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STUDIES IN LAW, POLITICS, AND SOCIETY

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BETWEEN PAST AND FUTURE: THE EQUIVOCATIONS OF THE NEW COSMOPOLITANISM

Robert Fine and Daniel Chernilo

ABSTRACT

Our point of departure is a reservation concerning the validity of cosmopolitan ideas in response to 9/11. Cosmopolitanism in the social and political sciences plays an important role in the reconstruction of conceptual tools, the diagnosis of the current epoch and the creation of new normative standards. Its key motif, however, that of epochal change from a nationally-based to a cosmopolitan world order, is prematurely dismissive of traditional categories and assimilative of a normative vision. The separation of the present from the past is as overstated as is its conflation with the future.

COSMOPOLITANISM AND 9/11: THE CASE OF ULRICH BECK

A common trope of contemporary social theory is to construe the present as an era of radical epochal change. There are various ways in which this sense of change is formulated – not least as a transition from the modern to the postmodern or from one form of modernity to another – but in all such formulations what makes change radical and epochal is the fact that a specific event or social process can be singled out as the definitive marker of historical transition. At these critical

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moments the very categories of understanding and standards of judgement of one epoch are questioned as inappropriate in relation to the other. There is perhaps nothing new in this proclivity to see the new. Jürgen Habermas (1969), for one, has long argued that a sense of crisis is part and parcel of any epochal diagnosis of modernity and that the "classic" texts of social and political thought all expressed this sense of crisis and identified the problems associated with making sense of the newly transformed world. The mark of classical social theory was always to locate the idea of "crisis" within a framework of continuity and to comprehend it through universal categories of class, nation, rationality, relations of production, the division of labour and so forth. Today, by contrast, the distinguishing mark of social theory is the historicisation of concepts and the claim that our own epoch can only be understood through the development of new categories beyond the classical frameworks of the social and political sciences. The idea that something radically new is happening in the world now goes hand in glove with the idea that something radically new is required in social and political thought. The very *evenfulness* of such events seemed to lie in their originality and resistance to all parallels with earlier social forms.

Today the event known to the world as 9/11 is commonly presented by social scientists as a marker of a significant rupture between past and future, an indicator of major social transformation and a call for major *conceptual* transformation. The sociologist, Ulrich Beck, provides us with a compelling example of this way of thinking. He argues that 9/11 "stands for the complete collapse of language," that we do not have the right concepts to understand it, and that we need to construct new ones. He sees 9/11 as a sign of a new global terrorism and associates it with other global threats – including ecological disasters and financial crises – as the expression of the central condition of our times, that of a "global community of fate" to which we all necessarily belong. Beck argues that this global community of fate reveals the inappropriateness or even bankruptcy of old national perspectives and he himself is on this basis cautiously optimistic about the direction of change: "Since September 11," he writes, "governments have rediscovered the possibilities and power of international cooperation" (Beck, 2002, p. 48). He presents the current age as confronted by two existential choices: first, between nationalism and multilateralism and then between a regressive multilateralism based on surveillance states and a progressive multilateralism based on cosmopolitan states. If a multilateralism based on surveillance sacrifices rights, law, democracy and hospitality to the security of a Western citadel, a multilateralism based on cosmopolitan principles also seeks security but by re-affirming human rights, international law, democracy and hospitality at the transnational level. In a "world risk society," Beck argues, we need a "new big idea" to survive and civilise the twenty-first century. For Beck, this new big idea is that of the *cosmopolitan state*.

He likens the advent of cosmopolitanism in our own times to the sea-change achieved in the 17th century by the Peace of Westphalia (Beck, 2002, p. 50). Since risks are now spatially, temporally and socially unbounded, since they have become de-territorialised and uncontrollable at the level of the nation-state, it is necessary to construct a new form of legal-rational authority, a new *Leviathan*, at a level above that of the nation-state. In its search for security through human rights, this vision of a new cosmopolitan order both transcends the classical framework of nation states and resists the imposition of disciplinary, police powers at the international level.

Beck maintains that political and cognitive legitimacy now comes from the future instead of the past and he characterises this transition as nothing short of a "second Enlightenment" – one that will "open our eyes and our institutions to the immaturity of the first industrial civilization and the dangers it posed to itself." World risk society, as he defines it, "means that the past loses its power to determine the present. Instead, the future – something non-existent, constructed or fictitious – takes its place as the cause of present experience and action" (Beck, 2000a, p. 100). His conception of cosmopolitanism is related to breaking from the past as a source of legitimation for the present and introducing in its stead the power of the future into sociological thinking. On the one hand, Beck affirms the necessity of "future-oriented legitimacy" in sociological knowledge in contrast with the "more-of-the-same dogma" of traditional sociology and its corresponding exclusion of alternative scenarios. On the other hand, instead of addressing the future within the linear and teleological conceptions of progress characteristic of the first modernity, the sociology of the second enlightenment looks to a "visionary non-fiction" to understand a situation that is still to manifest its full development (Beck, 2000b, pp. 8–9). For instance, Beck comments that the age of full employment is over, that growing economic production can no longer create more jobs, and that absolute employment is decreasing. On the basis of these observations, he argues that the crumbling of the central pillar of the *first modernity*, that of full long-term employment, represents a crisis in politics, culture and society which should be viewed not only as a threat but also as an opening of new possibilities for modern society. For Beck, the view that "the end of work society as we know it" is merely a threat and not a new beginning, is presented as a symptom of the general failure of the social sciences to escape the "more-of-the-same" dogma or provide an understanding of the emergent world-to-come.

