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Author(s)	Morishima, Atsuki
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Toward the Establishment of Cosmopolitan Norms: Jürgen Habermas and Seyla Benhabib

MORISHIMA, Atsuki

Abstract: This paper examines the establishment of cosmopolitan norms from a theoretical perspective. Section 1 responds to criticisms of such norms as being vulnerable to serving the particular interests of powerful states under the guise of universalistic claims. While accepting this criticism, this paper nevertheless argues for the continued importance of cosmopolitan norms. The following two sections focus on the global learning processes that such norms require. Section 2, following Jürgen Habermas, examines intercultural or cross-cultural discourse. Section 3 highlights Seyla Benhabib's concept of "democratic iterations" as complementing Habermas's framework. Accordingly, this paper seeks to demonstrate the significance of cosmopolitan norms and to theorize possible pathways for their establishment.

Introduction

In *Toward Perpetual Peace*, Immanuel Kant introduces a third type of law—cosmopolitan law—alongside domestic and international law (cf. Kant, 1964 [1795], pp. 125–126). Unlike domestic law, which regulates relations among individuals within a state, and international law, which regulates relations among states, cosmopolitan law aims to establish legal conditions that transcend state boundaries. According to Jürgen Habermas, this conceptual expansion in Kant's legal theory constituted "a consequential innovation" (Habermas, 1996, p. 192).¹ More than two centuries later, however, the very idea of cosmopolitan norms has become rather familiar. The notion of human rights commonly accepted worldwide exemplifies such cosmopolitan norms: It refers to standards that apply to all human beings irrespective of national borders.

At the same time, difficulties in the establishment of cosmopolitan norms are well recognized today. By their very nature, cosmopolitan norms "limit the sovereignty of states and their representatives and oblige them to treat their citizens and residents in accordance with certain human rights standards" (Benhabib, 2011, p. 124). That is, the universalistic demands of cosmopolitan norms often constrain the sovereignty claims of states, which both constitutes the distinctiveness of cosmopolitanism and impedes its realization. Contemporary wars, conflicts, and their associated arbitrary interventions testify to the simple fact that norms overriding state sovereignty have yet to be fully institutionalized. The establishment of cosmopolitan norms remains a project in progress; this task has confronted humanity from Kant's era to our own.²

¹ All translations from German in this paper are the author's own.

² Borrowing from Kant, we can frame this task as follows: "If it is a duty, and if there is at the same time a well-grounded hope, to make real a state of public law—

However, the lofty slogan of undertaking a task for humanity inevitably encounters Carl Schmitt's pointed warning: "Whoever invokes 'humanity' intends to deceive" (Schmitt, 1963, p. 55). Schmitt's incisive critique of efforts to limit state sovereignty must be reconsidered if we wish to construct cosmopolitan norms (Section 1), but does not bring that project to a halt. Even in the face of Schmitt's challenge, Habermas defends the pursuit of cosmopolitan normativity; his attempt merits systematic examination (Section 2). Finally, drawing on Seyla Benhabib—who stands in the tradition of discourse theory associated with Habermas—and her notion of "democratic iterations," I focus on the global learning processes involved in the establishment of cosmopolitan norms (Section 3).

1. Critiques of Cosmopolitan Norms

In this section, I examine the major critiques of cosmopolitan norms. By their very nature of acting to limit states' sovereignty, cosmopolitan norms are inherently contentious. Precisely because they may entail unwarranted intrusions into the affairs of sovereign states, cosmopolitan norms pose a certain risk. Examples of failed "humanitarian interventions" authorized by the UN Security Council in the name of the international community—Somalia, Rwanda, Darfur, and Kosovo, among others—illustrate the precariousness of such cosmopolitan norms as human rights, lending weight to the criticism that cosmopolitan norms can ultimately serve to justify imperialist or colonial ambitions.³ Any defense of cosmopolitan normativity must therefore begin by addressing such critiques.

Habermas responds to these concerns in his engagement with Carl Schmitt's critique of moral universalism in 1932, when there were far fewer historical examples of the instrumentalization of human rights than we have today. Nevertheless, his argument retains some contemporary relevance.

