The institutions of the Greek *polis*, the Renaissance
city-state and the modern nation-state are standardly taken as the institu-
tional preconditions. This tradition can be seen as 'civic' in a narrow or
circumscribed sense in contrast to the broad and extended sense that I am
explicating. However, it also can be interpreted as a democratic wing of the
civil tradition, since it takes an institutional form as primary and necessary,
differing only over the importance of democratic participation (tier two
rights). Consequently it shares the civil tradition's commitment to the
coercive imposition of institutional preconditions and myths of founding.[46]
This latter interpretation thus seems more apt, since this tradition contra-
dicts the primacy of practice and the commitment to a plurality of forms of
political organisation of the civic tradition (aspects 1 and 2). As we proceed

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[43] For this interpretation of Athenian democracy, see Moses I. Finley, *Democracy Ancient and Modern* (London: Hogarth Press, 1985).
[44] See *Volume I*, Chapter 8.   [45] See Tully, *Strange Multiplicity*, for this convention.
[46] This is the tradition mentioned above that often endorses a coerced duty to participate.

we will see that such attempts to circumscribe civic activity in canonical institutions are continuously undone by the democratic activities of civic citizens and the institutions reformed by the activities.

(4) *Partnerships*. Whereas civil citizenship always exists in institutions, civic citizenship always exists in relationships. There are two general kinds of civic being-with relationships: (i) relationships among roughly equal citizens exercising power together in citizen/citizen relationships of solidarity, civic friendship and mutual aid (citizen relationships); and (ii) relationships between citizens and governors (citizen/governance relationships). To see the importance of this aspect, we have to set aside the dominant institutional language of the civil tradition (constitutions, rights, autonomous rules, jurisdiction, states and sovereignty) and look at what goes on before, within, beyond and often in tension with these institutions. What we see are individual and collective actors in citizen and citizen/governance relationships. I will treat citizen/governance relationships first, in which civic citizenship is the vis-à-vis of government, and then turn to citizen relationships (aspect 11 below).

The language of relationships between governors and the governed (the people) developed alongside the juridical and institutional language of modern citizenship in Europe as a way of describing government from a more practical and interactive perspective (in contrast to the institutional language of sovereignty, rule and obedience), yet still from the perspective of the governing class.[47] That is, it characterises the citizenry in the first instance as the subject and object of the arts and sciences of government, namely as 'the governed' (or 'all affected'). In the early-modern period, the language of governor–governed was used very broadly to characterise any relationship of power and authority in which one actor seeks to govern – to guide – the conduct of another actor: parents–children, master–slave, master–servant, company–employees, sergeant–soldier, teacher–pupil, government–people, colonial administration–colonies, priest–flock, master–apprentice, protégé–mentor, older and younger friends, dance partners, and an individual governing his or her own thoughts, desires, will and comportment. Since the phenomena of some agents 'guiding' the actions of others in all these vastly different ways are co-extensive with living in society and interacting with others, relationships of governing and being governed were taken to be the basic unit of analysis, beneath, within and beyond the more formal institutionalisation and rationalisation of these relationships in the centralising institutions of modern European societies.

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[47] See *Volume I*, Chapter 3 and Chapter 2, this volume, for the language of governors and governed.

As the modern nation-state consolidated and brought many relationships of governance under its direct or indirect auspices, the terms 'government' and 'the governed' came to be restricted to the formal institutions of 'representative government' and its civil citizens in the official public sphere. Modern political science and theory restricted its focus to these institutions, as we have seen, leaving the other relationships of governance in the official private sphere to other specialised disciplines. However, since our conduct is governed in a multiplicity of overlapping ways in contemporary societies and global networks that do not all pass through legal and political institutions, the language of governance in its broad sense has been rediscovered and used anew to analyse in detail the actual workings of contemporary relationships of power, knowledge and subjectification by the *governmentalité* and 'global governance' schools (among others). These two schools can analyse anything from the most specific forms of face-to-face power relationships or the ways media conglomerates govern our thoughts and desires in detail to the most general modes of informal power through which multinational corporations and coalitions of great powers informally govern the conduct of subaltern states and populations in relation to production, consumption and the environment, through global relationships that bypass, outrun or manipulate traditional legal and political institutions. No matter how anonymous these relationships may appear, especially from an institutional perspective, and no matter how clever those responsible are in evading their responsibility, a relationship of governance can almost always be traced back to identifiable agents who govern (directly or indirectly) on one side and agents who are governed on the other (as environmental movements have shown time after time).[48]

Civic citizens share the view that humans are always already in relationships and that *many* are relationships of this general governance kind (in both its restricted and broad sense). However, while all relationships can be said to 'guide' the partners in some way or another, only a large subset of these can be characterised as 'governing' the partners, in the sense of 'directing' in some more or less calculated way.[49] They also realise that the practical arts and sciences of government (restricted and broad) consist in a wide variety of knowledges, means and strategies. The bodies of knowledge under which people are picked out and governed comprise the

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[48] I discuss these two schools in Chapters 2 and 4, this volume.

[49] Citizen relationships, for example, guide but do not govern (see below under aspect 11). Relationships of love and of friendship are other examples, even though they can involve episodes of governing one another.

range of human, environmental, policy and administrative sciences that modern governments and governing organisations in the private sphere employ to govern their members, 'all affected' and their relationships with each other. The means can range from the mobilisation of the consent of the governed on one side to the use or threat of violence and force on the other. The strategies can range from the most detailed governance of individual preference and character formation through techniques of consultation and deliberation to the global use of sanctions, financial manipulation and military manoeuvres. However, this is where the civic school parts company with the *governmentalité* and global governance schools. Civic citizens rotate the whole orientation around the axis of their real need and examine governance relationships from the standpoint of the partner who is governed – not *as* a governed subject but *as* an agent, a civic citizen.

(5) *Citizen/governance partnerships.* Accordingly, the fifth aspect is the characterisation of governance relationships as relationships between citizens and governors. At the heart of any governance relationship and constantly animating it is the freedom of the governed *as* citizens. A relationship of governance does not act directly on the body or mind of the governed, determining their behaviour in detail (or it would be a relationship of force and determination). Rather, it acts on and conducts the 'conduct' of the governed partners (their actions, thoughts, expectations, comportment) to induce them to acquire a predictable form of subjectivity (to become self-governing subjects in the relationship). In this sense, governance always presupposes and acts on subjects who are 'free'. That is, they are individual or collective agents who are faced with a limited field of possible ways of thinking, speaking, acting, organising and conducting themselves *within* the (rules of the) relationship, including the many arts of appearing to conform while acting otherwise within. And, furthermore, if they refuse to be governed in this way and to work within the relationship, there is also a range of possible ways of directly confronting and negotiating the limits of the relationship itself, from the acceptable procedures of grievance and negotiation, strike and direct action to strategies of disobedience, revolt and revolution or escape. The aim of governance is to try to guide (induce, disallow, anticipate and respond to) the freedom of the governed in their activities so they disclose and act on the field of possibilities open to them in predictable, utile and productive ways.[50]

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[50] This specific description of situated freedom in governance relationships draws partially on the late Foucault, who introduced it into his own work only in 1980. See *Volume I*, Chapter 3. My development of it departs from Foucault in a number of ways.

The freedom of *Spielraum* (free play) in the field of any relationship is both the existential field – the room or space of manoeuvrability (the range of possible moves) – and the experiential ways in which the partners can and do disclose and act on their possibilities – the games (*Spiel*) they play *in* the relationship or in the confrontation of its limits. This twofold freedom is the 'field freedom' of human beings in so far as they are 'field beings' in relationships. 'Field' refers to the broad sense introduced in the introductory section, which includes the primary sense of the field in the natural world where freedom takes place. Field freedom is irreducible, and it exists and is enacted to widely varying degrees in different relationships.[51] This freedom exists in the playful 'guidance' relationship between parent and child long before language acquisition, between pupil and teacher in pedagogical relationships, in the creative extension of the frontiers of linguistic relationships (as Wittgenstein taught us at the beginning), to a narrow degree in tightly governed institutions (prisons), and more broadly in informal imperial relationships. The governed partner is thus always an active agent – an apprentice player who must learn how to navigate and negotiate his or her way around the field and how to play the game through acting and interacting with the governing partner. The governor is always an interactive partner to some extent, drawn into the game of giving further instructions, answering questions, correcting conduct, responding to seemingly untoward rule-following and so on. Humans are always unavoidably *homo ludens*, creative game players and prototypical civic citizens in the dialogical relationships of their cultures and civilisations before and *as* they take on any other identities.[52]

Since the 'governed' in any relationship are always already active agents partaking in guiding and being guided in countless ways, they have to engage in practices of self-formation by which they develop the abilities to act and interact in the relationship. These embodied or phenomenological abilities of knowing how to mutually acknowledge and interact with self and others in intersubjective relationships begin to develop in the earliest days of childhood, long before language use and training in specific roles.

[51] This way of describing freedom in a field draws on Maurice Merleau Ponty. An influential use of Spielraum in a somewhat similar way is Martin Heidegger, *Being and Time* (New York: Harper and Row, 1962), p. 185 [I.5.31]. However, I have learned more from Martin Buber's innovative attempts to place this field of freedom in dialogical relationships and link it to a concrete global politics of non-violence and peace, as I am trying to do as well. See his *I and Thou* (New York: Scribner, 1970) and *Between Man and Man* (London: Routledge, 2002).

[52] Johan Huizinga, *Homo Ludens: A Study of the Play Element in Culture* (Boston: Beacon Press, 1955); James Carse, *Finite and Infinite Games: A Vision of Life as Play and Possibility* (New York: Ballantine Books, 1986). See *Volume I*, Chapter 4.