In terms of the sociological tradition, Beck's thesis amounts to a rejection of both "Marx-Weber's theories of modernisation" and post-modern social theory. In relation to the former, the argument is that sociology needs to call into question the "basic premises of European thought and activity – the notion of limitless growth, the certainty of progress or the contrasting of nature and

society" (Beck, 1997, p. 12). The core problem with this consensus is that it speaks of a world that no longer exists with what Beck calls "zombie categories" (Beck, 2002, p. 53). Against post-modern social theory, the argument is that it has proved unable to be more than a theory of the crisis of modernity. So if theories of modernisation conflate modernism with growth, progress and humanity, theories of postmodernity can neither recognise the positive elements of the enlightenment project nor think the future of society. Beck's answer to these problems, his theory of reflexive modernisation, is based on the thesis that only *unawareness* and not *knowledge* can be taken as the key principles of global risk societies. Modernisation can no longer be equated to rationalisation and the optimism based on the *linearity of progress* and the *control of side-effects* can no longer be sustained:

Society is changed not only by that which is seen and desired but also by that which is *not* seen and *not* desired. The *side-effect*, not instrumental rationality (as in theory of simple modernization), becomes the motor of social history (Beck, 1997, p. 32).

In the paradoxical formulation that side-effects are now the motor of history, history moves forward through mechanisms which can be neither controlled nor foreseen. Rather than presuppose a *telos* for history, Beck's theory of reflexive modernisation leads to a choice: either to a re-engagement with the enlightenment project or to counter-modernity phenomena such as neo-nationalism and xenophobia (Beck, 1997, p. 5). His rejection of teleology leaves wide open the relation between past and future.

The idea of cosmopolitanism Beck proposes, in common with a far broader research programme, attempts to draw for the social and political sciences certain conceptual, historical and normative lessons from the experience of globalisation. First, it poses a conceptual critique of the "methodological nationalism" that was previously widespread in the social and political sciences (Beck, 2000c, pp. 20–21, 2002, p. 51).¹ Second, it offers a diagnosis of our own age that no longer accepts the centrality of nation-states as *the* characteristic form of political modernity. Third, it expresses a normative endeavour to construct new standards of global justice beyond the parochialism of national frameworks. In general, it presents itself as a critical theory whose aim is the reconstruction of the social and political sciences, the diagnosis of the crisis of our age, the formulation of the decisions this crisis demands of us, and the development of the institutions and practices of a new cosmopolitan order. This is an ambitious agenda.

There is, however, a defect we see in Beck's cosmopolitan manifesto that we might call: using a term drawn from Frank Webster, the "fallacy of presentism" (Webster, 2002, p. 267). What we mean by this is the tendency to turn the present into an "ism" by prematurely declaring the redundancy of traditional concepts and by turning any major event or series of events that catches the public eye

into a sign of a new epoch. The paradox of "presentism" may be indicated by the fact that, while Beck announces in relation to 9/11 the need for *new concepts and new standards* to deal with this event beyond the terms of classical social theory, he still declares his own debt to the political philosophy of Thomas Hobbes. His analysis is indeed posed in essentially Hobbesian terms (Beck, 2002, p. 46). Taken at his word, Beck's cosmopolitan thesis reads very much like that of Hobbes writ large. In a global risk society people are driven by "fear of death" and "desire for security" into "seeking peace." To this end, reason demands a renunciation of the natural liberty of nations and the erection of a "common power," a "mortal God," to compel the performance of promises and obedience to laws. Whether this common power takes the form of one nation or an assembly of nations, it must reduce the plurality of voices into one will. Everyone must, to quote Hobbes, "own and acknowledge himself to be the author of whatsoever he that so beareth their person, shall act or cause to be acted in those things which concern the common peace and safety;" while the new sovereign, again to quote Hobbes, "can do no injury to any of his subjects nor ought he to be by any of them accused of injustice" (Hobbes, 2000, pp. 122, 124). It is perhaps surprising that Beck's inspirational vision of a new cosmopolitan order accedes to this iconic text of the statist political imagination, in which the absence of a common power is identified with the primitive, yet given that this is so, we should not be surprised to find that the ambiguities of liberalism and authoritarianism characteristic of Hobbes's *Leviathan* are reproduced in Beck's theory of cosmopolitanism.

