

Refugees And A Global Cosmopolitan Democracy - Empowerment or Political Aspiration?

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Abstract:

This paper engages with the application of David Held's proposed democratic reform of international regulatory and legal institutions as they pertain to refugee protection and administration. The implications of Held's short-term proposals for the refugee protection community will be discussed on the basis of making international governing institutions more accountable, investing compulsory jurisdiction in an International Court and creating a democratic global law. In light of the emancipative potential of cosmopolitan democratic theory, this paper assesses whether the above reforms could provide a tangible solution to the refugee 'problem'.

The main contention of this paper is that there is a dilemma in using democracy as a vehicle for creating a cosmopolitan democratic law. On the one hand, instantiation of a global cosmopolitan law is needed to regulate the active participation of those affected by trans-border movements so that the refugee community can be liberated from the constraints of the law of nations and positive international law. On the other hand, there is currently no democratic consensus amongst states to create global legal institutions to enhance, let alone enforce refugee protection on a global level.

Sovereignty and boundary problems remain intractable and call into question Held's contention that territorial democracy and cosmopolitan democracy could be mutually reinforcing. This has concomitant implications for the more just world order that he envisages.

For David Held, the processes of globalisation have brought about a normative 'shift [in] human organization and activity to transcontinental or inter-regional patterns of activity, interaction and the exercise of power' (Held 2000, p. 19). The uniformity of this transformation is, however, hotly debated within globalisation literature, and hyper-globalists, sceptics and transformationalists differ on the role they accord to the state in directing its own, and increasingly, global affairs (McGrew 2006, p. 20). Globalisation, understood as 'the widening, deepening, and speeding up of worldwide interconnectedness' (Ibid.), is therefore contentious in that there is no agreement on the extent to which the spatial organisation of social relations and transactions has led to a reordering of the international political system of states (Clark 2006, p. 731).

Held takes issue with the re-ordering of the international system along democratic lines. His ideas centre on the notion that all states within the international system irrespective of their political regimes¹ have been affected, albeit to differing degrees, by the constraining forces of 'world economy, international organizations, regional and global institutions, international law and military alliances' on national governments and international governance (Held 1995a, p. 99). Within the context of a 'democratic thought experiment', Held tentatively analyses 'seven sites of power' that he suggests impose constraints or limits on both individual and state political autonomy (Ibid., p. 176). In Held's view, the fact that these 'external' constraints have resulted in a democratic deficit has prompted him

¹ Potter identifies 'five types of political regime': liberal democracy, partial democracy and authoritarianism as well as direct democracy and participatory democracy (Potter 1997, p. 3).

to rethink the institutional and political conditions that would be necessary for effective democratic governance within, between and above the national unit (Ibid., p. 21).

As a result, the emancipative potential of Held's cosmopolitan democracy lies in the 'praxeological dimension' of critical theory (Devetak 2001, p. 171). Taking a multi-focal approach that is based on the diversification of individual democratic autonomy with the aim of re-establishing the political legitimacy of a range of political actors, including states operating at the international level, Held suggests that it is human political involvement and democratic behaviour that will ultimately challenge existing power structures. As Theodor Adorno (1974, p. 103) explains: '[a]n emancipated society [...] would not be a unitary state but the realization of universality in the reconciliation of differences.' The growing numbers in refugees and internally displaced populations indicate that at the nation-state level, such an arrangement has rarely been achieved and it appears even more difficult to realise within a global cosmopolitan framework. By putting his faith in democracy as the vehicle to reconcile difference, the vices of democracy's exclusionary nature remain underdeveloped.

With the above in mind, this paper will provide an assessment of whether David Held's ideas, regarding the creation of a global cosmopolitan democracy, offer workable solutions to the contemporary refugee 'problem' and to the creation of a more just world order. Held's short-term proposals for democratising the refugee protection community will be assessed, the first of which is to make

international regulatory and legal institutions more accountable. Secondly, the implications of investing compulsory jurisdiction in an International Court will be examined. And thirdly, the creation of a democratic global law will be addressed. The main contention of this paper is that there is a dilemma in using democracy as a vehicle towards creating a cosmopolitan democratic law. On the one hand, the instantiation of a global cosmopolitan law is needed to regulate the active participation of those affected by trans-border movements so that the refugee community can be liberated from the constraints of the law of nations and positive international law. On the other hand, there is currently no democratic consensus amongst states to create global legal institutions to enhance, let alone enforce refugee protection on a global level. Sovereignty and boundary problems remain intractable and call into question Held's contention that territorial democracy and cosmopolitan democracy could be mutually reinforcing.

