

# Global Governance without Global Government?

## Habermas on Postnational Democracy

*The Postnational Constellation: Political Essays*, by Jürgen Habermas. Trans. and ed. by Max Pensky. Cambridge, MA: MIT Press, 2001. 190 pp. \$57.50 (cloth); \$25 (paper).

*Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, ed. Giovanna Borradori. Chicago: University of Chicago Press, 2003. 208 pp. \$25 (cloth); \$15 (paper).

*Time of Transitions*, by Jürgen Habermas. Trans. and ed. by Ciaran Cronin and Max Pensky. Cambridge, UK: Polity, 2006. 188 pp. \$54.95 (cloth); \$22.95 (paper).

*The Divided West*, by Jürgen Habermas. Trans. and ed. by Ciaran Cronin. Cambridge, UK: Polity, 2006. 224 pp. \$59.95 (cloth); \$19.95 (paper).

Rapidly approaching his seventy-ninth birthday, Jürgen Habermas continues to generate books and articles on an astonishing variety of topics at a no less astounding rate. Since the mid-1990s, his attention has fastened on a question of special interest to readers of this journal: can deliberative democracy be successfully extended to the global arena, and if so, what institutional forms should it take? Especially in Europe, his reflections on globalization have already garnered significant public as well as scholarly attention.<sup>1</sup> Habermas's starting point is eminently *political*. Like many other principled democrats, he worries that the ongoing process of globalization threatens popular sovereignty at the local and national levels, where it alone has been more or less successfully established. As nation-states find themselves enmeshed in complex and increasingly dense networks of supranational decision-making (e.g., the EU, WTO, or IMF), existing forms of political participation seem ever more remote from political and economic decisions “negotiated under asymmetrical relations of

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**Author's Note:** I would like publicly to thank the students in my fall 2006 graduate seminar on “Globalization and Democratic Theory” at Indiana University (Bloomington) for a series of lively discussions on Habermas's writings on globalization. As they will see, they “won” the argument, since many of their astute critical observations and insights inspired my remarks here.

power” but having far-reaching ramifications (*Time of Transition* [hereafter, *TT*], 95). A committed social democrat, he also shares the worries of many on the left that globalization undermines the capacity of the welfare state to mitigate capitalism’s harshest features. Conversant in the most advanced empirical research, he notes that national governments “still enjoy a range of options in policy areas that have an immediate impact on the covariant relationship between levels of employment and social welfare” (*TT*, 95). Nonetheless, globalization tends to lead to reductions in corporate tax rates and a general shrinkage of public finances. At the very least, it remains unclear whether smaller or medium-sized states can realistically “withstand a creeping assimilation to the [neoliberal] social model being foisted upon them by the currently dominant economic regime” (*TT*, 96).

Motored by these anxieties, Habermas’s intellectual energy has concentrated on explaining how democracy can “catch up” to our globalizing economy, and the misfit between nationally based democracy and the realities of post-national decision-making consequently overcome. For better or worse, this programmatic starting point occasionally lends a defensive tone to his reflections. First and foremost, the political task at hand now appears to entail the *preservation* of the existing achievements of the democratic welfare state, albeit necessarily via novel experiments in self-government “beyond the nation-state.” Globalization’s challenge to the welfare state means that politically responsible intellectuals need to figure out how to conserve the personal, political, and social liberties to which those of us lucky enough to reside in the privileged countries of the North have become acclimated. Arguing against those who lament the lack of a wide-ranging constitutional debate along the lines of revolutionary France or America, Habermas asserts that the contemporary European political and intellectual situation is *not* akin to that of our Enlightenment republican predecessors:

the challenge is less to invent something new than to conserve the great achievements of the European nation-state beyond its frontiers in a new form. What is new is only the entity which will arise through these endeavors. What must be conserved are the standards of living, the opportunities for education and leisure, and the social space for personal self-realization which are necessary to ensure the fair value of individual liberty, and thereby make democratic participation possible. (*TT*, 90)

Despite its novel institutional form, the European Union’s main normative justification is that existing levels of self-government and social policy can only be preserved at the supranational level: the EU potentially allows us to

see how political and economic institutions can adjust themselves to the realities of globalization. In spite of his own well-known enthusiasm for a European Constitution, for Habermas “the constitutional question is no longer the key to the problems we have to solve” in part because Europe’s would-be constitutional architects are “merely treading well-worn paths” (TT, 90).

As always, Habermas’ political instincts are sound and refreshingly hard-headed. In the face of a resurgent neo-liberalism, the main intellectual undertaking for social democrats and welfare-state liberals indeed probably consists of determining how to preserve the fragile achievements of the welfare state amid accelerating globalization. Examined from the broader perspective of the Frankfurt School of critical theory whose greatest representative Habermas undoubtedly has become, however, the defensive character of his recent reflections represents a substantial deflation of utopian energies. In his recent writings on globalization, Habermas has little to say about *deepening* or *broadening* self-government, rather than merely defending or salvaging it, let alone moving aggressively towards what *Between Facts and Norms* (1992) described as the necessity of a “reflexive” *reform* and *extension* of the welfare state. No mention is made of his earlier critical ideas about the existing welfare state or, for example, the pathological forms of “colonization of the lifeworld” he attributed to it in *Theory of Communicative Action* (1981). As with many others on the democratic left, the ascent of neoliberalism has apparently left Habermas politically chastened.