Apprentices in specific roles usually initially engage in these practices under the direction of the governing partner or peers, and then gradually develop the abilities to perform the role self-critically, creatively and without further direction, but never without further negotiation. One does not become a practitioner blindly. The requisite abilities are acquired in pre-linguistic interaction and by more or less elaborate and reflective practices of the self on the self in the course of learning one's way around in a specific relationship. Language learners and novitiate students, for example, gradually become self-critical and self-educating language users and competent students, each with their own individual and distinctive style, through years of study, practices and exercises of self-formation. The explicit practices of self-formation in any relationship and the more general phenomenological practices that underlie these are the basis for the whole array of more complicated practices of self-formation of civic citizens in citizen/governance and citizen relationships.[53]

No matter how relentlessly domineering governors try to implant and internalise these role-related abilities without the active interplay of the patients, as if they are blank tablets, in behavioural modification experiments, repetitive advertising and total institutions of colonial and postcolonial discipline (such as internment camps and residential schools), they invariably fail to 'construct' the other all the way down. They cannot eliminate completely the interactive and open-ended freedom *of* and *in* the relationship or the room to appear to conform to the public script while thinking and acting otherwise, without reducing the relationship to one of complete immobilisation. As we have seen, they are reduced to trying to induce and then respond to and work on the ways the governed conduct themselves in the sparsely limited *Spielraum* open to them. This is the constrained space in which Indigenous peoples and others have exercised the arts of resistance and survived centuries of imperialisation.[54]

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[53] For background embodied phenomenological dispositions and their development into abilities prereflectively and reflectively, see John Searle, *The Construction of Social Reality* (New York: Free Press, 1995); Shaun Gallagher, *How the Body Shapes the Mind* (Oxford: Clarendon Press, 2005); Medina, *Language*; Michel Foucault, *Hermeneutics of the Subject: Lectures at the Collège de France, 1981–1982* (New York: Palgrave, 2005); Helen O'Grady, *Woman's Relationship with Herself: Gender, Foucault and Therapy* (London: Routledge, 2005); and *Volume I*, Chapter 2.

[54] See James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990); see also *Volume I*, Chapters 7 and 8, and section 5 below. For the counterargument that humans are constructed all the way down in power relations and the difficulties in accounting for critical freedom on this view, see David Hoy, *Critical Resistance: From Poststructuralism to Post-Critique* (Cambridge, MA: MIT Press, 2004). It is perhaps noteworthy that several of the authors Hoy discusses moved to a view closer to the one advanced here.

If, therefore, we analyse a governance relationship from the side of the governed *as* the citizenry, we can see that the free play of negotiation in relationships is the ground of the civic freedom that manifests itself in civic activities and to which governments respond. So, a relationship of governance is always a relationship of prototypical civic citizenship negotiation to some degree, from the side of the governed. It is not a phenomenon of unilateral control of the conduct of the other, but a much more complicated and open-ended game of interplay and interaction between the arts and practices of proto-citizens and governors. While governors, by their free actions, try to structure the field of possible actions of the governed, the governed, by their actions and in so far as they are citizens, try to govern or, rather, 'citizenise' the actions of their governors. If a defining characteristic of governance relationships is the 'conduct of conduct', then it must always be read contrapuntally: as governors and citizens reciprocally conducting the conduct of each other and being conducted by their interaction in and over the relationships between them.

(6) *Types of activity*. I am saying that we are always and everywhere proto-civic citizens, engaged in practices of negotiating the fields of possibilities in the relationships in which we find our feet and learn to walk. This overlooked, everyday, grass-roots world of proto-civic freedom in which the official and more familiar activities of citizenship are nurtured and grow is perhaps the greatest discovery of civic practice and philosophy. It is first and foremost a discovery of feminist movements and of feminists reflecting on this experience in a number of different disciplines. They have transformed the civic tradition.[55]

To survey the field of civic citizenship practices, we need to differentiate different types of cases that evolve out of this broad and so far undifferentiated field of proto-civic activities and cross the threshold to civic activities of civic citizens. I want to say that there is no single answer to the question of what makes negotiation in a governance relationship 'civics', the negotiators 'citizens', and transforms the governance relationship into a citizen/governance relationship (or a citizen relationship). Rather, in addition to the five signature aspects we have already considered, I will now set out ten further features that distinguish civic (and glocal) citizenship

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[55] For feminist works on freedom in relationships to which I am particularly indebted, see Aletta Norval, *Aversive Democracy: Inheritance and Originality in the Democratic Tradition* (Cambridge: Cambridge University Press, 2007); Linda Zerilli, *Feminism and the Abyss of Freedom* (Chicago: University of Chicago Press, 2005); Heyes, *Line Drawings*; Peta Bowden, *Caring: Gender-Sensitive Ethics* (London: Routledge, 1997); Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Sumach Press, 2000).

practices from the unlimited field of proto-civic activities on the one hand
and from the restricted field of civil (and cosmopolitan) citizenship on the
other. These aspects are concerned with the types, characteristics and sites of
civic activities (aspects 6–9); the civic view of law (aspects 9–10); acting
together (aspect 11); the roles of civic goods (12); the relationship of civics to
the environment (aspect 13); non-violence (aspect 14); and the civic response
to structures of domination (aspect 15).[56]

To begin, we can characterise the broad field of civic (and glocal)
citizenship by means of five general types of civic activity. The first is
the wide or narrow range of activities recognised by and available to
citizens under their existing system or multilayered systems of govern-
ment. These constitute the official field of civic activities that each
generation inherits from their forebears and carries on. Secondly, within
these official fields there is a range of ways of 'acting otherwise' than the
dominant norms of civic conduct without challenging the official rules
governing citizen activity. This *Spielraum* of acting on the given possibil-
ities in creative ways and 'playing the civic game differently' within the
official rules is, as we will see, a world of civic pluralism and cultural
diversity unseen by approaches that presume rules determine rule-follow-
ing (aspects 5, 8–9).[57] The third and classic field comprises the activities
by which citizens no longer act within the field of a governance relation-
ship but turn and negotiate some aspect of that relationship. Fourthly,
when citizen activities run against unjustifiable limits of the fields in
which they act, act otherwise and negotiate, they turn to civic activities
of directly confronting them (aspect 15). This range of activities from
protests to revolutions comprises the field of civic confrontation strategies.
The fifth and least studied type of civic activity emerges when sovereign
citizens turn aside from the governance relationships in which they find
themselves, create their own citizen relationships, act together and exercise
political power themselves (aspect 11).

Let us begin with the third, classic civic activity of 'we, the people'
negotiating a governance relationship to which we are subject. This consists
in (but is not restricted to) calling some aspect of the relationship into

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[56] For the disclosure of the field of civic activity from a civic rather than civil perspective, see Nikolas
Kompridis, *Critique and Disclosure: Critical Theory Between Past and Future* (Cambridge, MA: MIT
Press, 2006).
[57] See *Volume I* and Chapter 8, this volume, for this type of civic activity. For an excellent introduction
to the whole field, see Wiener, *The Invisible Constitution of Politics*. I discuss it further under aspect 10
and in section 5.

question and demanding that those who govern enter into negotiations, either within, over or without the acceptable procedures of negotiation (including litigation). This is a demand literally to *civicise* the relationship: to bring it under the shared negotiation and authority of the partners subject to it. If successful, the governance relationship is no longer imposed monologically over the governed who are constrained to negotiate their activities within its prescribed limits. It becomes a more cooperative, dialogical or citizen/governance relationship worked on by both partners through on-going phases of 'negotiation' in the broad sense: contestation and critique, specific negotiations (arguing and bargaining), modification or transformation, implementation, review, renegotiation by future generations and so on, world without end. To civicise governance relationships is – *eo ipso* – to 'democratise' them, for one of the oldest and most ordinary meanings of 'democracy' is that the people always have an effective say in and over the relationships (rules) to which they are subject. The 'arts of citizenship' are precisely the democratic arts of critique, negotiation and transformation of the governance relationships we bear into citizen/ governance relationships. This whole world of democratic negotiation in the broad sense is the classic world of *negotium* (civic action) as opposed to *otium* (the non-civic life of contemplation).[58]

(7) *Civicisation*. In contrast to the processes of *civilisation* and *democratisation* in the civil tradition, *civicisation* and *democratisation* are not identified with a set of Western institutions and processes of often coercive imposition over other practices, but with citizens non-violently negotiating and transforming the governance relationships in which they find themselves into citizen/governance relationships (or citizen relationships) from the ground up. This is the heart of civic citizenship. As we have just seen, this activity flows out of the proto-civic negotiated practices on the field of possibilities within the relationship. Both partners (governors and governed) enter into and subject themselves to the give and take of negotiation in and over the relationship they share. The governed *become* 'good citizens' only by exercising their civic freedom of entering into these kinds of negotiation in all their complex phases: of listening to the other sides and for silenced voices, of responding in turn, negotiating in good faith and being bound by the results, experimenting with the amended or transformed relationship and so on. Reciprocally, governors become good governors only by doing the same: by listening to what the citizens have to say,

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[58] *Volume I* is a series of surveys of this whole field.

responding and being held accountable by them. A citizen/governance relationship is an interdependent, interactive and open-ended partnership of mutual enabling, nurturing and reciprocal learning. The unpredictable evolution of the relationship and of the identities of the partners over time is what the civic tradition calls progress. If the governed fail to exercise their freedom of having a say in and over the governance relationships they bear and speak truthfully to power, they never become citizens. They remain unfree and servile 'slaves': that is, subjects of monological or 'despotic' relationships of command and obedience. It is like the life of 'exile', where one may have negative freedom but not civic freedom. Reciprocally, if the governors refuse to listen and enter into negotiations, and either silence citizens or treat their demands as free speech to which they have no obligation to respond, they never become good governors. They remain unaccountable 'tyrants': independent and subject only to their own arbitrary will and appetites. Neither becomes a mature human being.

A superb presentation of the civic relationship of reciprocal enlightenment between free governors and free citizens, where there is neither master nor slave but only free- and frank-speaking relationships (*parrhesiastic* dialogues) between partners, is the dialogue between Jocasta and Polyneices on the value of citizenship in Euripides' *The Phoenician Women*. The two previous paragraphs are a gloss of this crystallisation of civic freedom. Polyneices, who represents democracy, is returning from exile to free Thebes from his brother, Eteocles, who broke the pact to share rule on an annual basis and thus represents tyranny. He is speaking to his mother, Jocasta:[59]

JOCASTA:	This above all I long to know: What is an exile's life? Is it great misery?
POLYNEICES:	The greatest; worse in reality than in report.
JOCASTA:	Worse in what way? What chiefly galls an exile's heart?
POLYNEICES:	The worst is this: the right of speaking freely [parrhesia] does not exist.
JOCASTA:	That's a slave's life – to be forbidden to speak one's mind.
POLYNEICES:	One has to endure the idiocy of those who rule.
JOCASTA:	To join fools in their foolishness – that makes one sick.
POLYNEICES:	One finds it pays to deny nature and be a slave.