In a nutshell, David Held's liberal cosmopolitan model of democracy is a heterarchical institutional re-arrangement defined as 'a system of governance which arises from and is adapted to the diverse conditions and interconnections of different peoples and nations' (Held 1995b, p. 106). Held's model suggests a break with the classical Westphalian order in that peoples and nations should no longer be exclusively tied to a territorially bounded state in the exercise of their political agency. Indeed, Held draws attention to an uncritically assumed 'symmetrical' and 'congruent' relationship between political decision-makers and those on the receiving end of political decisions that has been central to most democratic thought

of the nineteenth and twentieth centuries (Held 1995a, p. 224). Held identifies 'nautonomic' asymmetries of life-chances, meaning '*the asymmetrical production and distribution of life-chances which limit and erode the possibilities of political participation*' as an example where congruence can be said to have only ever been inadequately achieved (Ibid., p. 171). Held's cosmopolitan democracy promises to diffuse nautonomy through the participation of those affected by policy decisions made at an international level. Here, it seems that political participation has the aim of re-establishing 'congruence' between national citizens who are (perhaps adversely) affected by a consensual and non-democratic international decision-making *process*, particularly in the international legal arena, and their respective governments. Indeed, Held suggests that people in a cosmopolitan community would come to hold 'multiple citizenships' alongside national citizenship, thereby diversifying sites of political engagement to ensure that overlapping centres of power remain accountable (Held 1995a, p. 233). He argues that to achieve collective action in a decentralised but integrated political and legal system along cosmopolitan lines², it is necessary to '[expand] the framework of democratic institutions and procedures' so as to re-establish 'the accountability of all related and interconnected power systems, from economics to politics' (Held 1995a, p. 267). In Held's view, territorial democratic rule would be compatible with cosmopolitan democracy, for the latter embraces 'a political order of democratic associations, workplaces and cities as well as of nations, regions and global networks' (Ibid., pp. 279-280).

² The cosmopolitan project is based on the rule of law, democratic autonomy and rights in the form of 'entitlement capacities' (Held 1995a, pp. 222-223).

While this is the essence of Held's structural normative rethinking, he goes further to reverse the content of democratic political legitimacy which rested on 'the consent' of individuals' for government rule (Held 1996, p. 81). Advanced along the Kantian regulative ideal for the self-determination of individuals, the centrality of democratic autonomy brought about by 'a double-sided process of democratization' becomes the rationale for political legitimacy in a global cosmopolitan democracy (Held 2000, p. 30). This is so because together with a cosmopolitan democratic law that enumerates those rights and duties transcending the claims of states, democratic autonomy best ensures that contending power structures remain accountable (Held 1995a, pp. 221-222). Here, the principle of 'democratic autonomy' is understood as 'an entitlement to autonomy within the constraints of community' (Ibid., p. 156). In such a new order, Held argues that the centrality of the rule of law and considerations of social justice must be 'in-built' for 'anything less would hinder the realization of the principle of autonomy and the rule of democracy' (Held 1996, p. 319). Contrary to Saward's (2000, p. 33) critique then, it can be argued that Held's faith lies not in a political institutional response alone to bring about a more just order. Both content and structural considerations become inseparable in particular in an analysis of the refugee 'problem'.