More worrisome conceptually is the fundamental structure of an argument that commences from the assumption that democracy should “catch up” to economic and technological processes which remain in many decisive ways deeply pathological.<sup>2</sup> Why not instead begin with a critical-minded analysis of globalization which distinguishes between its historically necessary and transient attributes, as well as between its potentially positive and pathological features? If democracy is forced to catch up or adjust itself to the latter as well as the former, it will suffer: democratic institutions made-to-order for global capitalism are unlikely to prove normatively attractive.<sup>3</sup> Of course, Habermas is no admirer of globalizing capitalism. Nonetheless, his formulation of the enigma at hand risks distorting the intellectual and political tasks we face. We need a political theory attuned to the ways in which globalization challenges democracy. Yet we also require a critical theory of the multi-pronged and contradictory processes that tend sometimes misleadingly to get lumped together under the catchall rubric of globalization.

Notwithstanding these dangers, Habermas's reflections remain impressive. His ideas on global democracy have undergone a number of significant modifications since he began articulating them over a decade ago. Yet the basic contours of his model of global governance can now be clearly discerned: Habermas creatively defends a three-tiered system of global governance, where decision-making at the level of the nation-state is complemented by novel modes of what he describes as *supranational* (e.g., worldwide or global) authority and *transnational* (chiefly regional or continental) democracy. Even with the defensive intonation of some of his comments, his conception of global governance turns out to be *anything but* institutionally cautious or conservative in character. At the cost of neglecting the much-discussed normative edifice—namely Habermas's conception of deliberative democracy and the theory of communicative action at its base—on which it builds, I highlight its main institutional features. Unfortunately, his particular rendition of the now theoretically fashionable view that we can realize global *governance* without substantial elements of global *government* proves overstated.<sup>4</sup> I start with Habermas's reflections on Kant's cosmopolitanism and its purported institutional weaknesses (I), before turning to critically examine Habermas's own tripartite vision of global governance (II).

## I

In Habermas's writings on globalization since the mid-1990s, Kant has served as a constant intellectual companion, both inspiring him and functioning as a friendly target against whom he has developed his own position.<sup>5</sup> *The Divided West* (hereafter, *DW*) again revisits familiar debates about Kant's international political theory. Like many other recent cosmopolitan theorists, Habermas praises Kant's prescience in anticipating the now widely documented trend according to which "international law as a law of *states*" becomes an identifiably "cosmopolitan law as a law of *individuals*" in which "the latter are no longer legal subjects merely as citizens of their respective states, but also as members" of a universal or cosmopolitan constitutional order (*DW*, 124). As Habermas notes, however, Kant oscillated between envisioning the constitutionalization of cosmopolitan law in terms of a world republic and an institutionally more modest league or confederation of nation-states. Kant famously hesitated before consistently embracing the idea of a single world republic because he feared the dangers of a despotic world state: even a world republic might devolve into a "universal monarchy."<sup>6</sup> Habermas is basically sympathetic to

Kant's skepticism on this score, even though he sharply criticizes the traditional conception of indivisible state sovereignty on which Kant's original anxieties supposedly rested. "The democratic federal state writ large—the global state of nations or world republic—is the wrong model" for thinking about global governance (*DW*, 134). Unfortunately, the competing tendency to defend the virtues of a league or confederation founders as well. Even if we ignore the difficult exegetical questions raised by seemingly contradictory comments "over which generations of Kant interpreters have racked their brains," Kant's "idea of an ever-expanding federation of republics engaging in commerce which renounce wars of aggression" rests on untenable assumptions (*DW*, 125, 128). Inadequately cognizant of the pathologies of modern capitalism, Kant naively pinned his hopes on the pacifying influence of free trade and commerce, and his account was too closely tied, as many commentators have noted, to a dubious philosophy of history.

How then to overcome this bottleneck in Kant's theory and provide a secure constitutional basis for an emerging cosmopolitan system of rights? In Habermas's view, a vital lesson can be gleaned from Kant's internal ambiguities. Heavily indebted to the work of the German political theorist Hauke Brunkhorst,<sup>7</sup> Habermas introduces a sharp conceptual distinction between "state" and "constitution":

A "state" is a complex of hierarchically organized capacities available for the exercise of political power or the implementation of political programs; a "constitution," by contrast, defines a horizontal association of citizens by laying down the fundamental rights that free and equal founders mutually grant each other. (*DW*, 131)