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[59] Euripides, *The Phoenician Women* (New York: Penguin, 1983), lines 386–94. For the context of practices of free speaking in unequal relationships of governors and governed, see Michel Foucault, *Fearless Speech*, ed. Joseph Pearson (Los Angeles: Semiotext(e), 2001). For my interpretation and extension, see James Tully, 'La liberté civique en contexte de globalisation', *Les Cahiers du Juin 27* 1(2), 2003: 1–10.

This account of interdependence and civic freedom in relationships also stands as a critique of the priority and adulation of independence and negative freedom in the civil tradition (as in tier one civil rights). Agents who are independent and free of interdependent relationships, subject only to their own will, are on the road to becoming arbitrary tyrants, disposed to lording it over others and enslaved to their own whims and desires, as we have seen with the history of Western imperialism. It is only by being subject to democratic relationships with others and the practices of self-formation these require that those who govern can learn to discipline themselves and serve the civic good. Reciprocally, if citizenship is only a status, 'guaranteed' by institutions, then citizens tend to become either servile subordinates or arbitrary bosses in the vast sea of non-democratic, hierarchical relationships in which they find themselves for most of their lives. They tend to become unaccustomed, unable and too submissive to exercise their civic freedom in the official public sphere, let alone in the private sphere, and prone to submit uncritically to the socialisation and media glorification of a life of negative freedom and private consumption that accompanies tier one liberty and free trade.[60] The powerful then dismantle the democratic rights that earlier generations of civic activists fought and died for.

As Jocasta and Polyneices agree, far from seeing dialogical relationships with governors and fellow citizens as interference with their negative freedom, they identify with these free-speaking relationships, as the enabling and nurturing conditions of their civic freedom and maturity. The crucial kind of freedom is thus neither the freedom from relationships of interdependency (negative freedom) nor the freedom of acting in conformity with allegedly ideal and universal legal relationships that 'we' impose on ourselves (positive freedom). It is the proto-civic and civic freedom of negotiating and democratising in and over the always less-than-ideal relationships in which we live and breathe and become who we are. The only guarantee of freedom and democracy is, not surprisingly, the daily cooperative practices of democratic freedom in webs of relationships and on the fields of possibilities they disclose.[61]

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[60] See Benjamin Barber, *Consumed: How Markets Corrupt Children, Infantilize Adults, and Swallow Citizens Whole* (New York: Norton, 2007). For the pathological aspects of a relentless drive for negative freedom, see Frithjof Bergmann, *On Being Free* (Notre Dame: University of Notre Dame, 1977).
[61] For a history of civic freedom in the narrow sense vis-à-vis the more familiar traditions of negative and positive freedom in the West, see Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991).

(8) *Civic public spheres*. Civic activity is not restricted to the official, institutionalised civil public sphere of the modern nation-state and the global civil sphere of cosmopolitan globalisation. One does not have to be a civil citizen to engage in civic activity. In so far as an individual or group is subject to the effects of a governance relationship, no matter how local or global, they have for that very reason a civic right to act civically in relation to it. A non-violent activity by the governed that brings the relationships they bear into the open space of questions and negotiations is an instance of the civic activity of citizens, no matter where it takes place, whether in the official public or private spheres. A civic public sphere, in contrast to the civil public sphere, comes into being whenever and wherever those who are subject to a closed governance relationship take it out of the darkness of the 'private sphere' of being unquestioned, either in the sense of being taken for granted and coordinating our interaction behind our backs or of being explicitly placed off limits. They do this by calling it into question (speaking truth to power), subjecting it to the light and enlightenment of public scrutiny, and opening it to negotiation with the powers that be. They become citizens, the space of negotiation becomes public, and the relationship itself becomes civicised and democratised to the extent that the governors enter into, and are subject to, the on-going negotiation of the relationship between them. Hence the popular slogan, 'we are everywhere'.[62]

These civic and publicising activities are not seen as acts of 'resistance' or 'rebellion', as they are seen from civil and governmental perspectives. It is rather the powers that be who by refusing to enter into civic negotiations and be held accountable engage in resistance and rebellion against civicisation and democratisation. They are also not seen as heroic acts of resistance by great leaders and writers overcoming the habituation, interpolation, conditioning or internalisation that construct the very consciousness and body of the assimilated and colonised majority, as they are often portrayed in the critical tradition.[63] They are understood as the certainly courageous yet non-heroic extension of everyday practices of negotiation in which ordinary citizens are already engaged in the civic sphere. They consist in nothing more (nor less) than disclosing the field of possibilities within the

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[62] As Nancy Fraser stresses, these unofficial public spheres are often more open and innovative than the elite-dominated official public sphere. See 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy', in *Habermas and the Public Sphere*, ed. C. Calhoun (Cambridge, MA: MIT Press, 1992). For an introduction to this aspect of the field, see Romand Coles, *Beyond Gated Politics: Reflections for the Possibility of Democracy* (Minneapolis: University of Minnesota Press, 2005).

[63] See note 54 above for this view.

relationship from the standpoint of concerned citizens and acting on it.[64] Finally, they are not seen as the spontaneous irruption of unformed constituent power, for the civic powers are already exercised in, and extend out from, everyday practices and relationships of governance.[65]

(9) *Civic law*. Why does the civic tradition construe cases of citizenship so broadly, as participation in activities of negotiating the arbitrary constraints of a field in governance or citizen/governance relationship at the most appropriate and effective sites by those affected? In contrast to the civil/cosmopolitan tradition, this seems too unruly. Civil law circumscribes the exercise of democratic rights (tier two) to official citizens negotiating or litigating the law in the official institutions of civil/cosmopolitan society and in accord with their procedural rules, and, if necessary, their institutions of amendment of these rules. Members of the civic tradition agree that these are exceptionally important citizenship practices; noting as well that they have been fought for, institutionalised, extended and defended by civic citizens who did not initially have a right to them. But, they argue, to place these institutional limits on citizenship is to impose limits on democratic citizenship that are unsustainable in practice and unjustifiable in a free and democratic society. This follows from everything we have already said about the open-ended character of negotiated practices since the introductory section. However, it can be seen most clearly by comparing the civil and civic conceptions of law: the (civil) rule of law as an institution and the (civic) rule of law as a practice.

The *civil* tradition makes a fundamental distinction between the institutional rule of law and the citizen activities that take place within the boundaries of these institutional settings. The institutionalised rule of law exhibits a systemic or functional quality of formality and independence from the agents who are subject to it and act within its boundaries. This picture is encapsulated in the mantra, 'rule of law not of men'. The features of institutionalisation and rationalisation that establish the independence of the rule of law from the rule of men and women consist in the definite rules, procedures and training of the institutional offices, the hierarchical, command–obedience relationships among the members, the specialised division of labour, the separation of knowledge from use, reflexive monitoring and the systematic application of coercion to align behaviour with rules. That is, it is the non-democratic and procedural character of the relationships within an institution that gives it its formality and independence from the informal rule of men. The language of governance is replaced by that of

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[64] Norval, *Aversive Democracy*, Chapter 3.   [65] For these alternatives, see Chapter 7, this volume.

administration, management, control, discipline, procedure, direction and monitoring. As a consequence, the rules and procedures of an institution are conceptualised as 'rails' that the office-holders follow, like the operation of an adamantine calculus according to definite rules. The roles of humans seem to disappear.[66] While there may be some room for manoeuvre in individual cases of decision-making by an errant office-holder, this foreground indeterminacy is absorbed by the systemic operation of the vast background rules, procedures and hierarchical relationships of the institutions as a whole that are untouched. If a background rule is challenged and negotiated, then this proceeds as well within institutionalised rules and procedures. Democratic rights (tier two) have their foundation in the institutional rule of law, are protected by it and exercised within its boundaries. This is the separation or disembedded thesis of the civil institutionalised rule of law.

In contrast, the *civic* understanding of the rule of law is of a network of relationships of negotiated practices. Law is a craft or practical art rather than a science. For example, men and women in ministries draft rules (as Bills) to govern the relationships of their political associations; legislators debate, negotiate and vote on enacting them as laws; lobbyists lobby; administrators struggle to translate them into executable legislation and rules for application; civil servants apply them and officers enforce them; subjects try to figure out how to obey them in individual cases; experts advise them; ordinary citizens, corporate citizens, civil society organisations and media discuss and challenge them and take them back to their representatives or to the courts; lawyers argue pro and contra; judges discuss, interpret, judge, write majority and minority decisions; the legislatures respond, and so on. At each of these site-specific practices not only do men and women negotiate the particular law in question (which is just another rule), but they do so by acting in accord with the rules and procedures that govern the relationships of their office. As we have seen, the differentially situated players negotiate the *Spielraum* that the rules and procedures disclose to them, no matter how explicit the rules are and how many recursive sets of rules exist for the application of the rules.[67]

This is not to deny the importance of institutionalised procedures. It is rather to observe that the way a person 'grasps' a procedural rule is not itself a procedure but a negotiated practice. The practical know-how attitude

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[66] For the misrepresenting role of the metaphor of the 'rule of law not of men' and the calculus conception of rule-following, see Gordon P. Baker, 'Following Wittgenstein: Some Signposts for *Philosophical Investigations 143–242*', in *Wittgenstein: To Follow a Rule*, eds. Stephen Holtzman and Christopher Leich (London: Routledge, 1981), pp. 48–58, and Chapter 7, this volume.