When a state, in the name of humanity, fights its political enemy, this is not a war of humanity. Instead, it is a war in which a particular state seeks to appropriate a universal concept for itself in order to identify with it (at the expense of its enemy), just as one may misuse the ideas of peace, justice, progress, and civilization in order to claim them for oneself and deny them to one's enemies. "Humanity" is an especially beneficial ideological instrument for imperialist expansion, and, in its ethical-humane form, a specific vehicle of economic imperialism. [...] Whoever invokes "humanity" intends to deceive. (Schmitt, 1963, p. 55)

Schmitt here articulates a sharp critique of counterfeit universality: "Humanity as such cannot wage war" (*ibid.*, p. 54), for there can be no enemy of "humanity" as a

even if only through an approximation that advances infinitely—then *perpetual peace* is not an empty idea, but rather a task that, being solved bit by bit, continuously comes closer to its goal [...]."

³ For a discussion of the arbitrary use of human rights to legitimize military intervention in other countries, see Maus (1999).

whole⁴—unless one introduces science-fictional scenarios of extraterrestrial beings. This is, in a sense, a simple logical point: “The concept of humanity excludes the concept of the enemy” (*ibid.*, p. 55). No matter who is designated an enemy of humanity, such an enemy does not thereby cease to be human. Thus, when an actor “fights its political enemy in the name of humanity,” the enemy, properly included within the very concept invoked, is excluded. Such a conflict then is not, strictly speaking, a “war of humanity.” In such cases, the term “humanity” is nothing more than a label falsely claimed and monopolized by a particular group. Schmitt adds:

The bearing of the name “humanity,” the appeal to humanity, and the appropriation of this term could [...] only express the terrible claim that the enemy is to be denied the quality of being human, declared outside the law and outside humanity (*hors-la-loi* and *hors l’humanité*), thereby driving war to the extreme of inhumanity. (*ibid.*)

How might one respond to Schmitt’s challenge? One must acknowledge that cosmopolitan norms like human rights can never be entirely protected from use as ideological tools concealing the arbitrary aims of powerful states. However, it would be premature to conclude that we must then abandon concepts like human rights or cosmopolitan norms altogether. This is my first response to Schmitt and to other critics who discern colonial or imperialistic motives in cosmopolitanism. In a sense, Schmitt’s critique is accurate. As Benhabib observes, “it would be foolish to deny, therefore, the ambivalences, contradictions, and treacherous double meanings of the current world situation, which often transform cosmopolitan intents into hegemonic nightmares” (Benhabib, 2011, p. 123). Still, “the hermeneutics of suspicion in the face of these new developments will only take us so far” (*ibid.*). The dangers inherent in cosmopolitan projects do not invalidate the very idea of cosmopolitan norms.

Indeed, cosmopolitan norms are needed precisely to restrain the arbitrary aims of particular states by enabling challenges to unjustifiable state actions. Unlike international law, cosmopolitan law possesses the authority—at least in principle—to hold states accountable even against their will. Thus, even if cosmopolitan norms can be invoked to conceal the arbitrary behavior of dominant states, the very condemnation of such arbitrariness presupposes a cosmopolitan normative standpoint. Only once cosmopolitan norms have been properly established can the legitimacy of actions globally be evaluated impartially and appropriate responsibility assigned.

To summarize, this section examined the critical view that cosmopolitan norms merely serve to cloak particularistic and arbitrary interests. On the one hand, I acknowledge the force of such critiques. As Habermas notes, the “shameless

⁴ The concept of the “enemy” holds particular significance in Schmitt’s political theory, where the defining criterion of the political lies in the distinction between friend and enemy (cf. Schmitt, 1963). In other words, under Schmitt’s definition, there can be no politics in the absence of a distinction between friend and enemy.

instrumentalizations of human rights for a universalistic concealment of particular interests” (Habermas, 1999, p. 227) must indeed be condemned. On the other hand, I reject the extreme Schmittian conclusion that cosmopolitan normativity should therefore be dismissed, for if, as the critics insist, the arbitrary actions of states are to be prevented, then it is precisely cosmopolitan norms that are needed to make such prevention possible.