COSMOPOLITAN PARADIGMS IN THE SOCIAL AND POLITICAL SCIENCES

Let us now broaden our view, from Beck and September 11 to the role of cosmopolitanism in the social and political sciences. *Viewed historically*, the rise of the cosmopolitan paradigm coincides with the end of the Cold War in 1989. Cosmopolitanism itself is an old term that can be traced back to the ancient Greeks, Romans and early Christians, before it was reconstructed as a modern idea within the eighteenth-century Enlightenment. By the middle years of the twentieth century, however, cosmopolitanism was widely used as a term of abuse by totalitarian ideologues in order to denigrate Jews and other "rootless" peoples deemed incapable or unworthy of killing and dying for their country. In this context, the new cosmopolitanism of our own times looks back to the Enlightenment to recover the validity of cosmopolitan ideas and to extirpate the totalitarian legacy. *Viewed politically*, the new cosmopolitanism perceives the integrity of contemporary political life threatened on two sides: on the one

hand, by the globalisation of markets and consequent loss of political autonomy on the part of nations; on the other, by the strident re-assertion of political autonomy in the shapes and forms of nationalism, religious fundamentalism and ethnic communalism. It aims to *reconstruct* political life on the basis of an enlightened vision of peaceful relations between nation-states, human rights shared by "world" citizens, and a global legal order buttressed by a global civil society. Viewed *academically*, the new cosmopolitanism has proliferated in the social and political sciences to the point that we now hear of cosmopolitan law, cosmopolitan international relations, cosmopolitan sociology, cosmopolitan political philosophy and cosmopolitan social theory – each with its own story to tell.

We have looked at the academic developments in more detail elsewhere (Fine, 2003). Suffice it to say that across these and doubtless other social scientific disciplines cosmopolitanism has emerged as an intellectual movement committed to the reformulation of traditional canons, the redefinition of objects of knowledge, the reformulation of epochal diagnoses, and the reconstruction of normative standards. The reformulation of disciplinary canons refers to the creation of the intellectual tools necessary for the development of particular disciplines: concepts are created, different intellectual traditions are put together and institutional spaces are fought for and created. The definition of an object of knowledge refers to the locus and tempus of research and especially to the global space in which current social relations may be understood, the temporal obsolescence of the nation-state and its derivative phenomena, and the rise of "postnational constellations" coming after the nation-state. The reformulation of epochal diagnoses refers to the analysis of those major trends that characterize the current historical condition and make the world change so quickly. This in turn contains normative as well as descriptive dimensions in favour of universalistic standards of moral, legal and political judgement.

The new cosmopolitanism has been a productive movement in the social sciences. Consider these examples. The idea of cosmopolitan law has emerged out of the field of International Law but has a logic that transcends its origins and is in some aspects in contradiction with them. While international law recognises nation-states as legal personalities and has national sovereignty as its guiding principle, cosmopolitan law reaches inside states to recognise individuals and groups in civil society as well as states as legal personalities, and reaches outside states to recognise a higher legal authority over that of states. It is concerned with the rights and responsibilities of world citizens and the key problem it addresses is that the worst violators of human rights are often states or state-like social formations (Charney, 1993).

In the field of International Relations cosmopolitanism also has a logic that transcends its origins. Whilst the "realist" mainstream of IR holds that the state is

the ultimate source of authority and that there is no legal or moral authority beyond the plurality of sovereign states, the cosmopolitan paradigm criticises "realism" for naturalising a system of sovereign states that is in fact historically specific and normatively undesirable. It rejects the spatial matrix of IR which distinguishes between the domestic field in which individuals freely submit to the state as to their own rational will and the international field that is taken to be devoid of all ethical values. And it rejects the temporal matrix of IR which declares that *inside* the state progress can be accomplished over time but that *outside* there can only be an eternal repetition of power and interest (Bartelson, 2001; Doyle, 1993; Walker, 1993).

In Political Philosophy the new cosmopolitanism is based on a revival of the ideas of cosmopolitan right and universal history first developed by Kant at the close of the eighteenth century (Archibugi, 1995; Fine, 2001; Kant, 1991; Nussbaum, 1991, Chap. 8). Its basic intuition is that Kant's cosmopolitan thinking is as pertinent to our own times as it was to Kant's and that the challenges posed by the catastrophes of the twentieth century have given new impetus to this way of thinking (Archibugi et al., 1998; O'Neill, 2000). It acknowledges that Kant's cosmopolitan vision may need to be *rationalised* in order to iron out inconsistencies in his thinking, *modernised* to take into account differences in social context and conceptual framework that now separate us from him, *democratised* to introduce a deliberative and intersubjective element into the definition of cosmopolitan right, and *socialised* to elaborate the linkages between peace and social justice that Kant neglected (Habermas, 1997). Even so, its basic agenda is to "think with Kant against Kant" in reconstructing the cosmopolitan idea (Apel, 1997).

Finally, in Sociology the cosmopolitan paradigm seeks to dissociate the core concepts of the discipline, especially that of "society," from the presuppositions of the nation-state. Its argument is that the strong notion of a *rational* society that has traditionally prevailed in sociology is the joint product of the discipline's own national consciousness and the apparent "solidity" of national societies during the time of sociology's early development. It emphasises the historicity of this framework and maintains that it is no longer capable of containing the internal heterogeneity and hybridity of modern populations or of comprehending the proliferation of external connections between nation-states. (Albrow, 1996; Beck, 1997, 2000a, b, c; Castells, 1996–1998; Lash, 1999; Urry, 2000). Cosmopolitan arguments have become so prevalent in sociology that they may be characterised as a new orthodoxy in which, as far as the past is concerned, the nation-state is no longer seen as the major *container* of social relations and political modernity is no longer conceived as telologically oriented towards the generalisation of nation-states across the globe; and in which, as far as the future is concerned, the construction

of an order based on cosmopolitan right is put forward as a vision with empirical and normative dimensions. The word "orthodoxy" is used to suggest that the new cosmopolitanism may be becoming a "by-default" way of thinking in sociology, but not to suggest that it is uncontested. Indeed, we would place ourselves among a number of voices which, whilst challenging the classical view of the nation-state as the necessary referent of social, political and legal thought, do not so readily take for granted the idea of a radical epochal break with its implications for the obsolescence of all previous sociology (Calhoun, 2002; Mann, 1997; Smelser, 1997; Wagner, 2001a).