[67] See Wittgenstein, *Philosophical Investigations*, §§82–7, 198–201; and *Volume I*, Chapter 2.

underlies the institutional know-that orientation and is ineliminable. From this rule-maker, rule-enforcer, rule-follower, rule-challenger and rule-interpreter perspective, an institutionalised rule is neither a rail nor a calculus. It is more like a signpost. It points us to the complex network of negotiation practices going on under its sign. Both our understanding of the rule and the actual rule itself are immanent in the negotiated practices that cannot be circumscribed. The living rule of law is the pattern of interplay and interaction of the negotiated practices. This is the immanent or manifestation thesis of the civic rule of law. The unfolding of the rule of law, no matter how institutionalised and rationalised, is internally related to the indeterminate negotiated practices of the law.[68] In a word, civic citizens have an 'interactive' understanding of the law.[69]

If the civic thesis is plausible, not only should there be proto-civic negotiation practices within the institutions of the rule of law but these practices should extend in the course of things into demands for on-site civic negotiations, just as we have seen in the similarly institutionalised corporations of the official private sector. Historically, union movements and collective bargaining associations have been the agents of such sporadic civicisation of institutions. Over the last thirty years, there has been an explosion of new demands for ad hoc practical negotiations of the rules and procedures within the legal and political and administrative institutions of contemporary societies. Public and private sector employees demand a direct and effective say over the rules and covert conventions of the relationships they bear: hiring procedures; discriminatory practices; equity; the organisation of work and time off; environmental practices; the right to disclose and make public information and bad practices; whistle-blowing; and so on. These activities dissolve the distinction between the civil institutions inhabited by civil servants and the exercise of democratic rights in civil society by civil citizens. Civil servants demand to be civic citizens within and over civil institutions, civicising their governance relationships at work into citizen/governance relationships through the creation of tailor-made alternative dispute-resolution practices. New departments, disciplines and epistemic communities of dispute resolution have sprung up in universities

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[68] See Medina, *The Unity of Wittgenstein's Philosophy*, p. 179. For a detailed presentation of this pragmatic view of normativity, see Robert B. Brandom, *Making it Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, MA: Harvard University Press, 1998), pp. 3–66.

[69] For an introduction of interactive approaches, see Antje Wiener, 'Constructivist Approaches in International Relations Theory: Puzzles and Promises', *Con.WEB* 5 (2006), available at: www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Filetoupload,52215,en.pdf [Accessed 30 August 2007]; and Chapter 5, this volume.

and policy communities throughout the world, and the courts have supported this revolution on the grounds that its curtailment is unjustifiable and unsustainable in a free and democratic society.[70]

(10) *From legal imperialism to legal pluralism.* We can now place the separation thesis of civil institutionalisation in the broader canvas of the first part of this chapter and see the two major roles it has played. In the early-modern period, the civil theorists argued that the existing practices of governance and citizenship constituted an informal, haphazard, conflict-ridden, uncertain and insecure crazy quilt of overlapping jurisdictions that gave rise to the Thirty Years War. Civil philosophers, lawyers and administrators explained that only centralisation and institutionalisation would resolve these problems of informal (under-institutionalised and under-rationalised) practices of law, governance and citizenship.[71] The modern contract tradition of political and legal theory rose to prominence by portraying this dispossession of local 'uncertain' practices of self-government in terms of a hypothetical contract or agreement. Despite the empirical evidence to the contrary, the recalcitrant local peoples could nevertheless be seen to be individuals (or a collective people) who would consent to delegate or alienate their powers and rights of local self-government to their new centralised and incorporated governors, if they only knew their best interests, in much the same way as they were contractually alienating their labour powers (formerly exercised in the local governance relationships of guilds, crafts, commons and so on) to the new institutions of private corporations. In exchange, they received back from the institutions of government the security, certainty and enforceability of modern civil liberties and democratic rights at the national level. Their erstwhile local practices were portrayed in theory as a pre-political state of nature or war and their new institutions as the embodiment of the rule of law, not of men.

The idea that governors and citizens should exist in relationships of mutual subjection was not abandoned but applied exclusively to political relationships of representative government, where the elected government governed the population and the opposition party governed the government in a system of competing parties (organised internally along institutional lines). Citizens could play a role in this by exercising their democratic rights, but only in institutional elections and the civil sphere. This sphere of representative government was surrounded by and anchored in the new administrative institutions of the rule of law that provided the

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[70] See *Volume I*, Chapter 9.
[71] See Hunter, *Rival Enlightenments*; and Tully, 'Diverse Enlightenments'.

non-democratic basis of representative democracy. The prestige of the institutional mode of organisation increased as more and more activities were organised accordingly: new model armies and navies, workhouses, public schools, factories, prisons, colonial plantations, labour discipline, and the bureaucracies of the modern national and imperial states. In short, it became the favoured organisational form of the modern mode of citizenship and its constitutive institutions.[72]

This transition to the modern institutional orientation undermined and reversed the old civic law convention that authoritative rights and government derive from long use and practice. Political authority was defined as an authority that was independent of relationships of interdependency and called 'sovereignty'. Sovereignty and right were now said to be above and behind 'government'; located in the central institutions of the modern state and placed there by the agreement of the people themselves precisely because they constituted a superior and uniquely modern form of rule, combining a sea of institutionalisation with an island of representative governance.[73] The civil thesis of the superiority of institutional rule was the hinge of the whole transition.

The second role of the civil institutionalisation thesis was to justify the dispossession of the non-European world of its local forms of government and citizenship. Under the civic convention that authority and right derive in endless forms from long use and negotiated practices, the world was already full of authoritative governments and citizenship practices and thus there was no legal justification for Western imperialism. The way around this 'obstacle to progress' was to discredit non-European governments and practices in the same manner as local governments were discounted within Europe, as not sufficiently institutionalised and independent of practice to be the bearers of formal law and sovereignty. Their laws were classified as informal and customary, still internally related to the vagaries of everyday practice, and the authority of their governors, if they were seen to exist at all, was non-sovereign or, at best, quasi-sovereign, still directly dependent on on-going agreement of the governed who could dissolve authority by walking away from it. There was either no coercive mechanism in 'primitive

[72] James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), pp. 9–70, 179–261.
[73] Tully, 'Introduction', in *Pufendorf: On the Duty of Man and Citizen*; Quentin Skinner, 'From the State of Princes to the Person of the State', in *Visions of Politics*, Vol. II, *Renaissance Virtues* (Cambridge: Cambridge University Press, 2002); and Skinner, 'Hobbes and the Purely Artificial Person of the State', in *Vision of Politics*, Vol. III, *Hobbes and Civil Society* (Cambridge: Cambridge University Press, 2002).

societies' or the arbitrary exercise of coercion by men in the more advanced stages, but not the systematic application of coercion through the law characteristic of the West. The more sophisticated theorists allowed for lesser degrees of law and sovereignty, but mostly for the purpose of entering into treaties that extinguished or subordinated that sovereignty, and for a degree of continuity of Indigenous self-government after conquest, yet under the sovereignty of European states. Non-Europeans thus were pre-emptively misrepresented as lacking precisely what Europe claimed to have in virtue of its recent institutionalisation: the integration of law and coercion separate from the ruled. Once the civic thesis was relegated to the pre-modern and non-European by this sleight of hand, the imperialism of modern, institutionally sovereign states could be justified by the Trojan horse that claims to bring the institutional preconditions of modern law, government and citizenship to a world rendered devoid of them.[74]

Given the pivotal justificatory role of the civil/institutional conception of the rule of law in the global spread of the institutional form of organisation, it is scarcely surprising that it is difficult to dislodge it, even after it has been shown to be untenable in theory. It has been shown that no system of rules could possibly be as autonomous as the civil thesis requires; that there are differences of degree but not of the formal versus informal kind between Western and non-Western legal and political orders; that negotiated, prac-tical know-how is the ground of procedural competence; and that norma-tivity remains related to use and practice in complicated ways. Despite these refutations, the background picture continues to prevail. But, as always, the most effective disproof is the pragmatic one. It includes the examples of the civicisation and democratisation of civil institutions by their own members that are so prominent today (aspects 8 and 9) and the obvious ability of non-Western peoples to govern themselves by their own distinc-tive laws and ways (see section 5).

(11) *Citizens acting together*. I want to turn to the other general type of civic relationship that I announced and set aside in the discussion of 'partnerships' (aspect 4): the citizen relationship. These are relationships among fellow citizens as equals in which there is no citizen/governor distinction. For the civic tradition, this is the more important type of civic relationship. These are the relationships citizens form whenever and wherever they 'act together' *as* citizens in various activities. The relation-ships are civic and democratic partnerships among equals negotiating and acting together. These are relationships of trust, conviviality or solidarity

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[74] Tully, *Strange Multiplicity*, pp. 58–98; and Chapter 7, this volume.

and civic friendship across identity-related differences and disagreements of various kinds. This is the realm of civic freedom as *isegoria*, citizens speaking to each other in equal relationships about their common concerns, rather than *parrhesia*, speaking to their governors in unequal relationships. On occasion one partner may take the lead and the others follow, especially when the task at hand requires specialised skills; however, it does not become a citizen/governance relationship, let alone a governance relationship, because the leader ceases to be a leader whenever the followers cease to follow. It then automatically becomes a relationship of equals acting together again, and they co-organise or 'coordinate' their interaction co-equally. It is tempting to say that they 'govern together' or are 'self-governing', but they are not 'governing' in so far as this term entails the correlate of the 'governed'. They are neither governing and being governed in turn nor simultaneously governing others and being governed by them. They are exercising power *together as* citizens all the way down. The citizenry cooperatively 'citizenise' rather than 'govern' the association composed of their citizen partnerships. They are literally 'doing democracy'. This is a distinct mode of exercising power different from governance and institutionalisation.[75]

There are two main families of citizen partnerships. One is when citizens organise themselves in order to negotiate in or over a citizen/governance relationship, as in deliberative forums, collective bargaining, negotiating NGOs, social movements and non-violent revolutionary movements if their internal relationships are citizen partnerships. The other is when citizens organise and run an entire activity on the basis of citizen partnership, not in relation to a government, but to citizenise the activity for its own sake (rather than submit to institutionalisation or governance). The classic examples of citizen partnerships are the celebrated practices of direct democracy, village commons and urban communes throughout history and today, such as Porte Allegre, autonomous communities in the North and South, and the Zapatistas. However, the most ubiquitous and familiar example is the vast array of civic 'cooperatives' in the broad sense of civic organisations comprised of citizen relationships.

If the private corporation is both the basis and flagship of modern citizenship – the institution in which moderns exercise their civil liberties in competing, working, shopping and consuming – then the commonplace cooperative is the comparative organisation of the civic tradition. Here citizens ignore the civil division between (non-democratic) private and

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[75] The verb 'citizenise' first appeared in 1593.