This simple but decisive conceptual clarification, he claims, allows us to overcome the immanent failings of Kant's cosmopolitanism. Relying on it, we can reject a series of false analogies which have misleadingly enticed many writers to envision "the constitutionalization of international law as simply a continuation of the development of the [nationally based] constitutional state at the global level," most likely in the form of a global state-like federal system (*DW*, 134). In European history, the process of state-building and the rise of constitutionalism were, of course, intimately connected in complex and contradictory ways. However, there is no compelling conceptual reason for assuming that "state" and "constitution" will necessarily be married together in the same fashion at the international level. By missing this pivotal point, many defenders of enhanced global governance wrongly presuppose that its emergence must necessarily represent an *extension* of

political and legal processes observable at the national to the transnational stage. They reify the history of modern state development and thus wrongly conceive of global governance as an extension of national government and thus as *world government*. The failure to distinguish clearly between “state” and “constitution” also leads them to obfuscate the fact that international law is *already* undergoing a process of “constitutionalization.” Although by no means democratic in character, in the charters, agreements, and treaties which provide a legal basis for entities like the UN, EU, and WTO, we can already glean the makings of an emerging constitutional structure for “a decentered world society as a multilevel system that for good reasons lacks the character of a state *as a whole*” (DW, 134-36). Powerful global organizations like the WTO or EU lack a monopoly on legitimate violence, and they remain normatively and politically problematic for many reasons. Still, they issue binding rules and norms that tend to be widely respected by their constituent members. They represent, in an apt phrase Habermas takes from Brunkhorst, emerging constitutional or “legal orders without a state” (DW, 138). From this perspective, the main chore at hand is to figure out how we might subject them to democratic legitimacy, but not necessarily transform them into state-like institutions. Not only can we separate “constitution” from “state,” in short, but we can also plausibly pursue the possibility of democratically legitimate legal and constitutional structures functioning without some crucial attributes of modern statehood.

The main programmatic attraction of a sharp conceptual division between “state” and “constitution” for Habermas is that it points to the possibility of a *third* path to constitutionalizing cosmopolitan law supposedly unrecognized by Kant and those who followed in his footsteps. In the broadest terms, this option would take the form of

a politically constituted global society that reserves institutions and procedures of global governance for states at both the supra- and transnational levels. Within this framework, members of the community of states are indeed obliged to act in concert, but they are not relegated to mere parts of an overarching hierarchical super-state. (DW, 135)

Furthermore, this vision constitutes no mere Kantian “ought,” but has already been at least partially realized in the everyday realities of the existing system of global governance, where an impressive body of legal and quasi-constitutional materials undergird a complex network of institutions. Of course, pushing these institutions towards democratic reform will obviously require difficult and risky political battles. Nonetheless, Habermas

here seems relatively hopeful that even relatively undemocratic international organizations—for example, the WTO—might ultimately find themselves subject to reform pressures. In support of this claim, he refers to the growth of global NGOs, transnational activism, and even an emerging global public sphere, as well as the fact that institutions like the WTO “increasingly take into account the protection of human rights” (*DW*, 140).

Habermas’s most recent reflections can be interpreted as various attempts to work out the details of this vision. His model of “global governance without world government” would operate at three basic levels. At the global or what he now describes as the *supranational* level, we would find a single world organization, essentially a reformed United Nations, outfitted with the capacity to secure basic human rights and preserve peace in a consistent and non-selective manner. In correspondence with his attempt to move beyond Kant, he argues that a modified UN need take the form of neither a world state nor a loose league or confederation of states.

At the intermediate or *transnational* level, energy, environmental, financial, and economic policies, or what Habermas cleverly dubs “global domestic politics,” novel modes of cross-border regulation, would be hammered out by those global actors strong enough to bring about binding agreements as well as effectively check and balance their global rivals. Which global players might successfully undertake the weighty responsibility of promulgating transnational social and economic regulation, which necessarily should go well beyond the “negative” (and primarily neoliberal) integration pursued by most existing multilateral organizations? Because of their familiar democratic deficits, existing multilateral organizations are poor candidates for the requisite regulatory tasks, unless subjected more directly to democratic decision-making. Although open to this possibility, Habermas tends to place his faith in democratized regional or continental regimes (e.g., a reformed EU, or NAFTA and the Association of Southeast Asian Nations [ASEAN]), though he sometimes suggests that great powers like the United States are *already* capable of getting the job done. In light of his understandable preoccupation with European political trends, this emphasis on highly integrated and democratized regional power blocs is by no means surprising: with the relatively positive case of the EU in mind, Habermas believes that not only are regional blocs most likely to garner the requisite democratic legitimacy, but that they also alone might possess sufficient power to implement policies across large territories and thus successfully tame globalizing capitalism.<sup>8</sup> Agreements among regionalized blocs, achieved in part perhaps via reformed multilateral organizations like the WTO or IMF, would require a complex system of negotiations and

old-fashioned political wheeling-and-dealing. Nonetheless, if a fair international balance of power could be achieved (e.g., the EU could effectively challenge the U.S. or NAFTA), the major players might be expected “to fulfill expectations of fairness and cooperation” essential to the legitimacy of the negotiation process (*DW*, 142). International politics as we know it would continue to function at this level, since autonomous political units would still compete with one another and conflicts would inevitably ensue. A social democratic EU, for example, could use its power to “counterbalance” the U.S. or NAFTA “at global economic summits and in the institutions of the WTO, the World Bank, and the International Monetary Fund,” bringing “its influence to bear in shaping the design of a future global domestic politics” (*DW*, 42). Yet traditional international relations would nonetheless undergo substantial modifications in light of the fact that regionalized decision-making blocs would lack any possibility of resorting to war: they would still lack a constitutive attribute of modern statehood.

