

Cosmopolitanism

Cosmopolitanism:

Between Ideals and Reality

Edited by

Lorena Cebolla Sanahuja
and Francesco Ghia

Cambridge
Scholars
Publishing



Cosmopolitanism: Between Ideals and Reality

Edited by Lorena Cebolla Sanahuja and Francesco Ghia

This book first published 2015

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Copyright © 2015 by Lorena Cebolla Sanahuja, Francesco Ghia
and contributors

This book is published thanks to the sponsorship of the project KOSBO-
BANDO POST DOC PAT 2011 by the Autonomous Province of Trento

All rights for this book reserved. No part of this book may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
electronic, mechanical, photocopying, recording or otherwise, without
the prior permission of the copyright owner.

ISBN (10): 1-4438-8370-0

ISBN (13): 978-1-4438-8370-2

TABLE OF CONTENTS

| | |
|-----------------------------------|---|
| Introduction | 1 |
| Lorena Cebolla and Francesco Ghia | |

Cosmopolitanism: Ideality

| | |
|--|----|
| Cosmopolitanism and Human Rights | 10 |
| Isabel Trujillo | |

| | |
|--|----|
| Dynamic Cosmopolitanism: A Brief Sketch with a Special Emphasis on Kant | 35 |
| Georg Cavallar | |

| | |
|---|----|
| The Right of the Subject to Become a Citizen of the World: Kantian Anti-Colonial Cosmopolitanism | 59 |
| Lorena Cebolla | |

| | |
|--|----|
| The Principle of Equality and The Religious Foundation of Human Rights: A Critical Review of Georg Jellinek's Work..... | 83 |
| Francesco Ghia | |

Cosmopolitanism: Reality

| | |
|--|-----|
| Defense or Domination? Moral Cosmopolitanism and International Order..... | 108 |
| Luca Scuccimarra | |

| | |
|---|-----|
| Integrity in Conflict: A Cosmopolitan Approach for Survival | 128 |
| Laura Westra | |

| | |
|--|-----|
| Constructing Cosmopolitanism in the Digital Age: Challenges and Prospects | 154 |
| Francisco Arenas-Dolz | |

Progressive Environmental Taxes: A Fair Measure against Climate
Change..... 172
Paula Casal

INTRODUCTION

LORENA CEBOLLA AND FRANCESCO GHIA

Sometimes, when thinking about a concept, it is better to start with facts. In this case, the meaning of cosmopolitanism. It is refreshing to realize that this is the strategy followed many years ago by the undoubted father of current reflections on cosmopolitanism, Immanuel Kant. Considered a rationalist par excellence, Kant nonetheless constructs his philosophy on the basis of the real or empirical conditions of human life; his transcendental system of reason is the result of thinking about and for human beings. Without wishing to enter into a critique of Kant, it can be noted that Kant constructs his defense of cosmopolitan right, as right or law and not merely as a moral notion, on the fact that we all live together in an enclosed, limited spherical space.¹ This fact, seemingly obvious and apparently irrelevant, is the starting point for our reflections. The fact that we all live together in a limited space and, most importantly, with limited resources, begs the question of how we, humanity, are going to cope with this fact. We could add another, rather “pretentious” fact: human beings, as individuals, members of families, groups, peoples, nations or states, try (if possible) to avoid war. So, the cosmopolitan question becomes “the humanity question”: how are we going to live together in a small space of limited resources and avoid a state of perpetual war? How are we going to proceed if we want human relations to be based not on power, force or terror, not on immediacy. The question of justice and equity immediately follows since living in a space undetermined by violence or power is to live in a legal, institutional or “ruled” system, where everyone is able, again in a Kantian fashion, to exercise freedom, follow their desires, aims, life plans, etc. provided this does not encroach on the freedom of others. This is the cosmopolitan question and its distinctive characteristic, dealing with the destination of the whole and not of a single part; cosmopolitanism is concerned with global justice.

¹ Kant, Immanuel, *Metaphysics of Morals*, 6:352; *Perpetual Peace*, 8:40.

Kant's idea of cosmopolitanism, the project of a federal world republic, should be analysed against the background of the major elements of political modernity and the features of the German political and legal culture at the time of the Enlightenment (summarised in the slogan "Sapere aude!"). In our case, the presentation of cosmopolitan as a window of opportunity for global justice might attract immediate criticism, since it seems to be based on only on individualistic/liberal assumptions. In our opinion, this is not the case. By presenting the problem this way we are not saying that cosmopolitanism looks for a "ruled" solution securing a just and equal system for the individual (or not only this). A "system, where everyone is able...to exercise freedom, follow their desires, aims, life plans, etc. provided this does not encroach on the freedom of others" does not impose specific conduct, or a specific course of action understood as a universal mechanism. This idea of justice is compatible with multiple understandings (or sometimes failures to understand) in relation to notions of identity, membership, citizenship, happiness... It is reconcilable with different ways of life, thought and action about life and life's purpose. Over time, civil societies and political institutions have developed an idea of themselves as societies and institutions of liberty, based on respect for the freedom of conscience, the recognition of the positive value of diversity, and the construction of an open public sphere in which all citizens have an equal right to have their positions represented and to participate in the decisions concerning collective life. The future of our world, indeed, is linked to our capacity to think, at the theoretical level, of positive interrelations between different values, and to create at the practical level new forms of cooperation between various realms of life. However, cosmopolitanism imposes constraints, some would say a set of "minimums", which must be respected for life, human and non-human, to be possible, and if human life is to be lived, in its multiple understandings, fulfillingly.

These constraints reflect a common understanding of what is required to reach our different and particular conceptions of the good. This could be illustrated by saying that the necessary constraints imposed by cosmopolitanism could be those necessary, for example, to produce the list of goods outlined by Martha Nussbaum.² Another way to describe these constraints is simply to call them human rights. Again, these

² Nussbaum, Martha (2002), 'Capabilities and Human Rights' in de Greiff, P. & Cronin, C. (eds.), *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Civilization*, Cambridge: Cambridge University Press.

necessary constraints can be condemned due to their liberal grounding, Occidentalism, imperialist interests, etc. We prefer to refer the reader to Simon Caney's book *Justice Beyond Borders*,³ perhaps the best analytical defense of cosmopolitanism and the civil, political, and distributive human rights it entails against the critiques typically made of human rights as a western construct. The key to our proposal is to identify the factors that might determine a positive interpretation of what is entailed by cosmopolitanism, so that they can be given a proper theoretical work and coherent public policies.