(representative) public spheres, between civil liberties and democratic rights. They participate as democratic citizens governing themselves directly in the economic sphere (and other spheres), citizenising the same kinds of activity that corporations privatise. In contrast to individual and corporate competition in market relations, cooperatives are founded on the ethics of cooperation. In the place of competitive free trade, they practise fair trade: trade relationships based on non-violent democratic negotiations among all citizens affected. In contrast to the goal of profit, many cooperatives are not for profit but for living democracy and mutual aid. Instead of globalising from above, they are grounded in the local first and foremost. All the human creativity that is channelled into the world of commerce and private profit by corporations is poured into experimentation with forms of democratic cooperation by the cooperative movements.[76] The most astonishing feature of the countless cooperatives on the planet is that they manifest, in concrete and practical forms, actual alternative worlds of democratic citizen partnerships *within* the interstices of the globally dominant political, legal and economic institutions of modern citizenship. They do not organise to overthrow the state or the capitalist mode of production, or to confront and negotiate with governors to change this or that regulation. They simply *enact* alternative worlds of citizen relationships around various activities, refusing to abjure their civicism to privatisation or governmentalisation. Cooperatives are thus classic examples of the unique civic activity of 'acting together' delineated in the discussion of types of civic activity (aspect 6).[77]

(12) *Civic goods*. A civic activity also has another important aspect, the *telos* or good towards which the activity is oriented and which the activity upholds and manifests. It gives the activity its civic character or ethos. A civic *telos* is thus a 'civic good'. Modern citizenship is 'egocentric'; oriented towards the protection of the liberty of individuals to be free from interference and to be free to exercise their autonomy in the private sphere (tier one rights) or in the official public sphere (tier two rights). In contrast, diverse

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[76] For the contrastive dimensions of the private corporation listed in this paragraph, see Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Penguin, 2004).

[77] For an introduction to cooperatives and cooperative democracy in this broad sense, see the global survey www.WiserEarth.org under *Civil Society Organizations*. For the history of consumer and producer cooperatives respectively, see Ellen Furlough and C. Strikwerda, eds., *Consumers Against Capitalism? Consumer Cooperation in Europe, North America, and Japan 1840–1990* (Lanham: Rowman and Littlefield, 1999); and Kimberley M. Grimes and L. Milgram, eds., *Artisans and Cooperatives: Developing Alternative Trade for the Global Economy* (Tucson: University of Arizona Press, 2000). For autonomous movements in Europe, see George Katsiaficas, *The Subversion of Politics: European Autonomous Movements and the Decolonization of Everyday Life* (New York: Humanities Press, 2007).

citizenship in both citizen and governance/citizen relationships is ecocentric and human-centric (or relationship-centric in both cases). Civic activities are oriented towards *caring for* the public or 'civic goods' of the correlative 'city': namely, the community and its members bound together by citizen/ governance and citizen relationships in interdependency relationships with non-human animals and the environment they bear as inhabitants of the natural habitat.[78] Civic goods are multiplex and they too are subject to on-going democratic negotiation. They include such democratic goods as civicising relationships in many spheres and the character development and conviviality that come from participation; and such substantive goods as caring for the environment, economic self-reliance, mutual aid, fair trade, equality among citizens and so on. When civic citizens call a particular governance relationship into question, they do so under the general critical ideal that it fails to realise civic goods in some specific way or another. These are goods that make possible and enhance civic forms of life.[79]

(13) *Gaia citizens*. Civic citizens are thus 'caretakers' of the goods of the dwelling places in which they live. In so doing, they dissolve the modernist distinction between culture and nature that separates civics from the places in which it is enacted. Every locale and network of locales of civic activity is not only culturally diverse but also a place in the natural world with its web of relationships of biological and ecological diversity. They see the inter-active and interdependent relationships between humans and nature as similar in kind to human relationships, and they attend to and care for them in similar ways. They listen and respond carefully to nature as a living being (Gaia) in their ecological sciences and daily practices of treading lightly. Civic citizens realise that this non-metaphorical field of possibilities in human/natural relationships and its limited *Spielraum* is the ground of all others. They are Gaia citizens.[80]

They also take their civic responsibility of caring for the goods of communities and members *in* dwelling places and placeways to be prior

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[78] See Bowden, *Caring*, pp. 141–82; Anderson, *Recognition of Being*, pp. 194–229.

[79] In his global survey of civic organisations, Paul Hawken classifies these goods into two main categories, social justice and the environment: Paul Hawken, *Blessed Unrest: How the Largest Movement in the World Came into Being and Why No One Saw it Coming* (New York: Viking, 2007). For the contrast between egocentric and ecocentric ethics, see Chapter 3, this volume.

[80] For a historical and interdisciplinary introduction to this ecological dimension of citizenship, see Emilio F. Moran, *People and Nature: An Introduction to Human Ecological Relations* (Oxford: Blackwell, 2006). See also John Borrows, '"Landed Citizenship": An Indigenous Declaration of Interdependence', in *Recovering Canada*; Capra, *The Web of Life*; James Lovelock, *The Revenge of Gaia: Why the Earth is Fighting Back – and How We Can Still Save Humanity* (London: Penguin, 2007); Hawken, *Blessed Unrest*.

to protecting the liberty rights of abstract individuals. They translate the latter back into one important civic good (negative freedom), detach it from free trade and place it among other goods that vie for attention in civic deliberative practices. They also reply that, in many cases, what oppressed individuals and minorities say they want is not protection from their own communities by a tier one right enforced by a distant national or international court, but democratic empowerment in their local communities (civic freedom). In theories of modernity, this grounded civic ethic is discredited by redescribing it as a pre-modern stage of historical and moral development and as a particular ethics of care in contrast to the allegedly higher and universal theory of morality and justice for the abstracted and independent individuals of modern citizenship. And the public good is redescribed as the spread of modern liberties and their underlying institutions of economic growth.[81] Notwithstanding the hegemony of this egocentric world-view with the rise of Western imperialism, multilayered ethics of civic freedom and care in human and natural relationships have been and continue to be the more basic and widely endorsed orientation of the world's peoples in their diverse cultures and traditions for millennia.[82] Moreover, the dawning awareness of the destruction of local communities, environmental devastation, global warming and climate change brought about by four centuries of expansion and exploitation under the sway of this modernising orientation, in which these public bads are concealed as 'externalities', is gradually undermining its credibility and paramountcy. Not only environmental and climate scientists of the world community and millions of citizens but even former modernisers and globalisers are quietly walking away from it and coming around to see the good of this alternative way of being a citizen *in* the world.[83]

   (14) *Non-violence*. Civic citizens are learning to be non-violent game players, and one of their most important civic activities today is the teaching and practice of non-violent dispute resolution and disarmament. As we have seen, the institutions of civil citizenship are spread and enforced by coercion. The justification for this is that people without the canonical civil institutions are not civilised and thus are not trustworthy. It is rational to

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[81] As we have seen in section 3 and Chapters 1, 4, 5 and 7, this volume.

[82] For the anthropological and interdisciplinary literature on this claim, see Moran, *People and Nature*.

[83] For examples of this turn in the World Bank, see Daly and Cobb, *For the Common Good*; and Stiglitz, *Globalization and Its Discontents*. Hawken, *Blessed Unrest*, dates the transitions to an ecological orientation among civic activists in non-Indigenous North America to the influence of Thoreau and Emerson in the mid-nineteenth century, Rachel Carson's *Silent Spring* in the 1960s, the environmental and social justice movements, and then climate change and global warming. In Canada one would add the name of David Suzuki.

distrust and fear them in their state of lawlessness and insecurity. Only the civilising force of institutionalised modern law and capitalism can render them civilised, predictable and trustworthy. If they do not submit or remove themselves, coercion can and should be used. Not surprisingly, the peoples in their own civilisational relationships who are approached, occupied and continuously patrolled by armed foreigners with this aggressive superior/ inferior attitude and conduct respond by fearing and distrusting *them*, and trying to protect themselves and expel the uninvited and uncivicised guests. The dynamics of fear and hatred and war preparation and war ensue (as we surveyed in section 3).

   Democratic citizens have learned from this depressing history that distrust and violence beget distrust and violence and from the history of non-violence that there is another more powerful way that leads to peace. They start from the simple premise that humans in all civilisations are already familiar with proto-civic and civicising relationships, even imperialistic westerners, and thus already able to recognise and enter into others. Accordingly, they approach others unarmed and with the embodied attitude and comportment of openness and trustworthiness. This takes the phenomenological form of the extended open hand, which says 'I trust you and come in peace, please reciprocate' in almost all cultures, in opposition to the closed fist. Only this vulnerable yet courageous and disarming comportment of groundless trust can initiate the reciprocal, pre-linguistic response and begin to weave a negotiated relationship of grounded mutual trust one strand at a time, civicising the partners as they interact, just as one does across differences in one's own neighbourhood. Democratisation cannot be spread by imposing institutional preconditions because non-violent grass-roots democratic relationships are the preconditions of democratisation. Consequently, peace cannot be the end of a long historical process of war and the spread of Western institutions. Peace is the *way*.[84] This commitment to non-violent democratic foreign policy is simply the extension of the non-coerced first step into civic citizenship (under aspect 3 above).[85]

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[84] This view, which is antithetical to modern imperial citizenship, is widely recognised in different ethical and spiritual traditions. For example, Jean Vanier, *Finding Peace* (Toronto: Anansi, 2003); Mahatma Gandhi, *All Men are Brothers: Autobiographical Reflections* (New York: Continuum, 2005); Hanh, *Keeping the Peace*; Deepak Chopra, *Peace is the Way: Bringing War and Violence to an End* (New York: Three Rivers Press, 2005).

[85] For the civic tradition of non-violence, see Ackerman and Duvall, *A Force More Powerful*; Mark Kurlansky, *Nonviolence: Twenty-Five Lessons from the History of a Dangerous Idea* (New York: Modern Library, 2006); and Transcend International, *Transcend: A Peace and Development Network for Conflict Transformation by Peaceful Means*, www.transcend.org.