Finally, at the *national* level, states would maintain many core elements of sovereignty as traditionally understood, even though the right to wage war would be denied them. Yet transnational and supranational governance would ultimately remain dependent on the nation-state and its military muscle in order to enforce their decisions. “States remain the most important actors and the final arbiters on the global stage” (*DW*, 176). Habermas hopes that global governance can function effectively without necessarily taking the form of a world state or perhaps even sovereign *governments* at the transnational or supranational levels. Simultaneously, he suggests that nation-states can still serve as sovereign governments even if crucial facets of governance have been relocated to the supranational and transnational levels.

## II

How coherent is this model? At the risk of describing Habermas’s ideas in an overly schematic fashion, I raise some critical questions by focusing on each of his three proposed levels of governance. Despite Habermas’s claims to the contrary, it ultimately remains unclear that he has successfully overcome the institutional ambiguities which plagued Kant’s original vision of cosmopolitan law.

Especially at the supranational level, Habermas appears to want to have his cake and eat it as well. He reminds his readers of the familiar limitations of the existing UN, and especially the manner in which human rights and world peace are presently secured in an unfair and inconsistent manner to

the advantage of the great powers. In the present-day UN, the hegemonic “law of the stronger” is legally entrenched in the Security Council and the veto with which it outfits each of its permanent members (*DW*, 142). Like other contemporary theorists of a cosmopolitan and democratic bent, Habermas proposes far-reaching reforms: the Security Council needs to be democratized and its constituencies updated in accordance with altered geopolitical realities, the General Assembly should be made more accountable to global public spheres and NGOs, and the political willfulness with which the Security Council tends to act (or, just as disastrously at times, *fails* to act) needs to be significantly reduced by constitutionally *obliging* it to act under certain specified circumstances. Lamenting the Secretary-General’s lack of financial independence as well as the practices of “uncooperative governments that continue to enjoy exclusive control over military resources” (*DW*, 170), he argues that the UN executive “must be reinforced to a point where it can guarantee the effective implementation of resolutions of the Security Council” (*DW*, 173). In this view, stronger transnational and supranational mandates for action require nothing less than effective “executive powers above the level of nation-states” (*DW*, 134). Only significant reforms to the UN, he asserts, can counteract the debilitating “selectivity” with which international law is presently enforced and ultimately open the door to a fair cosmopolitan legal order in which citizens of Burundi or Luxembourg, for example, might enjoy the same rights as those in the U.S. or Germany.

However appealing, Habermas’s suggestions raise many familiar questions. How could “uncooperative governments”—including great powers like the U.S. or China—be rendered as accountable to international law as minor powers unless the UN possessed sufficient independent military and political muscle to force its will upon them? When insisting on the need to reinforce the power of the Secretary-General, Habermas himself seems to concede this point. He sympathizes with proposals to provide the UN with more freedom to deploy troops than it presently enjoys. “Given that the UN is now involved in many urgent operations,” for example, “it would be desirable if the larger member states were to maintain units in reserve for swift deployment in such cases” (*DW*, 163). But how might the UN consistently enforce world peace and secure human rights unless it increasingly took on some of the more familiar attributes of modern statehood? Even if it *formally* lacked a *monopoly* on the legitimate use of force, it would still need substantial political and military muscle if, as in the inevitable case of conflict, it tried to apply cosmopolitan norms (for example, against torture) in opposition to rogue states like the U.S.<sup>9</sup> In other words, the non-selective

application of cosmopolitan law desired by Habermas inevitably engenders the specter if not of a hyper-centralized world state, then at least the possibility of a supranational order in which for all practical purposes the UN operates, in the final instance, as a military arbiter. At least in this context, “constitution” and “state” remain more closely linked than Habermas wants to concede. Generality and consistency in law presuppose some capacity to enforce legal norms without undue dependence on those against whom they may need to be enforced.<sup>10</sup> If individual nation-states (or, for that matter, regionally based state units) remain “final arbiters” on a global stage plagued by deep military inequalities, as will likely remain the case for the foreseeable future, it seems improbable that such dependence could be easily reduced or made fair and calculable. Perhaps, as Habermas hopes, we might successfully achieve crucial elements of global governance without a *single* or *unified* global state. This, in fact, already seems to be happening, albeit in a highly undemocratic fashion. Yet it nonetheless seems implausible to downplay the likelihood that effective supranational governance will ultimately require the establishment of some core elements of global *government*.