Having said this, much still needs to be said about what cosmopolitanism actually is. To quote Pogge:

"Three elements are shared by all cosmopolitan positions. First, individualism: the ultimate units of concern are human beings, or persons rather than, say, family lines, tribes, ethnic, cultural, or religious communities, nations or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, universality: the status of ultimate concern attaches to every living human being equally, not merely to some sub-set, such as men, aristocrats, Aryans, whites, or Muslims. Third, generality: this special status has global force. Persons are ultimate units of concern for everyone - not only for their compatriots, fellow religionists, or such like."⁴

It is important to note that although cosmopolitanism is concerned with the individual it is not, as Isabel Trujillo states in her contribution to this book, equivalent to individualism or universalism. It is an attempt to articulate differences within a community that is global, while at the same time making every individual count and be accountable. The fact that the unit of concern is the individual, all individuals, does not mean that cosmopolitanism is a political strategy for homogenization. On the contrary, it is a guarantee against communal forms of coercion. In this way, if an individual realizes a life project within a community through the community culture, values, and institutions, cosmopolitanism integrates the individual and the community within a wider or global sphere of acknowledgment, accountability, responsibilities and decisions. Where, on the other hand, an individual or group is coerced by the community (via physical, social and political coercion) cosmopolitanism

³ Caney, Simon (2005), *Justice Beyond Borders: A Global Political Theory*, Oxford: Oxford University Press.

⁴ Pogge, Thomas (1992), 'Cosmopolitanism and Sovereignty', *Ethics*, 103, pp.48-75, pp.48-49.

can respond because the individual is not isolated within the borders of a people or state, but is part of a wider, global community, which aims to provide guarantees to every subject, treated as a world citizen. It could equally be said, in line with the reasoning of Kai Nielsen, that cosmopolitanism protects the individual because of its being an egalitarian theory of justice. In his view, “as egalitarians [...] we believe that the life of everyone matters, and matters equally. We believe, that is, that all people have equal moral standing.”⁵ Hence, cosmopolitanism should not be understood in logical opposition to patriotism or communitarianism, in the sense that it acknowledges the importance of the diversity of cultures, and the existence of special duties among persons in certain categories, friends, families, workers...; but at the same time cosmopolitanism imposes some duties that have a universal scope, duties on everybody, and this matters in the context of a planet that belongs to everybody and will become the home of future generations.

To sum up, cosmopolitanism is the idea of humanity as a single community or *polis*. Beyond particularities all human beings (and in some cases or versions of cosmopolitanism some non-humans) are part of a community, and have responsibilities, rights and the power to decide on a common future. Ideas of cosmopolitan vary from the purely moral to cultural, social, legal, institutional, political, educational and economic cosmopolitanism, or versions that combine some or all of these. The various perspectives try to establish the basis necessary to create true cosmopolitanism.

This being the case, cosmopolitanism should not be understood in Kantian terms as an idea, a concept with no empirical reality, a notion in service of a never-to-be-reached aim nonetheless guiding our everyday actions and indicating the sole path to follow for us to be coherent with our understanding of ourselves and the world. Cosmopolitanism is not only this; it is a concrete objective, a foreseeable situation, capable of being achieved in our world. It is also true that its objectives cannot be reached immediately, since cosmopolitanism, in the words of Georg Cavallar, is a dynamic concept, with a goal that needs to be formulated, cultivated and promoted. And for this purpose, many things have still to be decided, such as the kind of political and institutional configuration the community of the world would adopt, and the economic configuration

⁵ Nielsen, Kai (1998), ‘Is global Justice Impossible?’, *Res Publica*, IV, 2, pp. 131-166, p.134.

able to sustain and promote a world of active citizens (a world of subjects that find themselves in a condition allowing for their active participation in the decisions that define the purposes of the multiple communities in which they belong). In this sense, cosmopolitanism is a process, a realistic one nonetheless.

The process has been variously defined, with a number of concrete proposals, particularly in relation to the political/institutional forms of cosmopolitanism and cosmopolitan theories of justice, including the work of David Held, Simon Caney, Thomas Pogge, Henry Shue, Brian Barry, Daniele Archibugi, Hillel Steiner, Ulrich Beck, Kai Nielsen, and many others.⁶ Theirs are well-constructed, solid proposals about political and institutional possibilities and the principles of justice that define the duties we all owe to each other. Some have a socialist leaning for cosmopolitanism or global justice to become reality, and these should be seriously considered, since the theory underlying institutional conceptions does not always recognize that market dynamics strongly influence the feasibility of the proposal.

The debate on the political and institutional configuration of cosmopolitanism rests today on the choice between a system of multilevel institutions with multiple decision centers and the idea of a global state or world government. The fact that the former would be able to carry out most, if not all, of the functions of the latter without many of its disadvantages is tipping the scales in favor of the multilevel proposals. In addition, this reflection must be accompanied by an analysis of the compatibility of our institutional and political programs with what is known of possible market configurations, adding to the institutional design realistic testing in terms of their realization and maintenance. Readers can gain accurate and extensive knowledge of the discussion on

⁶ As a guide we cite one work per author: Held, David (2010), *Cosmopolitanism: Ideals, Realities & Deficits*, Cambridge: Polity Press; Caney, Simon (2005), *Op.Cit.*; Pogge, Thomas (2002), *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Cambridge: Polity Press; Shue, Henry (1980), *Basic Rights*, Princeton: Princeton University Press; Barry, Brian (2005), *Why Social Justice Matters*, Cambridge: Polity Press; Archibugi, Daniele & Held, David (1995), *Cosmopolitan Democracy. An Agenda for a New World Order*, Cambridge: Polity Press; Steiner, Hillel (1994), *An Essay on Rights*, Oxford-Cambridge (MA): Blackwell; Beck, Ulrich (2006), *Cosmopolitan Vision*, Cambridge: Polity Press; Nielsen: Kai, (2003), *Globalization and Justice*, NY: Humanity Books.

the different political and institutional proposals relating to cosmopolitanism by consulting the works of the authors cited above, and this is the main reason no chapter in this book is dedicated to the political/institutional design of cosmopolitanism.