(15) *Domination and liberation.* The final aspect of civic citizenship arises when citizens run up against unjustifiable limits to the civic activities in citizen/governance and citizen relationships that we have been discussing. In any of these activities, there is always a vast ensemble of relationships that are not open to negotiation in the course of the activities. These background non-negotiable relationships 'structure' and limit the foreground field of possible actions in citizen/governance and citizen relationships. I will call these discursive and non-discursive relationships 'structural' relationships. If citizens try to bring these into the space of negotiation, they are met with refusal, often because the structural relationships are the very basis of the unequal power and universal claim to authority of the hegemonic partners with whom they are negotiating. When, for example, a network of citizens negotiates with a multinational corporation over the sweat-shop conditions under which their products are made, the multinational corporation and the global, legal, economic and military relationships that support it remain immovably in the background, structuring the limited and unequal field of negotiable relationships. If citizens attempt to 'overcome' these background structural relationships, either by bringing them into the field of foreground negotiations (thereby transforming them into governance and citizen/ governance relationships) or by overthrowing them entirely, as in a revolution, they move beyond negotiation to 'strategies of confrontation'. Confrontation strategies constitute the fourth type of civic activity introduced under aspect 6.

The problem (from a civic standpoint) is not only that there are such background structural relationships to any local negotiation, but that, as we saw in the first part of this chapter, on modern citizenship, local structures are embedded in complex layers of national and imperial structural relationships of inequality, dependency and exploitation that have been built up over a half millennium. This vast network of multilayered structuration appears to be a 'world system' capable of *integrating* the foreground play of specific civic negotiations into its daily reproduction and expansion.[86] In many theories this is precisely what is meant by 'globalisation'. No responsible account of civic citizenship can avoid the question of how citizens can confront, de-imperialise and civicise this imperial leviathan, which seems able to make playthings out of the other four types of civic activity. All of section 5 addresses this question. However, to make the transition, I want to

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[86] The classic presentation of this is Immanuel Wallerstein's world systems theory. See the *Journal of World Systems Research* for this approach.

clarify the terms of structure (structural relationships) and agency (confrontation strategies) that disclose the field.

It is important to realise that all forms of civic activity take place within background structural relationships that are not open to negotiation *in the course of* the foreground negotiations. They are background enabling-conditions that facilitate negotiations while foreclosing infinite regress. In the sweat-shop example, the citizens appeal to sections of the background transnational trade law and international law to bring the multinational to the table. Civil citizens interpret them as the very 'conditions of possibility' of civic engagement and the grounds of universalisable citizenship, whereas civic citizens interpret them as singular and contingent enabling-conditions of a particular form of civic engagement with a history of struggles behind them; however, they both agree on their role in civic activities. They have to be held firm for the negotiations to take place, or, from the civic orientation, the activity of negotiating holds them in place. Thus, it is not the structural role of such relationships that makes them objectionable, as long as they are open to civic questioning and negotiations under other circumstances (see aspect 9 above). Rather, what makes structural relationships objectionable from the civic perspective is when they do not enable civic citizens to care for civic goods but disable them in some way. They suppress, disallow, block, arbitrarily constrain, misrecognise, render negotiators unequal, include and assimilate, co-opt and enable the powerful to bypass the democratising negotiations of citizens. Structural relationships that play these anti-democratic roles are structural relationships of 'domination'. The imperial relationships of inequality, dependency and exploitation are prime examples of such domineering relationships. They are the target of confrontation strategies.

If we focus on the classic modern revolutions against a state system of domination as the abstract paradigm of confrontation, then there appears to be a sharp binary distinction between negotiation and confrontation. In confrontations, 'revolutionary' citizens 'liberate' themselves from a structure of domination, whereas in negotiations, 'reforming' citizens exercise their limited civic freedom within it. But this unsituated picture obscures the complexity of real-world civic struggles in locales. From the situated perspective of civic citizens engaged in concrete civic activities, confrontation strategies form a continuum from refusing to negotiate in accordance with the rules to revolution. It is difficult to draw a sharp distinction between negotiation and confrontation. When does a negotiating tactic become an act of confrontation: refusal to follow an order, speaking truth to power, walk-out, witnessing, sit-in, protest, strike, general strike, picket line,

road block, local or global boycott, Ghandian non-cooperation, coordi-
nated uprising, rebellion or revolution? In each case, the citizens are refusing
to negotiate and confronting what is, from their local perspective, a struc-
tural relationship of domination. On what grounds, other than the binary
paradigm, could one say that a reforming negotiator who takes this coura-
geous step within the negotiations is necessarily co-opted and ineffective,
whereas the citizens who refuse to enter into negotiations and organise for
the revolution from the outside are necessarily confrontational and effec-
tive? Even retrospectively, it is difficult to say which confrontation activities
precipitated an overall change or transformation.

Confrontational strategies are multiplex not only in their tactics but also
in the civic activities they initiate. Think of these examples. Citizens who
have no civil right to protest or demonstrate against harms to civil goods do
so anyway, not simply to protest monologically, but to force the powers that
be to enter into negotiations, and they see this as a success only if mutually
binding negotiations transpire. In other cases, citizens bypass protests and
simply engage in a form of civic activity even though they do not have the
civil right to do so and on the grounds that it needs to be done. Médecins
Sans Frontières (Doctors Without Borders) is a global example of this
phenomenon of 'acting otherwise' without a civil right but not without
civic right.[87] If these sorts of confrontation turn out to be successful, the
initiatory precedents often harden into a customary or institutionalised civil
right to continue to engage in them (as in aspect 3). They are exemplars of
extending the use of 'citizenship' by enacting it that we discussed in the
introductory section. Neither case fits the revolutionary model, yet each
may well be revolutionary in its consequences. Conversely, neither is a case
of lawlessness or 'anything goes', for both are undertaken for the sake of
civic goods and to bring the activity under civicising relationships. As we
saw in section 2, such confrontational precedents are often absorbed into
the civil institutions and their civic history forgotten.

Correlative with the tendency to construe confrontation solely in terms
of revolution is the tendency to view structural relationships of domination
through the paradigm of a bounded system like a state or a system of states
(as is presupposed in the use of 'inside' and 'outside' above). Yet, from the
civic standpoint, structural relationships of domination are neither bounded
nor systemic. The common experience of confrontations suggests other-
wise. When citizens overthrow a local structural relationship or convert it

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[87] Médecins sans Frontières, www.msf.org. For an analysis of this example from a civic perspective, see
Michel Foucault, 'Confronting Governments: Human Rights', in *The Essential Works, Vol. III*.

into a citizen/governance relationship (or a citizen relationship in cases of cooperatising private corporations), they find a further layer of dominating structural relationships behind it, and so have always to begin again the next morning.[88] The decisive example is the decolonisation revolutions of the middle of the twentieth century and the de-imperialisation revolutions in the new world order today. As we saw in section 3, citizens of the colonies were able to overthrow structural relationships of *political* domination (colonialism) by a complex repertoire of confrontation strategies, but they found the political powers they (or their elites) acquired deeply embedded in further layers of background imperial structural relationships of domination. The revolutionary anti-imperial struggles since the end of decolonisation have confirmed this complex situation. A successful revolution against the local dependent elite is followed by financial boycotts, economic pressure, tactics of destabilisation, covert and proxy military operations and, if necessary, the overt fist of US military intervention in order to 'overthrow' the popular government.[89] The classic picture of a bounded people overthrowing their unjust regime and setting up a new government as they see fit within bounded states has quite limited application, yet it continues to prevail, perhaps because it hides the unjust reality.

These examples, and others to follow, also illustrate what we saw in section 3. The structural relationships of global domination are not only historically layered rather than bounded but also networked rather than systemic. What holds structural relationships of domination in place and integrates both civic negotiations *and* confrontations into an on-going global organisation is neither a functional property of a world system nor a hidden hand, as it appears from the theoretical gaze. Rather, it is the actual contingent exercise by humans of all the considerable means available to the hegemonic partners in the layers of informal imperial networks that encircle the globe. The networkisation of informal imperialism beginning in the 1970s consists in linking together the various unequal nodes (communicative, economic, financial, military, legal, educational and so on) in structural and governance relationships that make up the network. For our purposes,

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[88] See Chapter 4, this volume.
[89] In addition to the literature referred to on this topic in Chapters 5 and 7 of this volume, see Stephen Kinzer, *Overthrow: America's Century of Regime Change from Hawaii to Iraq* (New York: Henry Holt, 2006); James Carroll, *House of War: The Pentagon and the Disastrous Rise of American Power* (New York: Houghton Mifflin, 2006); Chalmers Johnson, *Nemesis: The Last Days of the American Republic* (New York: Metropolitan, 2006). For the early history of intervention, see Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage, 2007). The imperialists celebrate these overthrows. See, for example, Kaplan, *Imperial Grunts*.

the crucial feature of this non-systemic form of organisation is that the nodes are composed of humans networking in a variety of different forms of association, all of which rest ultimately on the negotiated practices of the participants in their relationships with each other.[90] At the end of the day, therefore, what keeps the imperial network going and the structural relationships of domination in their background place is nothing more (nor less) than the activities of powerfully situated actors to resist, contain, roll back and circumscribe the uncontainable democratising negotiations and confrontations of civic citizens in a multiplicity of local nodes. These sites of civic activity are the Achilles heel of informal imperialism. To see dominating relationships as a systemic structure and to organise confrontation accordingly is to misrepresent the field of local and global citizenship and to overlook the concrete possibilities available on it for creative and effective negotiations and confrontations of civicisation and de-imperialisation.

With this more accurate survey of the field in hand, we are now in a position to turn to glocal citizenship practices.

5   THE GLOCALISATION OF CIVIC AND GLOCAL CITIZENSHIP

In contrast to the two ways in which civil citizenship is spread globally (outlined in section 3), I will now examine the two distinctive ways in which diverse civic citizenship is spread around the world. One trend is by the persistence and recent renaissance of local forms of civic citizenship practices despite the globalisation of modern citizenship. This localisation trend is illustrated by means of its three distinctive aspects. The other trend is by the global civic federation and networkisation of local diverse citizenship practices. Three civic aspects are used to illustrate this worldwide trend. I call this global networking 'glocalisation' and the networkers 'glocal citizens' because they are grounded in and hyperextend the civic features of local citizenship.[91]

I will also discuss these two ways of glocalising civic citizenship in relation to the global crisis of citizenship we examined in section 3. To recollect, the formal and then informal imperial spread of modern citizenship and the underlying institutions it sends on ahead to lay the foundations of

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[90] For the networkisation of informal imperial governance see Chapter 6, this volume. See also Chapter 3 for another argument for the non-systemic character of large historical concatenations of practices.