A partial response to such criticisms can be gleaned from Habermas’s brief appeal to constructivist international relations theory: “we should not underestimate the capacity of international discourses to transform mentalities under the pressures to adapt to the new legal construction of the international community” (*DW*, 177). As the self-image of states adapts to experiences of growing interdependence, traditional state practices can be transformed as legal norms (e.g., the ban on war) are internalized. Shared legal norms and practices can dramatically transform the harsh “facts” of the existing international political universe. In an alternative global environment, great powers like the U.S. or China might still possess enough “hard” power to ignore the UN and cosmopolitan law. Yet just as contemporary Sweden or Japan undoubtedly have the requisite technical know-how for producing nuclear weapons but have opted not to do so, the great powers might refuse to employ their superior military muscle because of altered self-conceptions as well as the internalization of widely shared legal and constitutional norms.

Obviously, this is an attractive vision. Let us hope that Habermas—and the constructivists—are right. By the same token, in a political universe where political identities remain highly nationalized and particularistic, and even universally shared legal commitments (for example, the ban on genocide) still incite deep political controversy, there are sound reasons for doubting that the great powers will soon renounce the many power advantages they presently

enjoy. National sovereignty is a historically variable legal “construct,” but it remains a construct that justifies an impressive array of “real” or material advantages. For familiar reasons, powerful states are likely to guard jealously against any impositions on them.

Habermas only complicates matters further by arguing that UN reforms should take “account of the legitimate interests of a superpower that must be kept integrated into the world organization” (*DW*, 173). Of course, this is a sensible concession to political realities. Yet it hardly meshes particularly well with his demand for a UN capable of acting in a consistent and non-selective fashion. The basic conceptual problem derives perhaps from his initial reflections on Kant. As noted, Habermas insists on a sharp conceptual distinction between “constitution” and “state” in order to highlight the possibility of a constitutional order lacking the attributes of traditional statehood, and especially a system of multi-tiered global decision-making which “lacks the character of a state *as a whole*” (*DW*, 136). Yet his arguably sound general defense of *multi-layered* decision-making occasionally gets conflated with a more general (and controversial) point: at times he endorses the view that supranational and transnational decision-making can function effectively without possessing significant attributes of traditional statehood.

How might supranational governance be successfully democratized? Although Habermas wants reforms to the UN, he reassures his reader that the necessary minimum of democratic legitimacy is by no means “unfeasibly high” in light of the limited functional requirements of maintaining world peace and securing human rights (*DW*, 143). “At the supranational level, the enforcement of established law takes precedence over the constructive task of legislation and policy-making, both of which, on account of the greater scope for decision, demand a higher degree of legitimation, and hence more effectively institutionalized forms of citizen participation” (*DW*, 174). The fact that we are unlikely to achieve robust deliberative democracy at the supranational level should not worry us too much because

if the international community limits itself to securing peace and protecting human rights, the requisite solidarity among world citizens need not reach the level of implicit consensus on thick political value-orientations that is necessary for the familiar kind of civic solidarity among civic-nationals. Consonance in reactions of moral outrage toward egregious human rights violations and manifest acts of aggression is sufficient. (*DW*, 143)

Limited to protecting basic human rights and avoiding war, the UN rests on “clear negative duties of a universalistic morality of justice—the duty not to

engage in wars of aggression and not to commit crimes against humanity.” Correspondingly, supranational governance would not require full-fledged democratic legitimacy or the “thick” sense of solidarity and shared civic culture indispensable, in Habermas’s view, to a robust democracy. Instead, a slender universalistic morality of justice that is both less controversial and more easily achieved would suffice (*DW*, 143). At the intermediate or *transnational* level where “global domestic policy” is to be hammered out, he argues in a revealing contrast, a thicker sense of solidarity and civic culture would in fact have to be achieved because the ambitious legislative and regulatory tasks at hand go well beyond fidelity to the “negative duties of justice.” While we can realistically expand the powers of the UN as it concerns human rights and security without pushing for full-scale democratization, Habermas insists, at the intermediate or transnational level, democratization must take a more pronounced form. In this view, the fact that a “thick” civic political identity appears unachievable at the global level is in fact a main normative reason why social and economic regulation should be located at the level of continental or regional power blocs. An “ethical-political self-understanding of citizens of a particular democratic life” inevitably is “missing in the inclusive community of world citizens,” yet the achievement of such a self-understanding remains realistic at the transnational and, of course, national levels (*The Postnational Constellation* [hereafter, *PN*], 107).<sup>11</sup> This gap need not worry us too much, however, since supranational governance chiefly involves the application and enforcement of basic rights already accepted as valid worldwide.