The growing phenomenon of forced trans-national population movements poses a challenge for the creation of a global cosmopolitan democracy alongside territorial democracy. Refugees are arguably a direct if somewhat undesirable result of globalising forces that escape democratic regulation, leaving us with *'overlapping*

communities of fate' and a fragmentation of political agency (Emphasis original, Held 1998, p. 24). The 1951 Convention relating to the Status of Refugees, amended by the 1967 Protocol, is the international legal basis governing the current international refugee regime and spells out the protection duties and responsibilities of states vis-à-vis those who have been fortunate enough to gain genuine refugee status. In Article 1 A (2) it defines a refugee as any person who

'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.' (1951 Convention relating to the Status of Refugees)

This definition excludes individuals fleeing across borders for economic or environmental reasons or from civil conflict simply because their lives are at risk. It also excludes persons who have become internally displaced within their own countries. For instance, according to UNHCR statistics, in 2006 forced internal displacements in Colombia had reached crisis proportions with an estimated 2,000,000 uprooted (UNHCR, 2006, 'Refugees by Numbers'). This makes Colombia the most prolific of all countries generating internally displaced persons (IDPs), surpassing Iraq and Sudan. The realist argument maintains that IDP protection can only be legitimately and effectively remedied within the boundaries of the state (Chalk 1998, p. 150). In this case, protection efforts remain the preserve of the Colombian government despite the fact that as a 'weak and failing state' it poses what Francis Fukuyama (2004, p. 92) terms '[...] the single most important problem

for international order'. The bottom line is that the Convention no longer adequately reflects the reality and complexity of mixed and multiple displacement today (UNHCR 2000, pp. 24-29). Nor does it take account of the fact that in many refugee-producing countries the processes of democratic consolidation, let alone legitimacy, have largely remained ineffectual.

As a possible remedy to this situation, one of Held's short-term ideas would be the reform of collective decision-making bodies such as the United Nations (UN) and political regional institutions such as the Organization for African Unity (OAU) in order to enhance international democratic autonomy and accountability (Held 1995a, p. 279). Held suggests the establishment of 'an authoritative assembly of all democratic states and agencies - a reformed General Assembly of the United Nations, or a complement to it' (Held, 1995a, p. 273). In effect, this means that those associations and states that are legitimated by democratic means would have a forum to conduct their affairs apart from the rest of the world's populations and nations. Even broadening the participation of 'IGOs, INGOs, citizen groups and social movements' in the process of establishing 'an international constitutional convention' (Ibid., p. 274) that would form the basis for such a cosmopolitan democracy cannot avoid the dilemma that the legislation emanating from such an authoritative assembly would, at least initially, not cover non-democratic associations and nations. Held is therefore in danger of creating a partial unity that 'over time' will come to embrace the whole world, an affront to the cultural particularities that currently exist in a pluralist and diversified world order.

This is a crucial point because one area in which accountability gaps arise is the legal arena - the ability of all states to enter into legally binding international agreements. Following the Treaty of Westphalia in 1648, the state system was institutionalised as a protection for the right of each sovereign amongst equals to retain a measure of territorial autonomy in the face 'of overlapping jurisdictions of *political* authority' (Emphasis added, Rudolph 2005, p. 4). This means that states are endowed with a unique international politico-legal personality and that governing authorities' marked differences in capacity to act on their 'rights, duties and competences' are still legitimated by virtue of 'being sovereign' within a cooperative international system of states (Werner & de Wilde 2001, p. 297). Indeed, Tiunov (1992-1993, p. 327) underscores this point when he argues that 'sovereignty is not a feature of a state as such, but a feature of a state as a subject of international law'. No other subject in international law is endowed with such wide-ranging formal authority that resides outside of positive law.

Held appears to underestimate the implications of this formal, legal authority when he puts his faith in establishing a democratic cosmo-political order alongside territorial democracy. Instructive here are attempts by regional institutions other than the European Union to make the definition of refugees more inclusive. The OAU in Article 1 (2) of its Convention Governing Specific Aspects of Refugee Problems in Africa acknowledges persons fleeing their country of origin due to '... external aggression, occupation, foreign domination or events seriously disturbing public order ...' (Article 1 (2), OAU Convention). Equally, the Cartagena Declaration