The approach taken here is different. We decided to provide an introduction to the ideas and reality of cosmopolitanism, to present it “in genesis”, giving a point of departure to students and readers of cosmopolitanism from which to analyze its various contemporary versions and proposals, providing an additional tool for their thinking and judgments in the face of a huge amount of literature today. We also wanted to give a sense of emergency to those matters, requiring a prompt legal, political and economic response, for the continuing existence of the planet and for cosmopolitanism to continue as a viable proposal for humanity. We wanted to stress the aspects and situations that need to be taken into immediate account if life matters.

Therefore, the part of the book dealing with “ideality” presents cosmopolitanism according to its historical character, as a philosophical notion that insists on some core problems and that has evolved over time to its “definitive” Kantian version. It also includes a reflection on the principle of equality and its conformation within a cosmopolitan perspective, accompanied by the study of the religious origin of human rights in the work of Georg Jellinek, one of the fathers of modern public law. Also included is a presentation of cosmopolitanism in modern juridical/legal terms. The “reality” is more complicated, concerning the different possibilities of reification of cosmopolitanism and more controversial questions in political and legal practice. Discussions feature humanitarian intervention, the application of gradual and progressive environmental taxation to combat climate change as well as global inequality, the drafting and immediate enactment of environmental law, with attention going to social media as the means and locations of democratization. The reality of cosmopolitanism deals, we could say, with the conditions *sine qua non* of cosmopolitanism.

In so doing, we have tried to give the idea and the reality of cosmopolitanism, allowing the reader to decide what lies between, the specific version of cosmopolitanism he or she favors among the available options. Our intention is also to provoke the reader into a specific question. With a knowledge of the fundamentals of cosmopolitanism, the emergencies it faces and the different versions that try to cope with those

problems, we hope the reader wonders: ‘Why is cosmopolitanism not a reality?’, ‘How come our institutions, political designs and economy are not cosmopolitan?’, ‘What is stopping us from becoming a cosmopolitan whole?’. We hope the reader discards what Nielsen called ‘the state of the world impossibility argument’ against cosmopolitanism and starts to seriously question ‘the political will impossibility argument’,⁷ and in this way, of course, we are trying to provoke the reader into a new spirit and action, the cosmopolitan one. The chapters of this book have this aim.

Georg Cavallar makes a core distinction between two basic understandings of cosmopolitanism, one static, one dynamic. Defending the dynamic character of cosmopolitanism the author presents it as typical of modernity and describes the evolution of the dynamism of cosmopolitanism and its contents from Francisco de Victoria to Immanuel Kant.

Lorena Cebolla offers a historical-philosophical description of cosmopolitanism understood as a concept strongly based on the common property of land; a controversial subject informing the notion of citizenship and citizenship of the world, culminating in the work of Immanuel Kant where cosmopolitanism, grounded on the concept of the common property of the land, is presented as a form of anti-colonialism, able to give a concrete sense and content to the prerequisites of becoming a citizen of the world.

Francesco Ghia suggests a comparison between the idea of cosmopolitanism and the “principle of equality” through readings in studies on human rights by the German public lawyer Georg Jellinek. The fundamental principle of any legal relationship, for Jellinek, is the foundation of legal personality, a concept that philosophically resolves the conflict between the common will of the people and the protection of individual rights of freedom. The concept of «substantive equality» (Jean-Jacques Rousseau) is asserted by Jellinek through a principle of differentiation that allows the individual to defend personal freedom and autonomous responsibility for action.

Isabel Trujillo presents a reflection on cosmopolitanism and its relationship with human rights, analyzing all the interrelated aspects through an analysis of the consequences observable in human rights

⁷ Nielsen, Kai (1998), *Op. Cit.*, p.132.

practice, such as specification and non-discrimination. The author also reflects on the various sources of legal power aimed at defending human rights and the problem of its international articulation.

Luca Scuccimarra debates the reformulation of humanitarian law in new cosmopolitan terms as used to transform the regulatory foundations of international relations, terms that give rise to the concept of cosmopolitical responsibility. The questioning of the “politically interested” character of this idea, though, leads the author to defend the necessity for a conception of politics that is finally free from the rigid internal/external dichotomy inherited from the political thought of the early modern age, and thus moves beyond the question: defend or dominate?

Laura Westra gives a thorough presentation of ecological integrity; an entirely positive concept that is essential to the life of both humans and non-humans, today and in the future. The concept needs to be openly and universally accepted, incorporated in environmental and legal human rights instruments as well as national constitutions. Westra argues for the urgency to establish a new form of global governance able to challenge the existing and functioning central power of financial organizations, supported by wealthy multinational corporations attacking the ecological integrity at the base of human life and rights.

Francisco Arenas-Dolz presents the challenges and prospects of constructing cosmopolitanism in the digital age. In his chapter, the author explores the extent to which Internet communication promotes (or inhibits) cosmopolitanism. He shows how digital media have reshaped the main challenges of democratic politics and characterizes “digital cosmopolitanism”.

Paula Casal presents a proposal for gradual and incremental environmental taxes as tools to combat climate change with fiscal mechanisms that do not increase, but may decrease, inequality. This proposal faces the emergency situation of our planet with the possibility of reducing global inequality.