Habermas’s argument here relies on a series of complicated distinctions between what he elsewhere describes as moral, ethical, and pragmatic forms of discourse. Rather than revisit familiar philosophical disputes generated by his complicated typology of discourses, let me just raise one skeptical political point. One hardly needs to be a Realist, let alone a protégé of Carl Schmitt, to observe that debates especially about the “existential” matter of war and peace typically represent the most controversial and fundamental of political questions. For precisely this reason, nation-states have been notoriously reluctant to hand over the right to determine when they will go to war to international organizations: even after they formally signed off on the prohibition on aggressive war which makes up an essential component of the UN system, those countries capable of waging war effectively too often have worked to circumvent or even undermine the UN system. To imply that debates about war and peace or the enforcement of human rights are somehow less politically explosive than, for example, energy, financial, or social policies, and thus that the supranational can

potentially get by with less democratic legitimacy than the transnational realm, fits poorly with historical and political experience. Lurking in the background here may be the quaint but basically incorrect old-fashioned left-wing political intuition according to which the heart of political conflict ultimately concerns issues of social and economic redistribution, but not war or peace.<sup>12</sup> Even if Habermas *is* right about the controversial point that an empowered UN would merely fulfill “clear negative duties,” their application and enforcement would inevitably raise deeply controversial questions. The fact that the prohibitions on aggressive war or genocide are now universally accepted hardly ensures universal let alone uncontroversial agreement about what they concretely entail.<sup>13</sup> Unfortunately, the distinction between the “enforcement of law” at the supranational in contrast to the making or promulgation of law at the transnational level is untenable. Despite his claims, an empowered UN would cry out for a dramatically democratized process of legitimation in which the voices of all those affected by security and human rights policies should be heard in a fair and impartial manner. *Any* institution claiming the authority to determine who should live and who should die—like the modern territorial state—requires far-reaching democratic legitimation.

What then of Habermas’s discussion of the *transnational* or continental level of decision making? Here as well, we can identify some revealing tensions. On the one hand, he sometimes appears to celebrate the fact that organizations like the EU lack a monopoly on force and thus conform well to his theoretical claim that “global domestic policy” can function successfully without global government. In his view, the EU lacks “the core element of internal and external sovereignty of the modern administrative and tax-based state” (*DW*, 137). Yet he simultaneously concedes that regionalized power bodies might evolve into “complex federal states on a continental scale” (*DW*, 141). Indeed, what he finds so praiseworthy about decision making at the regional or transnational level is precisely the fact that it possesses enough power to implement general policies across large territories. Yet recall his *own* definition of “statehood” as referring to “hierarchically organized capacities available for the *exercise of political power or implementation of political programs*” (*DW*, 131, emphasis added).

More fundamentally, in a slew of widely discussed writings on the EU, Habermas proposes a federal model with striking similarities to a relatively traditional federal republic along U.S. or perhaps Swiss lines: even if the democratic federal state is “the wrong model” for global governance at large, this is effectively what he proposes for the transnational level (*DW*, 134; also *PN*, 89-112; *TT*, 73-109). Many critics have in fact attacked his

view for downplaying the idiosyncrasies of European development and especially the fact that a European state seems both normatively undesirable and politically unlikely.<sup>14</sup> Habermas has been no less adamant in defending the controversial view that Europeans can realistically expect to develop a sufficiently rich common political identity along the lines he considers essential to ambitious democratic self-government. Indeed, *without* such a shared civic identity, he argues, it is difficult to fathom any chance of legitimizing precisely those redistributive social and economic policies which continental blocs like the EU should pursue in order to salvage the welfare state (*TT*, 87). The issue here is not whether Habermas or his critics are “right” on the matter of European political integration. But the fact that so many involved in the present debate interpret him with good reason as an advocate of a strong and relatively centralized model of the EU supports my intuition that he prefers to downplay the constitutive role that traditional elements of statehood would inevitably play in his vision of global governance.

Habermas has also become a prominent advocate among left-wing European intellectuals of the view that the EU should pursue common foreign and security policies in order “to counterbalance the hegemonic unilateralism of the United States” (*DW*, 42). Unsympathetic commentators have attributed this position, and especially his eloquent and now-famous joint (with Jacques Derrida) condemnation of the foibles of recent U.S. foreign policy, to anti-Americanism (*DW*, 39-48). This is a surprising and in my view unfounded accusation in light of the profuse praise for U.S. political and legal culture found throughout Habermas’s writings, as well as a long history of courageous public opposition to political revanchism at home.<sup>15</sup> In fact, the final section of *The Divided West* includes a fascinating attempt to *defend* the U.S., though by no means the Bush administration, against the fashionable view on the left that its foreign policy represents nothing more than an empirical confirmation of Carl Schmitt’s cynical ideas about international law (*DW*, 179-93).<sup>16</sup> Such name-calling simply corroborates Habermas’s anxieties, expressed eloquently in a thought-provoking 2003 interview with Giovanna Borradori, about the increasingly conformist contours of U.S. political culture after 9/11 (*Philosophy in a Time of Terror*, 25-43).