2. Intercultural Discourse: Habermas

The next question regarding cosmopolitan norms is how they can be effectively established. In doing so, one must, of course, carefully navigate the critiques discussed above. In other words, cosmopolitan norms must not be established solely with reference to particular interests. How then can the universalistic demands inherent in cosmopolitan norms be adequately addressed? This section and the next examine the responses of Habermas and Benhabib to this question.

In this section, I focus on the position Habermas articulated in “The Intercultural Discourse on Human Rights” (1999). Habermas seeks to promote the establishment of cosmopolitan law while resisting the instrumentalization of human rights discussed in Section 1. Central to this endeavor is what he calls “intercultural discourse.” It is instructive first to consider the discourse that this is contrasted with—the “discourse of the West with itself,” which represents the West’s critical self-reflection. Considering the ability to “gain distance from their own traditions and to broaden their limited perspectives” as “the advantages of Occidental rationalism,” Habermas characterizes the Western history of human rights as follows:

The history of the interpretation and realization of human rights is the history of such a *decentering* of our perspective. The allegedly equal rights were extended to oppressed, marginalized, and excluded groups only gradually. Only after arduous political struggles were workers, women, Jews, Romani people, homosexuals, and asylum seekers recognized as “humans” entitled to full equality. In retrospect, each wave of emancipation also reveals the ideological function that human rights had served *up to that point*. (Habermas, 1999, p. 217–218)

Modern human rights can be traced back to the Virginia Declaration of Rights, the U.S. Declaration of Independence (1776), and the Declaration of the Rights of Man and of the Citizen (1789). However, the rights declared in these documents were in fact minimal, applying primarily to property-owning adult men and silently excluding many people under the universalistic claim of human rights. This façade of universality, however, was gradually exposed through persistent political struggle. Western actors, by critically distancing themselves from the concepts of human rights woven into their own traditions, expanded the meaning of “human” and the normative scope of human rights. In this context, the history of the concept of human rights illustrates the advantages of “Occidental rationalism in gaining distance from one’s own traditions and broadening limited perspectives.”

Such Western critical self-reflection on human rights has developed further in a more radical direction, as skepticism has emerged within the Western context itself:

“Have they [=human rights] not always served as a shield for a false universality—an imaginary humanity behind which an imperialist West could hide its particular character and own interests?” (*ibid.*, p. 218). This skepticism overlaps with the critiques of cosmopolitan norms discussed in Section 1. As I noted regarding Carl Schmitt, sharp critiques of human rights as a Western legacy first arise within the West’s own intellectual traditions. Habermas cites, for example, the critiques of Martin Heidegger and Schmitt, against which he seeks to defend human rights. Nevertheless, the emphasis of his argument goes beyond mere counter-argumentation.

Habermas stresses that interpretations of human rights rooted in the West—no matter how critically self-reflective—cannot be confined solely to the West’s discourse with itself. “Western intellectuals should not confuse their discourse on their own Eurocentric biases with the debates that others conduct with them” (*ibid.*, p. 219). In other words, those situated within the Western tradition must distinguish between their own reflective self-criticism and criticism of the West by external actors. The concept of human rights can only be expanded through discourse with those who recognize its inherent Eurocentric bias and position themselves outside of it, for it is precisely through such an “intercultural discourse on human rights” that universalistic cosmopolitan norms capable of transcending particularistic interests can be realized.

Habermas then participates in the intercultural discourse on human rights as a defender of the Western participants by responding to human rights critiques emerging from Asian values. For reasons of space, I will not examine these exchanges in detail. What is important, however, is that Habermas demonstrates the significance of intercultural discourse in practice, rather than limiting himself to self-critical reflection within the Western cultural context. Of course, such a discourse cannot be completed by Habermas alone. At the conclusion of the debate, he adds, “the answer the West has found is neither singular nor the best. In this sense, the current debate offers us an opportunity to become more aware of our blind spots” (*ibid.*, p. 226). Thus, the intercultural discourse on human rights remains ongoing and will continue to evolve.