COSMOPOLITANISM: IDEALITY

COSMOPOLITANISM AND HUMAN RIGHTS

ISABEL TRUJILLO
UNIVERSITY OF PALERMO

1. Kinds of cosmopolitanisms and cosmopolitan factors

Every form of cosmopolitanism involves the idea of a single community¹ beyond “borders” of different kinds: political, moral, economic, cultural and other relevant diversities that very often divide people into groups, distinguishing between insiders and outsiders. This is the meaning of the combination of *cosmos* and *polis*. *Polis* designates a human community of equals and *cosmos* refers to its scope: it indicates that the community of equals ought to cover the maximum possible domain and then ought to go “beyond” other existing affiliations. Properly speaking, the minimal cosmopolitan claim is a normative demand of inclusion and equal concern without discrimination.

Both Greek terms refer to the idea of an order: *cosmos* is the universal order of nature or facts – mostly but not completely independent of human action –, and *polis* refers to an order made by humans that can be expanded to the borders of the *cosmos*, not only in the sense of the whole earth, but of the entire universe.² In the broadest version of cosmopolitanism human beings and their political communities are called upon to respect and contribute to the cosmic order. This is one meaning of politics: *cosmopolis* is the outcome of free human actions. Hence, cosmopolitanism is a normative approach concerning the structure of the world built by human beings, inspired by equality and participation (*polis*), with a worldwide extension (*cosmos*). It is a normative account of justice as long as it regards the concern for human and other beings and their appropriate treatment.

¹ Kleingeld, Pauline & Brown, Eric (2014), ‘Cosmopolitanism’, *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism/>>.

² Appiah, Kwame Anthony (2006), *Cosmopolitanism: Ethics in a world of Strangers*, New York & London: W.W. Norton & Company.

Examining its scope, cosmopolitanism can be seen as a normative theory of *global* justice. Every theory of global justice tends to be cosmopolitan, but cosmopolitanism is not necessarily or first of all a theory of justice. On the one hand, cosmopolitanism can seek to overcome economic, institutional, legal, cultural, religious or moral borders. On the other hand, theories of global justice can be of different types (including only sentient or rational beings, for instance), and can have different content: rights, duties, institutions, relationships.

In the context of theories of justice, the content of cosmopolitanism has often been identified with the idea of the moral relevance of individuals,³ but cosmopolitanism is more focussed on an idea of a single community rather than on the value of individualities. The claim that individuals are units of moral concern can be called cosmopolitan if referred to a form of ultimate affiliation in a single community⁴ grounded on common humanity (mankind). Otherwise, the account can be thought of as simply individualist and not cosmopolitan.⁵ Nevertheless, individualism and cosmopolitanism are comparable. Sometimes it seems that in order to become part of the *cosmopolis* it seems that every form of particularity or identity must be eliminated. At first sight the self unencumbered⁶ appears to be the best candidate for integration into a community of the whole world, precisely because individuality seems neutral,⁷ whereas identity features determine distinctions and divisions. But, at the same time, it is difficult to imagine communities of just neutral individuals: every community has to be distinguished from all others. However, as will be shown below, individualism is far from being the core of human rights (our topic here). The choice for individualism brings to mind the proposal of natural rights theorists who consider individuals without colour,

³ Pogge, Thomas (2002), *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms*, Cambridge: Polity Press, p.169.

⁴ In the case of Beitz, for instance, individualism is moderated by the idea of interdependence. Beitz, Charles R. (1979), *Political Theory and International Relations*, Princeton: Princeton University Press.

⁵ Waldron, Jeremy (2000), 'What is Cosmopolitan?', *The Journal of Political Philosophy*, 8, pp.227-243.

⁶ This is the participant in the original position according to Rawls, John (1999), *A Theory of Justice. Revised Edition* (1971), Oxford: Oxford University Press, §4.

⁷ Feminist theorists have clearly shown that neutrality is difficult or impossible. It is very easy to confuse dominant with universal values: MacKinnon, Catharine A. (2006), *Are Women Human? And Other International Dialogues*, Cambridge (Mass.): Harvard University Press, p.52.

language, gender, religion, by virtue of a nature that is the same for everyone. But human rights *are not* natural rights.

Like individualism, universalism is often confused with cosmopolitanism, but must be distinguished too. The universalist approach looks for rules that are valid for everyone,⁸ whereas cosmopolitanism articulates differences. This distinction is clear for Immanuel Kant, who can be considered the father both of modern universalism and of cosmopolitanism. In the latter but not the former, the institutional dimension is crucial. In some way, the political dimension of cosmopolitanism comes to the fore through the difference between cosmopolitanism and universalism. The task of universalism is moral homogeneity (rules valid for everyone), whereas politics points to a dynamic unity of differences (in other words, politics aims at solving the problem of coordinating people who are different). The political dimension of cosmopolitanism regards the possibility of coordinating different agents. For this reason cosmopolitanism has both legal and political levels.

This difference is confirmed by some characteristics. The opposite of universalism is particularism, with which it cannot be mixed. The opposite of cosmopolitanism is neither patriotism (which can be integrated in the *cosmopolis*) nor the politics of difference (which is consistent with cosmopolitanism).⁹ Cosmopolitanism can mix local and global elements. Since cosmopolitanism seeks to overcome existing differences, it presupposes their existence and the possible tension between them. Universalism can exist without making reference to different levels. Cosmopolitanism can point to the universal aim of equality and at the same time demand its realization locally.¹⁰ From this point of view universalism and cosmopolitanism are dissimilar.

Within the multifaceted area of cosmopolitanism it is possible to distinguish between exclusive and inclusive versions. These different accounts must be seen as two extremes of the same continuous line (in order to avoid ambiguous results), with a middle area for different versions nearer to, or further from, one extreme or the other. Exclusive

⁸ Pogge, Thomas (2002), *Op.Cit.*, p.92.

⁹ Moellendorf, Darrel (2002), *Cosmopolitan Justice*, Boulder Colorado: Westview Press, pp.47-54.