More significant is the fact that Habermas’s political stance presupposes, to a greater extent than he perhaps wants to admit, a rather traditional view of statehood. As Glyn Morgan has suggested with some plausibility, a coherent shared European defense policy along the lines apparently desired by Habermas would demand of the EU not only that it shed some of its

present-day institutional idiosyncrasies, but also that it develop a capacity for effective independent military action. Doing so would inevitably require the EU to take on familiar virtues of modern statehood and probably a more centralized EU security apparatus.<sup>17</sup>

*The Divided West* is also filled with highly polemical comments about Realist international relations theory, which Habermas tends to read unsympathetically as a conservative defense of classical power politics in the tradition of Schmitt.<sup>18</sup> Yet he smuggles core elements of Realism into his own analysis. As noted, he envisions transnational regulation as emerging via an international negotiation system dominated by regionally based power blocs. In this account, guaranteeing that the results of inter-bloc political give-and-take represented more than the “naked” expression of global inequalities would require that the relevant global players possessed adequate power resources in order to check and balance one another. As those familiar with international political theory will immediately recognize, this argument might easily have come from the “arch-Realist” Hans J. Morgenthau, who emphasized the centrality of the balance of power to an effective system of international law without tying its operations intrinsically to the realities of the modern (for him, as for Habermas, historically transient) nation-state. As Realists have underscored, crucial to the consistent enforcement of international law has always been the existence of a “balance of power” on the international political scene. Habermas surreptitiously endorses a version of this old argument because his model of transnational governance attributes a decisive role to political entities which, given the basic contours of his argument, would inevitably tend to take the form of relatively developed regional or continental *states*. Of course, there are many sources of power in the political universe, as even a Realist like Morgenthau always recognized. Military power only represents one, though an undoubtedly crucial, resource for ensuring security.<sup>19</sup> Yet if an effective balance of power were to obtain between regional blocs, it would likely force some of them to acquire the impressive military prowess necessary to “counterbalance” the U.S.

So much for “global domestic policy without government.” As I have argued, Habermas’s proposals require, at both the supranational and transnational stages, the *enhancement* of many traditional state capacities, even if he may be right to posit that no single centralized world state is necessary in order to achieve global governance. But no serious thinker today is advocating a single global Leviathan: if that’s his main target, it’s probably a straw man. As he promised, his model does not in fact look very much like a global federal republic. Whatever its other flaws, however, at least in

a global federal republic the relationship between the different tiers of decision making would seem relatively transparent in legal and constitutional terms.<sup>20</sup> In Habermas's proposal, however, we instead arguably find a confusing and potentially problematic multiplicity of competing state-like entities at the national, transnational, and supranational levels.

Please note that I have said nothing about the normative *desirability* of achieving heightened levels of global government. As Habermas, following Kant, clearly understands, expanding formal governmental powers at either the transnational or supranational levels poses tough normative and institutional questions. On this point, by the way, they agree completely with sophisticated Realists. But let's not pretend, as I worry Habermas does, that we can have our cake and eat it too: if we opt to pursue "stronger transnational and supranational mandates for governance," as we very well may need to, let us not claim that we can do so without dramatically expanding relatively familiar forms of state power in arenas where they hitherto have been relatively limited (*DW*, 134). The inevitable result will be more global *government*, and not simply "multilayered governance." Only if we face this fact head-on can we realistically consider the full range of tough intellectual and political challenges we face.

Unfortunately, Habermas's brief comments on the third or *national* level of his multilayered system confirm this view that his account of global governance obscures its dependence on traditional modes of statehood, now likely to be located chiefly at the transnational and supranational stages. Although he insists that states would remain the final arbiters on the global stage, how any significant powers could realistically stay in the hands of the nation-state remains unclear. Significant forms of environmental, financial, social, and economic policy would have been transferred to the intermediate or transnational level of decision making. If peace and human rights are to be consistently secured, it is hard to see how this could be done without a sizable augmentation of the independent military prowess of the United Nations or, at the transnational level, of the state-like military capacities of regional blocs like the EU. States might indeed remain "the most important actors" in the global arena, but the states in question could hardly be *nation-states*. At least as far as the nation-state is concerned, it would apparently risk being "relegated to mere parts of an over-arching hierarchical super-state" (*DW*, 135). Its position would hardly seem superior to that typically occupied by individual regional units in federal republics. From the perspective of those who believe that the nation-state should continue to perform vital functions, a global democratic republic frankly might have more to offer than Habermas's model. California, after all, still possesses an

impressive range of significant regulatory capacities, as the history of environmental reform in the U.S. might be taken to imply.

In a fascinating paper delivered in October 2005 at the University of Chicago political theory workshop, Habermas again reiterates his view that global governance should be envisioned in terms of a three-tiered system of decision-making, which would include a third or “lower level” of national decision-making. Rather than offer a description of the specific functions remaining in the hands of the nation-state, however, the essay rapidly jumps to the stock argument that the global political economy overtaxes its normative and empirical capacities. His brief account of the “lower” or national level of decision-making repeats the familiar view that nation-states must merge into novel forms of highly integrated regionally based political blocs, along the lines of a democratized EU, alone purportedly capable of effectively navigating the harsh waters of the global political economy.<sup>21</sup> At a risk of polemical overstatement: the main function of the modern nation-state apparently consists in the task of ceasing to exist in any historically recognizable form. With the possible exception of a handful of great powers (and especially the United States), Habermas leaves the reader with the distinct impression that most nation-states are destined to go the way of the city-states and loose political confederations of the distant European past.