[91] Section 5 draws on the chapters and literature referred to in Part 2 of this volume, without repeating the references.

civilisation have led in many cases, at best, to a form of global cosmopolitan citizenship for official NGOs and multinational corporations; low-intensity citizenship for dependent elites of the former colonies; the dispossession or marginalisation of local citizenship and governance; the subordination of local economies and polities to global corporations and trade regimes; enormous inequalities; violent cycles of repression and resistance; and increasing environmental destruction. This crisis of modernity/coloniality has coincided with a crisis of democratic deficits in the representative democracies of the hegemonic states. The informal imperial networks of economic, legal, cultural, media, security and military relationships not only bypass and undercut the diverse citizenship of billions of people who are governed by them. They also manipulate, downsize and disregard the representative and legal institutions of modern citizenship that are supposed to bring them under representative authority. These trends of globalisation constitute a crisis of global citizenship that, viewed in isolation, fosters a pervasive sense of disempowerment and disenchantment. I want now to move around and reinterpret them from the perspective of the six aspects of glocal citizenship.

(1) *Another world is actual.* Despite these devastating trends, another world of legal, political, ecological and even economic diversity has survived and continues to be the *loci* of civic activities for millions of people. The reason for this remarkable survival and renaissance in the post-colonial world, unknown to the dominant debate over global citizenship, is that Western imperialism governs through indirect or informal means and thus depends on the active collaboration of imperialised peoples exercising constrained local self-government in their own cultural ways. Those who are not part of the westernised elite have been able to keep their diverse practices and forms of life alive to some extent within the considerable *Spielraum* of informal dependency relationships. Another world of pluralism exists in the interstices of globalisation.[92] One of the most astonishing examples is the survival and resurgence of 250 million Indigenous peoples with their traditions of governance and Gaia-based citizenship after five hundred years of genocide, dispossession, marginalisation and relentless assimilation.[93] The lived experience of citizenship in the present age is thus different from and more multiplex than it is portrayed through the

[92] See Chapters 5 and 7, this volume; for an introduction to this historical field, see Benton, *Law and Colonial Cultures.*
[93] Mander and Tauli-Corpuz, eds., *Paradigm Wars.*

sweeping generalisations of globalisation theories of both defenders and critics.[94]

Many existing diverse practices of governance have been corrupted into exploitative and despotic relationships by their dependency on indirect rule, and others were always non-civic.[95] The point is neither to reject them simply because they are non-modern nor to accept them uncritically because they are different or traditional. It is rather to bring them into comparative and critical discussions with other forms of governance and citizenship and to explore ways in which citizens can civicise them by speaking and acting within them.[96] In the modernised West, a vast repertoire of local citizenship practices have also survived within the interstices of state-centric modern citizenship, such as traditional working-class organisations and new and creative forms of cooperatives and networks linking rural and urban citizens in countless ways and around various civic goods (the environment, non-violent dispute resolution, low-cost housing, anti-racism, organic farming, place-based pedagogy, neighbourhood security and so on). These old and new citizenship practices and improvisations are multiplying rapidly today in the 'return to the local' of a new generation disenchanted with the elite manipulation of representative citizenship, the destruction of local communities by a half millennia of globalisation from above, and moved by the ecological revolution of the last century.[97]

(2) *Democratising democracy.* The second significant aspect of glocalising civic citizenship is the array of movements to 'democratise democracy' we touched on in section 4. The aim of these movements is to democratise the legal, political and bureaucratic institutions of modern representative democracy so that the people who are subject to them are consulted and have an effective negotiated say within them *wherever* power is exercised non-democratically and unaccountably, in ad hoc confrontations of speaking out and 'going public' or in more formal modes of negotiation in which

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[94] Vandana Shiva, *Earth Democracy: Justice, Sustainability and Peace* (Cambridge: South End Press, 2005); David McNally, *Another World is Possible: Globalization and Anti-Capitalism* (Winnipeg: Arbeiter Ring, 2006).

[95] As we have seen in section 3, the roles of the US military and multinational corporations in countries in Latin America and Saudi Arabia (and other petrotyrannies) are examples of how informal imperialism (by a low-intensity civil democracy) corrupts local governments, props up the most repressive regimes and subverts grass-roots democracy. For Latin America, see Grandin, *Empire's Workshop*, and for Saudi Arabia, see Robert Vitalis, *America's Kingdom: Mythmaking on the Saudi Oil Frontier* (San Francisco: Stanford University Press, 2007). For a general survey of the petrotyrannies under informal imperialism, see John Bacher, *Petrotyranny* (Toronto: Dundurn Press, 2000).

[96] Mahmood Mamdani, 'Beyond Settler and Natives as Political Identities: Overcoming the Legacy of Colonialism', *Comparative Studies in Society and History* 43(4), 2001: 651–64.

[97] Colin Hines, *Localization: A Global Manifesto* (London: Earthscan, 2000).

those who govern must listen and give an account. These are thus movements to 'civicise' the civil institutions of modern citizenship. Here civic citizens join hands with civil citizens engaged in the same projects from within – such as proportional representation, deliberative democracy, democratic constitutionalism, legal and political pluralism, and civic *versus* civil security. Globally, they include the movements to democratise the institutions of global governance and to establish at the UN an effective democratic forum that represents the majority of the peoples of the world who are subject to the relationships of inequality, dependency and exploitation.[98]

(3) *Post-colonial civics.* Since decolonisation and the triumph of informal imperialism, millions of the world's poor have been forced to migrate from the colonised world to the imperial countries to find work in a closely controlled global labour market.[99] Despite the hardships of poverty, slavery, exploitation, racism, xenophobia and second-class or non-citizenship, they refuse to be servile subjects. Instead, they exercise their civic citizenship in new and untoward ways, negotiating their diverse cultural ways into the public and private institutions of modern citizenship. This 'journey back' or 'boomerang effect' of formerly colonised peoples now civicising the imperial countries challenges the dominant imperial, nationalist and racist cultures encoded in modern citizenship institutions and creates new forms of multiculturalism and multi-civilisationalism on the ground, both in the urban centres and the diasporic relationships (transnational civicscapes) they sustain with their former countries. These grass-roots multicultural communities in 'mongrel cities' generate new kinds of citizen relationships of conviviality among their members and supportive local civic citizens groups that are often overlooked by, or poorly integrated into, the official policies of respect for diversity.[100]

The three aspects of this multifaceted trend are reviving and transforming practices of local civic citizenship. These worldwide local sources and resources of civic citizenship are much stronger and more resilient than we think. They are the bases of glocal citizenship. NGOs, social movements, networks, informal civic federations and similar creative improvisations are the

[98] Boaventura de Sousa Santos, ed., *Democratizing Democracy: Beyond the Liberal Democratic Canon* (London: Verso, 2005); Ian Loader and Neil Walker, *Civilizing Security* (Cambridge: Cambridge University Press, 2007); Archibugi, Held and Köhler, eds., *Re-imagining Political Community*; and Chapters 2 and 4, this volume. Bronislaw Malinowski called for the democratisation of the UN at its inception and predicted the imperial and violent consequences of the control of the great powers, in *Freedom and Civilization* (Bloomington: Indiana University Press, 1944), pp. 1–16.

[99] Richmond, *Global Apartheid*.

[100] Leonine Sandercock, *Cosmopolis II: Mongrel Cities in the Twenty-First Century* (London: Continuum, 2003); and Chapter 8, this volume.

means by which glocal citizens link together and so glocalise these local civic bases. These networks are civic and glocal to the extent that they (i) are grounded in and accountable to the local civic nodes, and (ii) hyperextend civic relationships (citizen and citizen/governance) and other civic aspects in their own organisation and their relationships with others. Of course not all networks are composed of citizen and citizen/governance partnerships. Many are institutional and governmental in form. They 'mobilise' rather than civicise. However, the network mode of organisation has the flexibility and potential to be organised civically and democratically all the way down. This mode of being-with is within its field of possibilities.[101] If, in contrast, networkers are organised institutionally and/or governmentally, and if they see themselves as the bearers of the gifts of civilisation and modern citizenship to the less developed, then they are modern (civil and cosmopolitan) imperial networks.[102] In addition to providing mutual learning and aid to their member civic nodes, glocal networks also crucially provide the civic means of democratising the persisting global imperial relationships of inequality, exploitation and dependency that are the major cause of the crisis of global citizenship. There are three major aspects of this glocal networking trend that are slowly but surely de-imperialising and democratising the predominant imperial relationships, and these are outlined in (4) to (6).

(4) *Glocal negotiating networks.* As we have seen in section 3, the persisting economic, legal, political, debt, media, educational and military relationships of informal imperialism are so unequal that, although the elites within the former colonies are able to have a say and negotiate (in global governance institutions and elsewhere), they (the G120) are barely able to modify these governance relationships, let alone transform them into governance/citizen relationships, and they are in turn scarcely in civicised relationships with their own people (the majority of the world's population). Similarly, the hegemonic partners in the relationships – the great powers and their multinational corporations – are not held democratically accountable by their own citizens. Even where there are well-defined international laws and rights, the more powerful bypass or manipulate them to their advantage so they function as a legitimating façade rather than an effective guarantee.[103] Since the only guarantee of democratic rights is the concrete exercise of civic

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[101] Chapter 6, this volume.

[102] Ayers, 'Demystifying Democratization'; Tony Evans and Alison Ayers, 'In the Service of Power: The Global Political Economy of Citizenship and Human Rights', *Citizenship Studies* 10(3), 2006: 289–308.

[103] See Chapter 4, this volume. This is also the conclusion of Micheline Ishay, *The History of Human Rights*, and she recommends glocal citizenship networks as the most effective response (pp. 348–9).

freedom, the initial role of a glocal network is to link together glocally enough local citizenship practices governed by any of these unequal relationships to single the relationship out and contest it. The networked citizens then call the existence and privacy of the unequal relationship into the space of public questioning and put enough soft power pressure on the responsible powers that be to bring them to negotiations in the most effective place or places. It is thus the glocalisation of the whole practice of civic negotiation and confrontation vis-à-vis unequal global governance relationships outlined in section 4.