¹⁰ Nagel, Thomas (2005), 'The Problem of Global Justice', *Philosophy & Public Affairs*, 33, 2, p.133.

cosmopolitanism refers to versions in which a negative claim is dominant: what cosmopolitans propose is to overcome divisions denying the relevance of narrower forms of communities. The most extreme form resembles universalism. An example of this version is the cosmopolitanism of supporters of the world state aiming to eliminate separate political communities, or approaches to justice that contest special duties towards fellow countrymen.¹¹ If we consider this version as one side of the line, on the opposite side are the more comprehensive – inclusive – versions of cosmopolitanism, with increasingly broad accounts able to go beyond political affiliations and even beyond humanity, as far as the conception of human beings, animals and other natural beings forming parts of a whole. In fact, within the *cosmos* human beings can be put side to side with other forms of life. Obviously, the broadest versions of cosmopolitanism need to incorporate the awareness that different statuses need to be distinguished and articulated. Otherwise cosmopolitanism would seem the Hegelian “night in which all cows are black” and become irrelevant for the task of establishing normative directions. The wider the community, the more important are the internal distinctions that have to be compatible and reach some kind of order and harmony. In general, the broadest forms of cosmopolitanism underline human responsibility for the rest of the *cosmos*, distinguishing the role of humans and their normative positions from those of other beings.¹² At the end of the day, cosmopolitanisms can be called inclusive because they advocate a dynamic effort for increasing inclusion in a single community, whilst maintaining differences.¹³ The level of inclusion that cosmopolitanism points towards is a question of degree.

Harmony and order as contents of cosmopolitanism express not a fact, but an ideal inspired by proportionality – in other words by justice and equality – and is a task to be realized by human beings. In the inclusive versions of cosmopolitanism, a positive cosmopolitan claim is prevalent: the point is not to deny the relevance of necessary differences, but to

¹¹ It is a contentious point. See for instance Goodin, Robert (1998), ‘What is so Special about our Fellow Countrymen?’, *Ethics*, 4, pp.663-688.

¹² This idea is prevalent in Confucianism and other Eastern approaches. See Kim, Youngmin (2006), ‘Moral Agency and the Unity of the World: The Neo-Confucian Critique of “Vulgar Learning”’, *Journal of Chinese Philosophy*, pp.479-489.

¹³ The idea of concentric circles of Nussbaum’s first works. See Nussbaum, Martha C. (1996), ‘Patriotism and Cosmopolitanism’, in Cohen, J. (ed.), *For Love of Country: Debating the Limits of Patriotism. Martha Nussbaum with respondents*, Boston: Beacon Press.

build a balance between differences in a community of destiny. Cosmopolitanism is an aim to be achieved, presumably with continuous new challenges. Nowadays, inclusive accounts of cosmopolitanism can be appreciated in ecology movements¹⁴ or in geoism¹⁵, positions that reiterate old meanings of *cosmos* as a harmonic whole including all beings, not only humans. From this point of view the cosmopolitan character of human rights practice is limited.

In order to relate cosmopolitanism to human rights, it is useful to observe the phenomenon as what it is: an international legal practice. In this perspective human rights can be said to work as crucial cosmopolitan factors in the context of international relationships, and to contribute to building the international community as a *cosmopolis*. However, the worldwide community that they contribute to form is ambiguously cosmopolitan, although this is not totally down to human rights. On the one hand, observed in the light of the most extreme form of inclusive cosmopolitanism, human rights are only partially cosmopolitan because they are centred on human beings. Some of their features call for the inclusion and equal treatment of some but not all non-human beings, as the *Great Ape Project* shows¹⁶, but they concern mostly human beings and similar species. For this reason, the meaning of cosmopolitanism as including every being in the *cosmos* is considered marginal here. On the other hand, human rights practice is one of the most important cosmopolitan factors in a world comprising nation states and not as an alternative to them. What today is called classic cosmopolitanism – the cosmopolitan thinkers of the eighteenth and nineteenth centuries, starting with Immanuel Kant – does not concern non-human beings. Human rights practice has to be positioned in the perspective of the modern pluralistic political set of international institutions, which includes nation states. They are also significant cosmopolitan factors in the contemporary world community. In our view, nation states are important for their links with human rights within a cosmopolitan framework, and not elements against cosmopolitanism. The success of cosmopolitanism depends on the structure of states and some other conditions such as the international rule of law.

¹⁴ “The air does not obey national boundaries”, Nussbaum, Martha C. (1996), *Op.Cit.*, p.12.

¹⁵ This term has been used by Casal, Paula (2012), ‘Progressive Environmental Taxation: A Defence’, *Political Studies*, 60, pp.419-433.

¹⁶ Cavalieri, P. and Singer, P. (ed.) (1993), *The Great Ape Project*, New York: St. Martin’s Griffin.

Since its origin, the idea of a single community comprising different elements is linked to the core concept of cosmopolitanism. It is a community of destiny, but also something to build, the content of a normative project. According to the shared idea of a community as a context in which rational beings interact,¹⁷ Greek cosmopolitan thinkers used to consider rational capacities (the *logos*) as the binding element of the community, because of the importance of communication. Community and communication have origin in the *logos* and have a common etymological root in “common-action” (*communicatio facit domum et civitatem*).¹⁸ The political character refers this time to the idea of common action (some characteristics of politics have been pointed out: against universalism, the crucial importance of differences; against a despotic power, the idea of an authority in conditions of equality).

It is not accidental that at the beginning of the modern world, after the discovery of the Americas, Francisco de Vitoria put forward the idea of a universal community of communication, the *communitas orbis*. Vitoria’s idea is particularly relevant if interpreted in its context. Until that moment, cultural differences were not as radical as the dominant mentality learned after the discovery of the Americas. However, reigns and states were developing fast in the modern fashion and borders were increasing strong, losing their traditional porosity.¹⁹ In the past, different political orders (the Holy Roman Empire, reigns, and the Roman Catholic Church – in the Western World) were able to interact at different levels. The evolution of sovereignty was tending towards absolute centres of power, creating incompatibilities among them in the process. At the beginning of the new world of independent states, Vitoria imagined different political communities, regional aggregations and an international community of the world, each the expression of interdependences and interactions, separate and independent but interconnected.

¹⁷ Aristotle, *Politics*, 1223 ss. In the case of Aristotle, the preference for the political community is clear.

¹⁸ See Aquinas, Thomas (1950), *In Libros Politicorum Expositio*, Turin: Edizioni Marietti, pp.7-11.