3. Democratic Iterations: Benhabib

We must now consider how cosmopolitan norms can be established without serving merely as a cloak for particularistic interests by focusing on Benhabib’s proposal. Benhabib’s view is broadly consistent with the lineage of discourse theory advanced by Habermas and others. Here, I focus on a global learning process for cosmopolitan norms that she formulates through the concept of “democratic iterations.”

Benhabib first highlights the tension between the universalistic demands of cosmopolitan norms and the territorially limited claims of state sovereignty that lies at the heart of the issues discussed in this paper. Cosmopolitan norms aim to guarantee the rights of all human beings beyond the boundaries of a state, while states seek to bind their populations to decisions made within their own national framework. These two demands often conflict, giving rise to the criticism that

cosmopolitan norms are merely the imposition of powerful states' arbitrary will (as discussed in Section 1). Benhabib's response is unique in treating this tension positively. She emphasizes the importance of interpreting and applying universalistic claims within the sovereignty of individual states, with the key mechanism being what she calls "democratic iterations."

By *democratic iterations* I mean complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society. (Benhabib, 2004, p. 179)⁵

Universalistic rights claims are thus "iterated" in concrete contexts, whereby the content of norms that may initially appear authoritative is gradually transformed. When universalistic rights claims "are appropriated by people as their own, they lose their parochialism as well as the suspicion of Western paternalism often associated with them" (*ibid.*, p. 88). In other words, when the citizens of a given state reappropriate and reinterpret universalistic legal norms, they become not merely subjects of the law but also its authors. Only through this achievement of autonomy via democratic iterations can cosmopolitan norms be legitimately established.⁶

To review: Sections 2 and 3 both focus on practices aimed at establishing cosmopolitan norms, the former Habermas's concept of "intercultural discourse" and the latter Benhabib's notion of "democratic iterations." Although these approaches share a common direction, their emphases subtly differ. Habermas stresses the importance of engaging in discourse with others rather than confining the discussion of universalistic norms like human rights to one's own cultural context. Benhabib, while acknowledging the significance of such intercultural discourse, also emphasizes the importance of citizens' reinterpreting universalistic rights claims within their own cultural context. These two perspectives are not in opposition; rather, it is through these twin mechanisms that the legitimate establishment of cosmopolitan norms becomes conceivable in practice.

⁵ Benhabib (2011) responds to a range of criticisms of the concept of "democratic iterations" as formulated in Benhabib (2004) and introduces several revisions (cf. pp. 138–165). Nevertheless, since these revisions do not fundamentally alter the core idea, this paper follows the definition presented in Benhabib (2004).

⁶ Benhabib refers, as examples of such democratic iterations, the so-called French headscarf affair (cf. Benhabib, 2004, pp. 183–198) and the practices of reappropriating and reinterpreting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by women living under Islamic law (Benhabib, 2011, pp. 132–135).

Conclusion

This paper has examined the concept of cosmopolitan norms that apply beyond national borders, focusing on human rights as a central example. In Section 1, I responded to criticisms of cosmopolitan norms; in Sections 2 and 3, I outlined two approaches to establishing them. The paths conceptualized as “intercultural discourse” (Habermas) and “democratic iterations” (Benhabib) represent processes of legitimization that can eliminate the imperialistic or colonialist character often associated with cosmopolitan norms.

Within these conceptual frameworks, one can also appreciate the significance of this paper’s own contribution. In addressing cosmopolitan norms, I have drawn upon and engaged with the arguments of thinkers situated in Western contexts—first Schmitt, then Habermas and Benhabib. Is this ultimately mere repetition? The answer is no: “The iteration and interpretation of norms and of every aspect of the universe of value, however, is never merely an act of repetition” (Benhabib, 2011, p. 129). Such approaches as “intercultural discourse” and “democratic iterations” themselves, when repeated in different contexts, are bound to transform and deepen in substance. In this sense, this paper participates in a global project of establishing cosmopolitan norms.

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