Intellectuals doubtless like to see themselves as living in hectic times and playing a pivotal role in their outcome. To our mind there is nothing wrong with this ambition, even if it smacks at times of a certain vanity, but the fallacy of "presentism" to which we referred in the previous section questions the proclivity of intellectuals to understate the ties that bind the present to the past and overstate the ties that bind it to the future. The basic argument we wish to pursue is that cosmopolitan social theory can help us reconstruct the canons of the social sciences, understand our current epochal condition and set the parameters for a new normative order, but it can only do so by positioning itself *within and not beyond* the intellectual traditions of the social and political sciences and by reflecting on the political concerns that are at the core of these disciplines. Where we are critical of the new cosmopolitanism, it is not from the standpoint of some resurgent national attachment but because it turns cosmopolitanism into an abstract ideal removed from the equivocations, passions and conflicts of ethical life that classical social theory addressed. Let us illustrate our argument by considering briefly the current "return to Kant."

THE AMBIGUITIES OF KANT'S COSMOPOLITAN LEGACY

The political works of Immanuel Kant, written over a twelve-year period around the time of the French revolution, are now commonly seen as an origin of the new cosmopolitan thinking. Kant challenged the nationalist view of the world, itself newly-born, and offered in its place the idea of a cosmopolitan order. In so doing, he demonstrated that the birth of nationalism was coeval with that of cosmopolitanism. He criticised the common sense which treats unbridled competition between nation-states as a natural and insuperable fact of modern life and argued that in this context the idea of "right" meant no more than the right of states to go to war as they please, to use any means of warfare deemed necessary, to exploit newly discovered colonies as if they were "lands without owners," and

to treat foreigners coming to their lands as enemies (Kant, 1991, pp. 105–106). For Kant, this was essentially no right at all. He compared this form of "order" with the Hobbesian "state of nature": as a war of all *states* against all which can only be terminated through the formation of a new Leviathan in which, for the first time in human history, there will be established "lawful relations among states" and a "universal civic society" (Kant, 1991, p. 114).

By the idea of "lawful relations among states" Kant referred to international laws that have as their central aim the creation of *peaceful relations among states*. By the idea of a "universal civic society" he referred to international laws that treat *individuals as juridical subjects* and guarantee the basic human rights of global citizens, regardless of whether they are recognised by their nation-states (Kant, 1991, pp. 47, 172). The world Kant imagined was one in which, to use his own words, standing armies are abolished, no national debt is incurred in connection with military costs, no individual state forcibly interferes in the internal affairs of another state, foreigners are afforded a universal right of hospitality and the indigenous inhabitants of newly conquered colonies are no longer "counted as nothing" (Kant, 1991, pp. 106–125). To approach this regulative ideal, Kant argued that nation-states 'must' put an end to the "lawless condition of pure warfare," renounce their "savage and lawless freedom, adapt themselves to public coercive laws, and form an international state . . . which would grow until it embraced all the peoples of the earth" (Kant, 1991, p. 105). He argued further that the new Leviathan had to take the form of a federation of nations, based on the mutual co-operation and voluntary consent of many or all independent states, since otherwise it might conceal the rule of a single great power that uses it as a mask in pursuit of its own interests, or become a "universal despotism" denying freedom to all.

Kant admitted that the idea of a cosmopolitan order was "fantastical," without precedent in world history, and that European states were in fact relating to one another ever more like atomised individuals in a Hobbesian state of nature. He did not deny that nationalism and xenophobia were the rising stars of the new republican order, but his achievement was to persist in trying to harmonise the principle on which the world revolution was turning, the sovereignty of independent nation-states, with that of peaceful, enlightened and rights-based universalism. He maintained in defiance of the prevailing currents of nationalism that the idea of a cosmopolitan order was nonetheless *right*, a duty everyone ought to fulfil whether or not it accorded with their inclinations, a duty incumbent upon rulers however great the sacrifices they had to make, a duty that was valid whether or not public opinion or the state recognised it, a duty that was binding even if there were not the slightest possibility of its realisation. All politics, as Kant put it, must "bend the knee" before the idea of right (Kant, 1991, p. 125). He also looked beyond immediate circumstances,

which were seemingly averse to the idea of cosmopolitan right, to more propitious underlying tendencies that revealed that cosmopolitanism is a form of *realism* in the modern world. First, it recognises that "the peoples of the earth have entered in varying degrees into a universal community . . . to the point where a violation of rights in one part of the world is felt everywhere" (Kant, 1991, pp. 107-108). Second, it corresponds with the economic requirements of a commercial age in which peaceful exchange is more profitable than plunder. Third, it accords with the political interests of nation-states facing escalating risks and costs of war. And finally it has an elective affinity with republicanism since republican rulers can no longer declare war without consulting their citizens and republican citizens have a higher level of political maturity than the subjects of traditional monarchical states. Behind the scenes, as it were, Kant saw what he called "Providence" or the "Plan of Nature" preparing the way for the progression, if not attainment, of cosmopolitan right. And he brought together his metaphysics of justice and philosophy of history to provide the resources needed to transcend both a *dispiriting positivism* which declares that the way things are is the way they always have to be, and a *superficial empiricism* which declares that the ways things appear to be is what they essentially are.