¹⁹ As is well-known, the Kantian universal right to hospitality is a minimum request of cosmopolitanism in a world comprising nation states. For challenges for democracy in the age of migration and the idea of porous borders, see Benhabib, Seyla (2004), *The Rights of Others. Aliens, Residents and Citizens*, Cambridge: Cambridge University Press. See also Anderson-Gold, Sharon (2001), *Cosmopolitanism and Human Rights*, Gloucester: University of Wales Pres.

Vitoria's most interesting contribution to the understanding of cosmopolitanism is that the universal community is thought of as a *polis*, and not as a moral community: "habet enim totus orbis, qui aliquo modo est una respublica, potestatem ferendi leges aequas et convenientes omnibus, quales sunt in iure gentium."²⁰ As is well-known, the law of the world community is *ius gentium*, the traditional law of Peoples.²¹ Every community has its own law because law necessarily depends on a social body (*polis*), characterized by equality in relevant fields. The borders of the law are therefore the borders of its social body. Depending on the size of each – or on the intensity of their capacity for inclusion – the law could be a tool for enforcement, excluding differences, or an instrument of inclusion. The smaller the community the less inclusive its law. Sovereignty was not the quality of an absolute power, because – albeit independent – states were subordinated to the law, inside and outside. International institutions were not thought of as a pyramid of increasingly strong powers, but as a network of powers governed by different laws in the traditional *ius civile* internally, and the *ius gentium* externally. This simple design summarizes what can be called the international rule of law.

Apparently paradoxically, the centrality of communities in cosmopolitan accounts requires the priority of law over politics. A community of equals is not possible if its power is not regulated by law. Yet, as we will soon see, the priority of politics over law is the condition for necessary differences without which neither human rights nor cosmopolitanism can be implemented. Both law and politics are necessary for cosmopolitanism, and – perhaps more interestingly and less intuitively – also for human rights.

²⁰ Vitoria, Francisco de (1960), *Relectio de potestate civili*, in Urdanoz, T. (ed.), *Obras de Francisco de Vitoria. Relecciones teológicas*, Madrid: BAC, § 21. Pagden, A. & Lawrance, J. (ed.) (1992), *Vitoria: Political Writings*, Cambridge: Cambridge University Press.

²¹ Here we are not speaking of some common principles of justice in a world society of liberal and decent states (Rawls, John (1992), *The Law of Peoples with "The Idea of Public Reason Revisited"*, Cambridge Mass.: Harvard University Press, §2), but of a legal system able to coordinate the actions of strangers, both in the private and the public domain.

2. Human rights practice

The reference to human rights as a practice excludes from our approach the theory of human rights. A theory of rights is a – presumably internally coherent – system of ideas that provides a justification for rights. It tends to be alternative to other theories, whilst in human rights practice different justifications of rights are permitted. In addition, theories of rights are important for practice because they contribute to the search for their justification without exhausting the life of rights. Human rights practice is a complex phenomenon, compatible with more than one theory of rights, in other words with different justifications, not limited to the problem of justifying them but aimed at their implementation. When a theory of human rights is confused with the practice (mistaking the part for the whole), the result is an ideology of rights. This is the main reason for identifying human rights neither with natural rights, nor with liberal rights (the most powerful Western accounts of them).

Human rights are – at least, here they are considered as – a social, moral and legal practice, with an origin in history, built through official events, with their own institutions and basic documents. Natural rights are the result of ideas about human nature, and – for as long as they appeal to natural law– they establish the content of justice that institutions must take into account.²² The demand of effective human rights explains their link with the law. Starting from the classic distinction between natural and positive law, human rights have to be classified as positive law, provided positive law includes values and principles. Human rights need positive law as a condition of efficiency and enforcement. At the same time, belonging to positive law troubles the universality of rights. The more positive the right, the less universal it is because positive law is rooted in facts.

Human rights practice is an interesting laboratory for the difficult task of defining law. It shows that it is not possible to clearly identify legal

²² As is well-known, there is a debate on the relationship between natural rights and human rights concerning continuity of discontinuity. On continuity, see Tuck, Richard (1997), 'The Dangers of Natural Rights', *Harvard Journal of Law and Public Policy*, 20 (3), pp.683-693; on discontinuity, see Beitz, Charles (2009), *The Idea of Human Rights*, Oxford: Oxford University Press. See also Trujillo, Isabel & Viola, Francesco (2014), *What Human Rights Are Not (Or Not Only). A Negative Path to Human Rights Practice*, New York: Nova Science Publishers, Ch. 1.

phenomena without considering their relationship with other social practices.²³ Although not the topic here, the reason for this lies in the continuity of the different dimensions of practical reason (to which law belongs, together with moral, political and social practices). Now we can remark that human rights are at the same time ethical claims, social persuasions and legal procedures, and tend to be able to integrate efforts made by political and non-political actors, from social and religious movements,²⁴ movements in civil society²⁵ and domestic and international communities, Human rights do not respect the neat but abstract divisions of conceptual categories, and this is sometimes a problem for analytic legal theorists, but is inevitable in the case of institutional facts.²⁶

The liberal theory of rights is an important but only partial approach to human rights. It associates the justification of human rights with freedom and autonomy, which inspire them along with equality and solidarity. In legal practice, different justifications of rights compete in the attempt to explain what is due to rights holders, and the different approaches develop the whole of their interests. This is made clear by the different generations of rights that coexist as part of the process of rights implementation: the first with rights of freedom and liberties, the second generation with social rights, the third rights of convergent goods (peace, clean air, development, and so on), the fourth associated with technological advance (rights to genetic patrimony or related to climate change). The different generations are the direct consequence of necessary and concrete efforts for implementing human rights, which demand protection in their contexts.

In order to understand rights as a practice, it is important to identify their aim, and this is easier when observing them at their starting point. Although a long history of rights vindications could be described, a convincing position is that modern human rights practice dated back to after the Second World War. Many similarities can be found with other important events in the evolution of Western institutions, but in some way

²³ Schauer, Frederick (2015), *The Force of Law*, Cambridge Mass.: Harvard University Press.