Networked contestation, negotiation and confrontation can take place anywhere and by anybody in the relationships (for example, in sweat shops and/or consumer boycott of sweat-shop products, in the WTO or in protest against the WTO). It should not be the burden of the wretched of the earth to refuse to submit and act otherwise, as in the dominant theories of resistance, but of the most powerful and privileged to refuse to comply and engage in the work of glocal citizenship. In doing this, citizens in glocal networks are engaged in civicising and democratising these imperial relationships by bringing them under the shared authority of all those subject to them *in* their local places and ways. They can steer the negotiations into the civil, legal and political institutions of the most effective nation-state or of global civil society, or they can negotiate directly in civic society, or they can pursue both strategies at once. If the negotiations take hold, the subaltern partner ceases to be 'dependent' but also does *not* become 'independent' (as was imagined in the unsuccessful theories of decolonisation). Rather, the partners gradually become 'interdependent' on the on-going democratic relationships between them (as we encountered in the local examples in section 4, aspect 7). These innumerable practices of glocal negotiation and confrontation constitute one non-violent path of de-imperialisation and democratisation characteristic of the civic tradition.[104]

(5) *Glocal cooperatives*. The second aspect of glocal networking that works to transform imperial relationships into democratic ones is the spread of cooperative citizen partnerships between partners in the North and global South. These cooperative informal federations are not strategies of contestation and negotiation, but of directly acting otherwise; of creating non-violent civic relationships between partners in the North and global

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This is also the view of Vandana Shiva, 'The Greening of Global Reach', in *The Geopolitics Reader*, eds. Simon Daly and P. Routledge (London: Routledge, 1998); and Andrew Dobson, 'States, Citizens and the Environment', in *States and Citizens*.

[104] See Iris Marion Young, *Global Challenges: War, Self-Determination and Responsibility for Justice* (Cambridge: Polity Press, 2007), especially pp. 137–9; and Chapter 4, this volume.

South. The relationships among all the partners in the network, and within each partner's local community association, are worked out civically and democratically as they go along. That is, they often build on the local cooperatives of section 4, aspect 11. Although there are thousands of examples, perhaps the best known are glocal cooperative 'fair trade' and self-reliance relationships, such as the specific Fair Trade and Level Ground cases, in contrast to competitive free trade; glocal networks of non-violent dispute resolution in contrast to war, militarisation and securitisation; and deep ecology networks in contrast to (oxymoronic) sustainable development.[105] Like their local cooperative partners, these glocal cooperative citizens work within the *Spielraum* of existing global rules in each case, yet they play a completely different game with different goods. They create and live 'another world' in their civic and glocal activities.[106]

The World Social Forum has emerged as an important place where citizens engaged in civic and glocal activities can meet each year. It is to glocal citizenship what the World Economic Forum is to modern citizenship. The forum does not take a position but, rather, provides a civic space in which participants from diverse citizenship practices can enter into civic dialogues of translation, comparison, criticism, reciprocal learning and further networking. They share the knowledge of their different arts of citizenship with each other without granting modern citizenship the universal and superior status it claims for itself and on the presumption that each mode of citizenship is partial and incomplete, so each can learn its limitations from others. The forum also hopes to develop closer links of reciprocal learning between academic research and the practices of citizenship we have been discussing, perhaps setting up popular universities of the social movements for this purpose.[107]

(6) *Civic research.* Relationships of reciprocal elucidation between academic research and civic activists, of which the popular universities are only one example, bring into being yet another kind of glocal partnership. These are glocal pedagogical partnerships that aim to challenge the institutional separation between university education and its 'fields of study' that is

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[105] For fair trade and mutual aid as the antidote to free trade, see Dunkley, *Free Trade*. For examples see Chapter 8, this volume.

[106] For a global survey see Hawken, *Blessed Unrest*, and his website of civicising networks around the world at www.wiserearth.org; Grimes and Milgram, eds., *Artisans and Cooperatives*; and Chapter 8, this volume. For the primary importance of building webs of nurturing relationships among local ecologies, food producers, food consumers and waste recyclers, see Moran, *People and Nature*.

[107] Boaventura de Sousa Santos, *The Rise of the Global Left: The World Social Forum and Beyond* (London: Zed Books, 2006); Janet Conway, 'Citizenship in a Time of Empire: The World Social Forum as a New Public Space', *Citizenship Studies* 8(4), 2004: 367–81.

characteristic of the modern university.[108] They also challenge the current privatisation and globalisation of this institutional model of the university. Glocal pedagogical relationships aim to bring university learners, teachers and researchers into a more practical and mutually edifying relationship with the activists and activities studied, as well as to encourage universities to become good responsible civic citizens of their own locales, sharing their knowledges with local communities and becoming exemplary glocal citizens. This is a civicising revolution in the way we think of and practise higher education in relation to public affairs.[109]

These revolutionary trends of the twenty-first century illustrate one of the most fundamental practical advantages of a civic/glocal orientation. Many if not most of the global harms to public goods we have discussed, from inequality, exploitation and war to climate change and global warming caused by imperial competition over scarce resources, cross the jurisdictional boundaries of the institutions of civil and cosmopolitan citizenship. There is thus a series of disempowering 'disjunctures' between the agents who cause the harms and the people who are affected by them, for the agents responsible are often not subject to the jurisdiction of the civil institutions in which those affected have the status of civil citizens.[110] This is a critical problem of civil citizenship organised within nation-states and an international law system of formally equal yet substantively unequal and dependent nation-states. It can be addressed within the civil tradition only by the establishment of something like a world state or its negative surrogate (an alliance of powerful states) to enforce the empire of rules of modern cosmopolitan citizenship and its underlying institutions. Yet, as we have seen, this further and perhaps ultimate projection of this imperial model would bring with it all the preconditions of the global harms in the first place.[111] The civic tradition simply does not have this disenfranchising disjuncture problem. By starting from the premise that any community subject to and affected by a relationship of governance that harms a public

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[108] This particular institutional separation of university education is part of the more general modern trend discussed in section 4, aspect 9.

[109] Michael R. M'Gonigle and Justine Stark, *Planet U: Sustaining the World, Reinventing the University* (Gabriola Island: New Society Publishers, 2006); and *Volume I*, Chapter 1, for this pedagogical relationship between academic research teams and civic citizens.

[110] David Held introduced this 'disjuncture' problem (see Chapter 2, this volume).

[111] For my objections to various plans to extend the imperial project, see Chapters 5, 7, and 8, this volume. For another example, see G. John Ikenberry and Anne-Marie Slaughter, *Forging a World of Liberty Under Law: US National Security in the 21st Century: The Princeton Project on National Security* (Princeton: Woodrow Wilson School of Public and International Affairs, Princeton University, 2006).

good is for that very reason a citizenry with the civic right to hold the responsible party accountable through civic negotiations, it links democratic organisation, networkisation and civicised institutionalisation directly to the specific power relationship at issue and at the most effective sites.

CONCLUSION: EXEMPLARS

If all the millions of examples of civic and glocal citizenship practices could be taken in a single view, as the tradition of modern citizenship and globalisation presents its inexorable progress, perhaps this would help to dissipate the sense of disempowerment and disenchantment the present crisis induces. But, from the situated standpoint of diverse citizenship, this cannot be done and the attempt would overlook the very diversity that the civic approach aims to disclose, keep in view, learn from and work with. Civic empowerment and enchantment do not come from grand narratives of universal progress but from *praxis* – actual participation in civic activities with others where we become the citizens we can be. But this response raises the question of the motive for participation in the first place. The civic answer has always been the motivating force of examples of civic activities and exemplars of civic citizenship. Since the civic tradition has no place for the cult of great leaders and leadership but only for citizens linking arms and working together in partnerships, it turns once again to everyday practice for these motivating stories.

Fortunately today there are over 1 million examples of civic and glocal networks and cooperatives and millions of exemplary ordinary citizens from all walks of life in all locales that move potential citizens of all ages to participate. They arguably make up the largest non-centralised and diverse coalition of movements in the world.[112] But perhaps an illustrative exemplar for our dark times of the kind of glocal citizenship I have sketched is Mahatma Gandhi and his lifelong activities to rid the world of imperialism. His ordinary, civic and glocal life continues to move millions of people to begin to act. The reason for this, I believe, is the simplicity of the four citizenship practices his life of *Satyagraha* manifests.[113]

The first is active non-cooperation vis-à-vis any imperial (non-civic) relationship and its corresponding idea of one universal civilisation or cosmopolitanism for all. The second is the way of peace. For Gandhi this consists in civic organisation and uncompromising non-violent confrontation and

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[112] Hawken, *Blessed Unrest*, makes this argument.
[113] For Gandhi's life and influence, see Weber, *Gandhi as Disciple and Mentor*.

negotiation with those responsible for imperial relationships with the aim of converting them to non-violent, democratic and peaceful relationships. Thirdly, for these two activities to be effective they have to be grounded in the local field and practices of the alternative world you want to bring about. For Gandhi this consists of 'constructive work' in local, self-reliant, civically organised Indian villages and respectful participation in their ways. Like millions of glocal journeyers, Gandhi started from and returned home to the close and closest things after a sojourn in the transcendent world of modern citizenship, seeing these homespun activities in a new and enchanting light. 'Where have I been?' one often exclaims at this moment of insight and transformation into a citizen who sees, thinks and acts glocally.[114] Fourthly, the first three practices are integrated into a singular style of civic life by the more personal practices of self-awareness and self-formation.[115] For Gandhi these arts and exercises constitute a spiritual relationship to oneself in one's relationships with others and the environing natural and spiritual worlds.[116] This is a meditative relationship of working truthfully on oneself and one's attitude to improve how one conducts oneself in the challenging yet rewarding civic relationships with others. These are daily practices of becoming an exemplary citizen.

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[114] A moving rendition of such a journey of self-discovery, which walks us through many of the steps of this chapter, was written by Nietzsche in Nice in the summer of 1886 when he was composing the life-affirming fifth book of the *Gay Science*. See Friedrich Nietzsche, 'Preface 1886', in *Human, All too Human*. For an analysis of experiences of transformation from subject to active citizen, see Norval, *Aversive Democracy*.

[115] For the place of practices of the self see section 4.

[116] Similar practices are available in every culture. See David Fontana, *The Meditator's Handbook: A Complete Guide to Eastern and Western Meditation Techniques* (London: Thorsons, 1992).

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Index to Volume II

IDEAS IN CONTEXT

Edited by
QUENTIN SKINNER AND JAMES TULLY