Kant did not invent the idea of cosmopolitanism but transformed it into a philosophical principle of the modern age, based on the belief that nationalism is a sign of human immaturity and that "genuine principles of right" point toward a more "universal law of humanity." His conviction was that humanity is "by its very nature capable of constant progress and improvement without forfeiting its strength." (Kant, 1991, p. 189) while remaining careful not to define too closely where this capacity for progress and improvement might lead:

No one can or ought to decide what the highest degree may be at which mankind may have to stop progressing, and hence how wide a gap may still of necessity remain between the idea and its execution. For this will depend on freedom, which can transcend any limit we care to impose (Kant, 1991, p. 191).

Kant's achievement was not only to recognise the importance of the modern idea that "a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc.," but to attempt to actualise this idea as a moral, social, legal and political project. It is for good reason that Kant's political philosophy has now been re-discovered by the new cosmopolitans, yet we would suggest that its reconstruction has been an equivocal one. Our argument is that, in ridding Kant of his metaphysical and teleological presuppositions, the new cosmopolitanism on the one hand mirrors the illusory relations Kant constructed between past and future, and on the other hand loses something of the sheer radicalism of Kant's conception of cosmopolitan right.

THE FIRST CRITIQUE: BETWEEN PAST AND PRESENT

It was a mark of the moral point of view Kant expressed that he contrasted the darkness of the "Westphalian" past to the light of the cosmopolitan future. He viewed the transition from an order based on the abstract rights of nation-states (definitive of Westphalia) to one based on positive laws and backed by a federation of nation-states (definitive of the cosmopolis) as a huge and radical break. The moral denouement of the former was the natural accompaniment to the equally moral idealisation of the latter. For example, at the same time as he represented traditional international legal theorists - "Grotius, Pufendorf and the rest," as he disparagingly referred to them - as offering no more than a disguise for what were essentially lawless relations between states, he presented himself as the harbinger of a fully legal order. Yet these same jurists were the first to give the world a regular system of natural jurisprudence, to conceive of the unity of the human race in spite of its division into nations, to base this unity on the moral kinship of all human beings, and to argue that human unity was a natural law even if it was not acknowledged as such by those who held that the duties of humanity ought to be conferred only on fellow-citizens and who treated foreigners as enemies. It is true that within this jurisprudence there was little or no sign of conceding either the historical existence or the ethical possibility of "a human legislative power of universal character and world-wide extent," yet this jurisprudence still provided a legal framework that brought to an end the condition of absolute mistrust between states manifested in the Thirty Years War, liberated states from the fixed morality of the One Church, excluded the religious point of view from international politics, ratified the co-existence of religious parties, recognised the legal principle of pluralism among states, and established a system of inter-state relations based on human will and empirical observation rather than on divine command or revelation (Hegel, 1956, p. 412ff).

The point of these historical observations is not to idealise the Westphalian order, nor to lament its passing, least of all to seek its restoration, but it is to indicate that Kant's dichotomous rendition of social change, in which the establishment of a higher legal authority is presented as the alchemy that would transform "perpetual war" into "perpetual peace," offers a highly stylised view of relations between past and future. Kant's supposition was that the legal codes of the old Westphalian order were without any legal force *because* they lacked a higher legal authority to enforce them, and that conversely a cosmopolitan order represents a new stage in human history *because* it is based on a higher legal authority. Yet as Hegel observed in his *Philosophy of Right*, the Westphalian model was not "devoid of right" since relations between states took the form of contracts and treaties and the principle on which these relations were based was that contracts and treaties must

be observed. Similarly, a federation of nations cannot be devoid of violence since it is just as capable of constructing its own enemies as an individual state: "even if a number of states join together as a family, this league in its individuality must generate opposition and create an enemy" (Hegel, 1991, §324A). To paraphrase Hegel, the violence connected with the more simple forms of right is "sublated" but by no means overcome in the more developed and complex forms.