²⁴ Sousa Santos, Boaventura (forthcoming), *If God Were a Human Rights Activist*, Stanford: Stanford University Press.

²⁵ Sen, Amartya K. (2004), 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs*, 32, 4, pp.315-356.

²⁶ Lacey, Nicola (2012), 'Reflections on the Philosophy of Law', *Rivista di filosofia del diritto. Journal of Legal Philosophy*, 1, 1, pp.91-106.

the post Second World War period produced something new. The Universal Declaration of Human Rights in 1948 was the result of awareness by nation states – in the Eastern and Western blocks²⁷ – of the gravity of the Holocaust and the need for states to respect and guarantee some universal rights. It is worth noticing here that the first step for human rights is the act of acknowledging *other's* rights: *states* recognize *human* rights. Before that moment, the recognition of rights had consisted mainly in the approval by political power of the claims of groups for their *own* rights, limiting the political power of the approver. Since then, human rights have – very slowly – pushed the leading legal and political institutions in the direction of cosmopolitanism. In other words states have begun a process of self-revision, because they are the main (if not sole) actors in human rights practice.

3. Human rights as exclusively cosmopolitan? Specification and non-discrimination in human rights practice

One of the most important ways to distinguish human rights from natural rights is the idea of the rights holder. As stated above, “natural man” is not a human rights holder. “Natural man” is “natural” because it is assumed that he – the male article is due here because ‘male’ means ‘neutral’ – must be deprived of some determinations to identify his nature. What remains are his natural rights: to self-preservation, freedom, ownership. In comparison with natural man, human rights holders are very demanding. In particular, they demand a large number of rights in relation to their status and conditions of life. This is shown by the stratification of different claims: women’s rights, children’s rights, elders’ rights, prisoners’ rights, workers’ rights, migrants’ rights, consumer rights, and so on. An important evolution of human rights has undoubtedly been their specification.²⁸ The process of rights specification is due to the demand for concrete protection over and above general and abstract categories which human beings tend not to fit. Since their origin, human rights have moved away from abstract universality to concrete specifics. The status of human rights holder is less ontological than

²⁷ In the sense that different traditions contributed to the drafting of the Universal Declaration. Glendon, Mary A. (2001), *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House.

²⁸ Bobbio, Norberto, *The Age of Rights* (1990), Cameron, A. (trans.), Cambridge: Polity Press, pp.43-45.

existential: it involves the conditions in which human beings need protection.

This process of specification – as long as it protects individualities as much as possible – is an innovation in modern law. It can be seen as a deviance from – or a new development of – the idea of the unity and equality of the legal subject that is at the origin of modern legal systems.²⁹ Human rights holders want to be considered individuals in their singularity. Appealing to status is a mid-way form of approaching individual rights holders in their concrete circumstances. Status reflects a generality: it is a condition shared by many individuals, even if not by all at the same time. This is one of the ways in which the struggle for equality is matched by the battle for differences.³⁰

But the way human rights law assures the defence of originality and the uniqueness of human beings follows other paths as well. For this purpose, another characteristic of human rights grammar needs to be introduced, one that has recently become increasingly important: their force of antidiscrimination. Antidiscrimination is part of a process of equality that begins with general rules. As is well-known, the main legal force of inclusion – the primary sense of the universality of a positive law (which human rights have) – is grounded on justice as a generality of rules. It does mean that legal regulations are not privileges (made for an individual), but they possess – both in the case of legislative statutes and in the case of rules established by precedent – the character of universality.³¹ Universality is necessary for human rights because it is part of the process of their implementation.

Nevertheless, the general character of rules is not sufficient to prevent the sort of inequality produced by the exclusion of some individuals,

²⁹ As is well-known, modern law differs from mediaeval law in the standardization of its subject. Part of its modernity coincides with the rejection of particularism and proliferation of personal status. The effort to build a rational system of law starting from the moral value of individuals has been claimed as an evident effect of the influence of Humanism on legal science. Villey, Michel (1975), *La formation de la pensée juridique moderne*, Paris: Editions Monchretien.

³⁰ Young, Iris M. (1990), *Justice and the Politics of Difference*, Princeton: Princeton University Press.

³¹ Obviously, this problem cannot be dealt with here. I am assuming that the difference between statutes and rules laid down by precedents is only a difference of degree.

since general categories are built on distinctions. The universality of human rights also includes the dynamic principle of non-discrimination directed at preventing (unjustified) discriminations from coming into existence as general regulations recognizing certain rights to certain subjects, but not satisfactorily inclusively. The principle of non-discrimination aims at correcting general rules that do not treat significant differences fairly, since each rule needs to identify the subject and each identification can be disputed. Usually, the discriminatory character of a general rule is discovered once the rule is applied: it is at that moment that significant differences can be noticed.

There are many concrete reasons for accepting that in terms of human rights, non-discrimination is part of their grammar. Firstly, many important human rights documents affirm it. The American Convention on Human Rights in its first article says that it intends to protect rights and liberty declared “without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” In the European Convention on Human Rights, article 14 is dedicated to non-discrimination, with the same content.

Secondly, the idea that human rights have an anti-discriminatory character can be pushed to an extreme position by affirming that human rights are nothing other than a force for eliminating discrimination among humans. Historically, the link between human rights and non-discrimination fits the thesis according to which the origin (or the recent revival) of human rights is an awareness of dire discrimination, as with the Jewish people. After this, other forms of discrimination have been addressed by human rights: against coloured people, women, the disabled, homosexuals. An important task of human rights is to remove all kinds of discrimination, and this is an aspect of their universality. This dynamism seeks to remove abstract categories that hide important differences not taken in account. From this point of view, human rights are pivotal cosmopolitan factors, even if their force of inclusion is limited since non-human beings are excluded.