In defense of this position, one might point out that the nation-state is *already* being hollowed out by globalization, and that its political latitude has become highly circumscribed even in the best of circumstances. But if this in fact is the case,<sup>22</sup> let us at least be forthright about the process at hand, and openly admit that small and medium-sized nation-states are now destined to play a role akin to Delaware or Rhode Island in the U.S. federal system, with large and relatively powerful nation-states perhaps realistically aspiring to the status of California or Texas. To describe this state of affairs as paving the way for a multi-level “politically constituted world society without world government,” however, potentially misconstrues this remarkable historical shift more than it helps illuminate it.

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## Notes

1. See the excellent volume co-edited by Peter Niesen and Benjamin Herborth, *Anarchie der kommunikativen Freiheit: Jürgen Habermas und die Theorie der internationalen Politik* (Frankfurt, Germany: Suhrkamp, 2007).

2. Ingeborg Maus, "From Nation-State to Global State, or the Decline of Democracy," *Constellations* 13 (2006): 465-84.

3. For a discussion of this issue, see William E. Scheuerman, "Critical Theory beyond Habermas," in *Oxford Handbook of Political Theory*, ed. John S. Dryzek, Bonnie Honig, and Anne Phillips (Oxford: Oxford University Press, 2006), 94-103.

4. I use the term "global governance" in the sense introduced by James N. Rosenau, "Governance, Order, and Change in World Politics," in *Governance without Government: Order and Change in World Politics*, ed. James N. Rosenau and Ernst Otto-Czempiel (Cambridge: Cambridge University Press, 1992), 1-29.

5. See Jürgen Habermas, "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight," in *Perpetual Peace: Essays on Kant's Cosmopolitan Idea*, ed. James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997), 113-54.

6. Robert Dahl has updated these anxieties in his thoughtful "Can International Organizations Be Democratic? A Skeptic's View," in *Democracy's Edges*, ed. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999), 19-36.

7. Hauke Brunkhorst, *Solidarity: From Civic Friendship to Global Legal Community*, trans. Jeffrey Flynn (Cambridge, MA: MIT Press, 2005).

8. His tendency to see the EU as a positive model for other supranational organizations generates problems. See the excellent essay by Adam Lupel, "Regionalism and Globalization: Post-nation or Extended Nation?" *Polity* 36 (2004): 153-74.

9. I do not know what else to call a state that regularly disregards binding international and domestic prohibitions on torture, practices indefinite detention, and establishes secret offshore interrogation (and, probably, torture) camps.

10. Recall the neglected argument by the first-generation Frankfurt School political theorist, Franz L. Neumann, who claimed that the dissolution of state sovereignty tended to go hand-in-hand with the disintegration of the rule of law (*Behemoth: The Structure and Practice of National Socialism* [Oxford: Oxford University Press, 1944]).

11. For a critical discussion of Habermas's reflections on this issue, see Robert Fine and Will Smith, "Jürgen Habermas' Theory of Cosmopolitanism," *Constellations* 10 (2003): 469-87.

12. In his comments on global terrorism, a similar economism tends to creep in. See Michel Rosenfeld, "Habermas' Call for Cosmopolitan Constitutional Patriotism in an Age of Global Terror," *Constellations* 14 (2007): 159-81.

13. Think, for example, about recent global debates about international intervention in the former Yugoslavia, Rwanda, or Darfur.

14. For a sample of the huge debate, see the essays collected in Michael Th. Greven and Louis W. Pauly, eds., *Democracy beyond the Nation-State: The European Dilemma and the Emerging Global Order* (Lanham, MD: Rowman & Littlefield, 2000).

15. Andrei Markovits, *Uncouth Nation: Why Europe Dislikes America* (Princeton, NJ: Princeton University Press, 2006).

16. See, for example, the *New Left Review* in recent years, where Schmitt typically makes a favorable appearance in discussions of U.S. foreign policy.

17. Glyn Morgan, *The Idea of a European Superstate: Public Justification and European Integration* (Princeton, NJ: Princeton University Press, 2005).

18. I challenge this conventional view of Realism in "Realism and the Left: The Case of Hans J. Morgenthau," *Review of International Studies* (forthcoming). Realists like Morgenthau and Reinhold Niebuhr are vastly more nuanced thinkers than Habermas—or most present-day cosmopolitans—prefer to concede.

19. Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 2nd ed. (New York: Knopf, 1954), 93-154.

20. For a defense of this position, see Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (Munich, Germany: Beck, 1999).

21. Jürgen Habermas, "A Political Constitution for the Pluralist World Society?" (paper presented at University of Chicago Political Theory Workshop, October 10, 2005).

22. To his credit, Habermas himself generally opposes this extreme view of what David Held and others have correctly criticized as the "hyper-globalization thesis" (David Held, Anthony McGraw, David Goldblatt, and Jonathan Perraton, *Global Transformations: Politics, Economics, and Culture* [Stanford, CA: Stanford University Press, 1999]).

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