Similar problems to those faced by Kant in handling relations between past and future are found in the new cosmopolitanism. If its strength is to challenge the methodological nationalism of the social and political sciences and address the historicity of the nation-state, it also mirrors the object of its criticism. It denies that the nation-state is a *natural* or a *rational* form of socio-political organisation in any general sense, but accepts that it is or was the natural and rational form of socio-political organisation in the *modern age*, i.e. that it is or was *the* organising principle of political modernity. This curiously re-natured view of the nation-state mirrors or even caricatures the modernism it opposes. Historically, it downplays the co-presence of the nation-state with other modern forms of political organisation (empires, colonies, dominions, totalitarian regimes, city states, "camps," multinational and international organisations, etc.); it takes a relatively brief period of modern political life when the norm of the nation-state appeared to be prevalent, the post-war period, as the exemplary period of political modernity as a whole; and even then, it imposes on this period an image of the solidity of the nation-state that was not generally shared by social scientists at the time who were centrally concerned about the resurgence of totalitarianism and then the cold war (Buxton, 1985; Parsons, 1993a, b). The cosmopolitan diagnosis of the current epoch in terms of the decline of the nation-state only makes sense against this mythic backdrop in which the nation-state appears as *the* characteristic form of political modernity. Our claim here is not only that modern nation-states have co-existed with other socio-political forms but also that they have been more intermittent and unstable than this highly stylised view of political modernity allows. The case of Germany makes the point all too clearly. On the one hand, the *idea* of a German nation-state has been present at least since the Napoleonic Wars in the early nineteenth century (Kohn, 1961; Mann, 1974). On the other hand, since the unification of the *Reich* in 1871, this idea has been turned into empire, nation-state, totalitarian regime, occupied territory, divided nation-state, unified nation-state and EU member. Although it is striking to find that the literature on the nation-state often surrenders to an image of its solidity and stability; it is even more striking that the new cosmopolitanism has reinforced this homogenised image of the past.

The point to be made here is that nation-states are an elusive object of study when it comes to the question of their decline. In current cosmopolitan discourses we often witness the re-birth of one of sociology's founding tensions: that between

Gemeinschaft and *Gesellschaft*. In classical sociology the concept of *Gemeinschaft* was used to describe forms of communal life that were not mediated by abstract forms of social co-ordination, such as money or law, while the nation-state, understood as national market and political community of citizens, was the form of appearance of *Gesellschaft*. Modernist social science, as Reinhard Bendix has argued, perpetuates this mode of thinking about historical transition by presenting it as a passage from "tradition" to "modernity." His argument is that the social sciences' reflection on "Western modernization has been accompanied throughout by a particular intellectual construction of that experience, prompted by moral or reforming impulses often presented in the guise of scientific generalizations" (Bendix, 1967, p. 313). His concern is with the "romantic fallacy" of both classical and modernist sociology, which reconstructs historical transitions "by contrasting the liabilities of the present with the assets of the past" (Bendix, 1967, pp. 319–320).

In the currently revised versions of this antinomy, there are a number of different reconstructions. The sceptical scenario, as far as cosmopolitanism is concerned, is to reconstruct the nation-state as a form of *Gemeinschaft*, while *Gesellschaft* is now represented by the transnational social formations that are seemingly replacing nation-states. This is roughly the position taken by those sociologists who doubt that the conditions of trust and solidarity possible in nation-states can be extended too far beyond these historical and philosophical limits (Offe, cited in Freise & Wagner, 2002). Proponents of the new cosmopolitanism do not generally regard this kind of dualist thinking as an adequate strategy for understanding the world but we find that they too make use of it. Either they turn on its head the sceptical scenario mentioned above by presenting the new cosmopolitan *Gesellschaft* as radically different from the nation-state "community," but this time contrast the "liabilities of the past" (i.e. nationalism) with the "assets of the future" (i.e. cosmopolitan order) (Albrow, 1996; Beck, 2000a). Or on a more nostalgic note they seek to *reconcile* the traditional conception of the moral duties of states as set by natural law with modern conceptions of legal positivism, *Realpolitik* and national interest. They do this by adding a third stage to the modernist dichotomy of tradition and modernity, that of the cosmopolitan age. What all these versions of history have in common, we suggest, is that they understate the internal fractures of political modernity as much as they overstate the gulf that separates the coming cosmopolitan order from the past.

If from the juridical point of view cosmopolitan thinkers represent the modern order of nation-states as an essentially anarchic order, a war of all *states* against all, they also present this order as remarkably stable and secure – lasting well over three hundred years from the Peace of Westphalia to our own times. The most momentous events – the political revolutions of the late eighteenth century, the growth of imperialism, the collapse of the mainland European empires after the

First World War, the rise of totalitarian regimes, the collapse of overseas empires after the Second World War – appear as mere punctuation marks in a continuous narrative of the nation-state. Even the forms of international co-operation established among nation-states – the League of Nations after the First World War and the United Nations following the Second – are viewed as consolidating the principle of national sovereignty and its accompanying *Realpolitik* (Giddens, 1985, Chap. 10). In this image of political modernity all events prior to the rise of the new cosmopolitan order seem to reproduce the old order of nation-states. It is as if the old adage, *le plus ça change, le plus c'est la même chose*, holds absolute sway in this sphere of life. It is an image of the Westphalian order that mirrors or even inflates the modernist paradigm it opposes. It differs from modernism only in that it refuses to see political modernity as an end of history and proposes a second rupture – one that brings into being the postnational or cosmopolitan constellation (Wagner, 2001b, p. 83). In this story, it would appear that nothing *substantial* happened for around 350 years and then, all of a sudden, in our own times, everything happens at once.