These features of human rights practice are consistent with the view of rights as playing an important role in removing bias: starting as rights of male, white, property-owning, protestant individuals, they became the rights of men and women, white and coloured, rich and poor, believers of every faith and atheists. It could be said that human rights have a de-

biasing effect. In some way, this is a legal process and depends on the capacity of laws to change the moral climate, perceptions and judgements. In many important domains substantive legal rules exercise a de-biasing effect by steering people in more rational directions.³² They can force certain things to be taken into account (such as possible risks), or prohibit inefficient choices (frivolous litigation). Hence, legal rules respond to problems of limited rationality, emphasizing rational behaviour and discouraging what is unreasonable. The other side of the coin is the ability of legal rules to manipulate the addressees and to fail in respecting pluralism in controversial fields, which could be the case when the content of rules is debatable. This is a good reason for supporting democratic institutions: legal rules can be manipulated by governments, power groups or lobbies, and it is necessary to ensure as far as possible the democratic control over them, precisely for the sake of autonomy and pluralism. A moderate approach is one that considers legal choices as deriving from a contentious rationality involving a process of continuous review.

An important part of human rights practice concerns its institutional character as a process of verifying reasons, not only in the form of rights justifications, but also the strategies employed in implementing those rights. The process begins in the social sphere (through activism and the claims of social movements), continues in political discussion and deliberation, then moves into legal discussion for adjudication, at various levels. As is well known, the last of these is the most appropriate for non-discriminatory matters, provided it refers to individual cases to be treated as analogous. As we will see, a capital feature of human rights practice is precisely the crucial role of adjudication.

Nevertheless, anti-discrimination clauses do not seem to create a generic and autonomous right to non-discrimination. Although participating in the dynamics of equality, non-discrimination does not have proper content but depends on another rule, highlighting the discrimination. Courts of Justice concerned with human rights confirm this dependence.³³ The prohibition of discrimination is coupled with another right: to private life, to freedom of expression and so on. Non-discrimination works as a residual remedy (epistemologically, not for its

³² Jolls, Christine & Sunstein, Cass R. (2006), 'Debiasing Through Law', *Journal of Legal Studies*, 35, pp.199-241.

³³ Millns, Susan (2011), 'Prospettive europea sulla discriminazione basata sull'orientamento sessuale', *Ragion pratica*, 36 (2), pp.75-94.

importance) in the context of human rights practice. This means that anti-discrimination is insufficient; it is not the aim of human rights. Examining practice, human rights need both lines of development, the first aimed at guaranteeing something (a good, a power, an immunity, or whatever) for someone, in the form of general rules, the second concerned with the elimination of residual discrimination associated with (inevitable or controversial) distinctions as required to identify general categories for which those rights must be assured. Practice needs to identify which “classes” of human beings have the right to what, because not everything can be guaranteed for everybody without seriously undermining the process of implementing rights. Potentially, the non-discriminatory force of human rights could wipe out the ability to recognize specific rights for specific categories. The more non-discrimination is emphasized, the more an exclusive cosmopolitan character must be attributed to human rights: non-discrimination alone tends to eliminate all distinctions. The distinction between migrants escaping from political persecution and migrants escaping from severe poverty leads to recognition of the right of asylum only for the former. That distinction remains controversial (in particular in terms of global justice). What is certain is that removing the distinction would have a strong impact on rights protection.

The problem of the relationship between human rights and non-discrimination is complex and is illustrated by one factor evident in some developments of human rights practice. What human rights holders sometimes demand is not goods or services, but more generally approval by the community of their life choices or plans. If anything, the recognition of goods or services is confirmation of a symbolic acceptance. New claims seek to obtain the social endorsement of various choices.³⁴ Sometimes this is described as the “expressive” force of human rights. When homosexuals ask for the right to marry, they are seeking to make a statement of commitment before society, because they view that statement as a very important part of their lives. In response, society may recognize and dignify that commitment.³⁵ Other rights are similar: the right to wear scarfs or other kinds of cultural or religious symbols, or the claim to freedom of expression (even the right to be protected against the exercise of freedom of expression by others), and so on.

³⁴ Ricoeur, Paul (1990), *Soi-même comme un autre*, Paris: Éditions du Seuil.

³⁵ Nussbaum, Martha C. (2009), ‘A Right to Marry? Same-sex Marriage and Constitutional Law’, *Dissent*, (<http://www.dissentmagazine.org/article/a-right-to-marry-same-sex-marriage-and-constitutional-law>).

Setting aside these concrete and controversial questions, if this reading is correct, human rights holders are seeking to establish an important relationship; in other words they are calling for inclusion in a sort of moral community. First of all, they are not self-sufficient individuals who reject intrusion from other individuals or institutions, as rights holders are sometimes described in liberal theory, people essentially interested in avoiding interference in their autonomous choices. In the logic of others' rights, human rights practice requires interaction between human beings, at least in the form of symbolic acceptance.³⁶ Ultimately, every claim to rights can be read as a claim to belonging in a shared community grounded on justice and equality, a community of morally accepted individuals in which each is a unit of moral concern. From this point of view, human rights practice tends to create a sort of universal moral community, and this is the extreme outcome of exclusive cosmopolitanism, associated with their force in avoiding discrimination. In some way, this development appears to produce the congruence of cosmopolitanism with moral universalism.

But human rights are cosmopolitan in another sense as well. We now turn, for the last topic, to a short sketch of how human rights are transforming the international scenario. All the arguments presented deserve deeper attention: I have preferred a lighter presentation to present the overall picture of the inclusive cosmopolitan character of human rights.

4. Are human rights inclusively cosmopolitan? States, citizenship, international community

The first step in human rights practice can be considered the 1948 Universal Declaration. Despite this, human rights acquired transformative force only many decades later, after de-colonization, when the sovereignty of post-colonial states affirming their independence was clearly enshrined in the right of peoples to self-determination.³⁷

³⁶ This result is confirmed by the spread of reasoning appealing to disgust as contrary to the sense of humanity. See Nussbaum, Martha C. (2010), *From Disgust to Humanity: Sexual Orientation and Constitutional Law*, Oxford: Oxford University Press.

³⁷ Moyn, Samuel (2010), *The Last Utopia. Human Rights in History*, Cambridge Mass.: The Belknap Press of Harvard University Press.