THE SECOND CRITIQUE: BETWEEN PRESENT AND FUTURE

A core argument of the new cosmopolitanism is that we are now living in an age marked by the decline of the Westphalian model of nation-states and the rise of a new cosmopolitan order. The present age is conceived as one in which national sovereignty and the nation-state are finally giving way to a global order in which the actuality or at least the possibility of human rights and international legal authority are in sight. There are many different accounts of when this transition is supposed to have occurred and of what the signs are that it has occurred, but this wave of cosmopolitan writers dates the beginnings of the new cosmopolitan order to the aftermath of the Cold War in 1989, and adduce two kinds of evidence in support of their claim: certain observable reforms and underlying social forces. In relation to the former they highlight, for example, the conversion of human rights conventions into enforceable international laws, the establishment of international criminal tribunals, international military interventions to stop crimes against humanity, the levelling of cosmopolitan criticism at the failure of big powers to stop these crimes, the shift in the United Nations from defending national sovereignty toward the protection of human rights, the establishment of the principle of the conditionality of national sovereignty in international law, and so forth. Their case is that such reforms are neither short-term nor contingent but the visible expression of deeper social processes and historical trends. Among the latter we can cite the separation

of nation and state brought about by movements of populations, the heterogeneous and hybrid character of populations within state territories, the expansion of complex mobile connections across state boundaries, the proliferation of global risks requiring transnational solutions, and the deterritorialised “liquidity” of money, media and information.

Two kinds of objections have been raised against this thesis: one challenges its factual basis and the other its normative significance (Hutchings, 1999). The factual challenge affirms the short-term, transitory character of these changes and re-asserts realist claims about the continuing significance of state power in relation to global governance. The normative challenge accepts that the order of nation-states is being surpassed but provides a pessimistic reading of the post-Westphalian order – as the unbridled dominance of global capital over political life or as the transformation of rival empires into a singular “Empire” (Hardt & Negri, 2000). Behind these empirical and normative arguments we find an “anti-cosmopolitanism” that can be no less doctrinal than the cosmopolitanism it opposes and shows little or no understanding of the concept itself. The empirical argument of the sceptics simply substitutes “no change” for the cosmopolitan idea of “total change”; the normative argument simply substitutes its own pessimism for cosmopolitan optimism. Our own line of argument picks up on our earlier comment, namely that criticism of the new cosmopolitanism is not to be derived from the standpoint of a reconstructed national framework nor from a negative futurology, but from a concern that the idea of cosmopolitanism is being removed from the conflicts of political life and that we should rather position it *within* the intellectual traditions of the social and political sciences.

The new cosmopolitanism devalues both cornerstones of the self-understanding of modern societies: nations and classes (Fine & Chernilo, 2003). It opposes nationalism on the grounds that it turns the idea of the nation into a supreme principle and prioritises particular interests over the universal interests of humanity. It opposes socialism on the parallel grounds that it turns class into a supreme principle. It objects equally to the old shibboleth of a *universal class* (be it, the state bureaucracy or the proletariat) and that of a *universal nation* (be it, France after 1789 or Russia after 1917) on the grounds that they both falsely identify the interests of a particular entity with the general interests of humanity as a whole. It portrays both nationalism and socialism as dangerous and contradictory political discourses and sees close parallels between the idea of “class enemy” and that of a “national enemy.” In each it traces a continuous thread of violence directed at the destruction of their respective “Others.” It represents socialist internationalism as basically a lie that allows some national interests to masquerade as universal (e.g. Soviet or anti-imperialist nationalisms during the Cold War), and suppresses other national interests in the name of class solidarity, as if the former were all bad and the latter all good. As long

as political argument takes these related forms, the new cosmopolitanism declares that there can be no resistance to the established order that does not mirror the power it opposes. Against a modernist framework defined in terms of competing forms of particularism and *spurious* universalisms, the new cosmopolitanism presents itself as offering a *genuinely* universalistic outlook: one that recognises the point of view of humanity as a whole as well as the diversity of the human species. It presents itself, in other words, as reconstructing our categories of understanding in such a way as to overcome the *narrow particularism* and *abstract universalism* constitutive of the modernist political imagination. It heralds a different relation: one which no longer looks to a particular class or nation as the embodiment of universal values, or to the destruction of another class or nation as the condition of human emancipation, but to a genuinely universalistic alternative to all such *spurious* forms of reconciliation.

Given these premises, the task undertaken by the new cosmopolitans is to discover what *genuine* reconciliation might look like and on this question we find various competing visions. We suggest, however, that the difficulties of reconciliation encountered at the level of the nation-state are necessarily reproduced at the cosmopolitan level, and that the most pressing task is therefore not to "resolve" such difficulties but to recognise them and develop a politics based on their recognition. We might call this the politics of "dysporia — the difficult way."

Consider, for example, the danger identified by Kant that a Federation of Nations might become a "counterfeit" concealing the rule of a single power. Kant believed he found an answer in the form of a federation of nations based on mutual co-operation and voluntary consent among a plurality of independent states, all of which would retain their own rights of particularity up to and including the right to withdraw from the federation itself. One difficulty Habermas (1997) has identified is that it is inconsistent to establish a Federation of Nations as a supreme authority and yet base it on a purely voluntary principle. A Federation of Nations cannot become a stable and legitimate body without its law being *binding* on individual governments, otherwise any particular power can simply withdraw and go its own way when it rejects the decisions of the Federation. The further difficulty is that if a Federation of Nations prioritises national sovereignty over the protection of human rights or the preservation of peace, as when the rights of particular peoples are violated by their own or other national governments, the cosmopolitan might look instead to a great power or group of powers to intervene to stop the perpetrators from pursuing their course of action. In this scenario, however, we find ourselves back again with the potentially destructive idea of a universal nation which identifies its own will with the general will of humanity (Fine & Smith, 2003).

At the time of writing we are witness to all the dangers unfolding — that of a strong nation withdrawing from the parameters of the UN, that of a strong nation presenting itself as the universal nation with its own historical mission, and that of the international community not protecting the rights of oppressed peoples. These are the real equivocations of modern political life and cannot be reconciled according to the imperatives of the new cosmopolitanism. The point of these examples is not to devise a conception of cosmopolitanism that will finally reconcile all oppositions, but to acknowledge that what the new cosmopolitans rightly identify as the pathology of political modernity also turns out to be a property of cosmopolitanism itself.

CONCLUSION

In this paper we have argued that there is something we can call the new cosmopolitanism and that it is a clearly identifiable intellectual movement in the social and political sciences. An attempt was made to show how: (1) it builds its own canon, taking more often than not either Hobbes' idea of Leviathan or Kant's idea of perpetual peace as a starting point; (2) it defines a new object of study, "the global," that can transcend the methodological nationalism prevailing in modernist social and political sciences; and (3) it defines a new set of normative standpoints based upon a universal idea of human rights and legal authority beyond the nation-state. This movement has crossed disciplinary boundaries and has pushed for a cross-disciplinary agenda to study what it sees as the main developments of the current world: the crisis of the nation-state (Sociology), the rise of globalisation (International Relations), the prospects for cosmopolitan democracy (Political Theory) and the development of cosmopolitan law (International Law). The cross-disciplinary discourse of the new cosmopolitanism is its major strength and indeed a core reason to attempt to reconstruct it and understand its major features.

This is neither a monolithic movement nor a fixed tradition. Whereas in sociology and in political theory the new cosmopolitanism is achieving a mainstream status, its position in other fields may be less secure. Beyond these differences, we have identified one dimension that crosses the different formulations we have reviewed: its thesis about the current historical transition. We have criticised the new cosmopolitanism for what we may now call its *rigid historical imagination*. It has taken the idea of radical epochal change, which has always been a feature of the social and political sciences, and turned it into a fixed idea of the relation between past and future. The permanence of modernity is suddenly broken and everything starts anew in a single event. It is a vision of

a normatively-modelled future – a “teleology,” as it were, for a post-teleological age – projected onto the present. If we return to the start of our paper, this is the main defect we see in the now common cosmopolitan response to the event of 9/11.

Today cosmopolitan right is no longer just an idea in the head of philosophers. It exists in the current age and our knowledge of it is of something external to us. We can study it in the same way we study other forms of right. It is derived from human beings, it is relative to other forms of right, it is never valid simply because it exists, and there is always the possibility of conflict between what it is and what it ought to be. Our conscience and convictions may come into collision with it. As social scientists, our task is that of recognising precisely what cosmopolitan right is. So, rather than celebrate prematurely the idea of cosmopolitan right and elevate it to the status of an ideal, we have sought to place it within the history of modernity. We see cosmopolitan right as a stage in the development of right from its most simple and abstract forms to its most complex and concrete. It is an *essential* moment in the development of human freedom, but if modernist social theory once made the mistake of deifying the nation-state, we do not wish to make the same mistake again with the idea of cosmopolitanism. We do not see cosmopolitanism as a consolation for the violence of our age, based on a “visionary non-fiction” of the cosmopolitan order to come, but rather as a confrontation with the violence of our age in the here-and-now. We do so in the knowledge that under the cosmopolitan banner the idea of “perpetual peace” can be subsumed to the justification of new forms of violence and that cosmopolitanism can be translated into political practice in a multiplicity of ways. It can be allied to radical, liberal or conservative forces so that its political effects are not contained in the idea alone.

NOTES

1. The original formulation of this idea of ‘methodological nationalism’ may be found in H. Martins (1974, pp. 275–280). In A. D. Smith’s apt summary, it establishes that “statistics (...) are collected on a national basis; and not merely the data, but also the assumptions behind such information-gathering operations are bound up with a nationalist framework which views ‘societies’ as ‘naturally’ determined by the boundaries and properties of nation-states (...) the study of ‘society’ today is, almost without question, equated with the analysis of nation-states; the principle of ‘methodological nationalism’ operates at every level in the sociology, politics, economics and history of mankind in the modern era. (...) the world nation-state system has become an enduring and stable component of our whole cognitive outlook, quite apart from the psychological satisfactions it confers’ (1979, p. 191).

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NEGOTIATING FOR JUSTICE, FIGHTING FOR LAW: THE DIALECTIC OF PROMOTING AND SETTling DISPUTES IN THE CURRENT GLOBAL ERA

Michal Alberstein

ABSTRACT

The present paper attempts to map the discursive relations between conflict and settlement as reflected in the realms of law and mediation during the second half of the 20th century, offering a 21st century model to combine the mediation drive to settle through reaching inter-subjective transformation with the legal drive to escalate and promote social conflict. Contemporary mediation, according to this model, should involve on the one hand "negotiating for justice," according to the familiar models of problem solving and transformation, and on the other hand "fighting for law"; acknowledging the self-referential and ideological quality of conflicts, while emphasizing the pragmatic need to end them through an interpretive public act that involves value judgments.

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