on Refugees that followed from recommendations by the Inter-American Commission on Human Rights includes individuals having to flee for reasons of 'generalized violence, foreign aggression, internal conflicts, massive violation of human rights or [...] public order disturbances' (UNHCR website, point 3). While it is true that in these instances the act of extending the legal categories of who counts as a refugee has been influenced by international human rights bodies, it is equally true that the individuals most affected by its content do not have an input in legislation that clearly affects them. Contrary to human rights rhetoric, then, the impetus to broaden the definition stems from the need for enhanced regional political governance to manage the disorder that refugees are perceived to produce. Urbinati is instructive here when she notes that '[u]nlike government, governance refers to specific 'policies' rather than general 'politics' because it is not a binding decision-making structure. Its recipients are not 'the people' as a collective political subject, but 'the populations' that can be affected by global issues....' (Urbinati 2003, p. 80). This indicates, as some authors have pointed out, that international protection is an inherently 'political act' that reaffirms the status quo because it is sustained by a multitude of non-government and human rights organisations, as well as 'journalists, aid workers, soldiers, [and] peacekeepers' that work in support of the protection efforts of states (Lui 2002, points 2 and 5). In this rather anti-Kantian context refugees take on an instrumental value as a problematised collective and efforts are geared not towards securing the human dignity of the individual as an end in itself but to maintaining the international peace and security that is jeopardised by the refugee 'problem'. Here, input in decision-making remains a non-

democratic, elitist affair because the representatives of states, no matter how legitimate their popular rule is, retain the right to consult, alter, promulgate and implement legal frameworks. As a consequence, individual refugee input becomes redundant. An authoritative assembly organised along democratic lines would still manage the refugee problem in an issue-specific manner and, despite having a new found democratic (procedural) legitimacy, democratic agents would still be subject to imbalances in the political clout that they can summon and project. This could possibly make refugee protection less rather than more effective. The following current regional efforts in this regard are instructive.

The legal efforts to expand on the definition of refugees reflect regional particularities, or better still, may be seen as an antidote to global disparities that require collective management and coordination to solve a problem that is at once global but also region-specific. It is no coincidence that the majority of both refugee producing and refugee receiving countries are located in the developing world (UNHCR 2000, p. 16). For authors such as Pogge, this is a cause for disquiet. He notes that while international law may serve the protection of human rights in some instances, it also creates and upholds 'institutional structures that greatly contribute to violations [... and] systematically obstruct the aspirations of the poor [...] for democratic self government, civil rights, and minimal economic efficiency' (Pogge 2005, p. 717). A state's equal legal status continues to mask the cultural, religious, social, economic and political diversity that exists amongst and within states, leading to substantive inequality in bargaining power (Rudolph 2005, p. 4). Such

diversity also has implications for the universal acceptance of Western democratic values. According to Hutchings (1999, p. 26), universal acceptance is misguided because a 'non-global normative agenda' characterised by diversity and pluralism prevails. It is within this context that critics such as Sandel regard the ethic that underpins a cosmopolitan democracy as '... flawed, both as a moral ideal and as a public philosophy for self-government ...'. (Sandel 1996, p. 342). He argues that cosmopolitans put the proverbial cart before the horse when they underestimate that the interests and values that frame liberal individuals derive first and foremost from their respective communities. Sandel therefore opines that the absence of a democratic community with a common civic identity tends to undermine the cosmopolitan project (Ibid.). This is certainly correct in the case of representatives of the OAU and Organization of American States (OAS) states with their delegates belonging to distinctive *political* communities, not all of them necessarily democratic. To the extent to which they are legitimate representatives of a democratic polity, decision-making in international forums is still derived at in a consensual rather than democratic manner, and at an international rather than domestic level. The potential of improved effectiveness in the conduct of regional affairs does not diminish continuing power inequalities between nominally equal states.

While Held's democratisation project is based on an innate understanding of the salience of these arguments and of why structural disparities prevail, his solution, to democratise the refugee protection regime, falls short of addressing the above concerns. It is doubtful whether those regional blocs representing a great

number of developing countries would voluntarily relinquish their right to forge legal agreements that better suit their particular needs to a supranational body such as a global parliament or even an International Court that would allow refugees to make claims on these governments (Held 1995a, p. 279). Indeed, it can be argued that it is precisely the inability of existing global international institutions such as the UN to provide the means for a more equitable distribution of the refugee burden that has brought regional institutions into being. As indicated earlier, state sovereignty is pivotal in order to retain a measure of autonomy in inter-state dealings so that region-specific refugee problems can be addressed more effectively, even if this means 'merely' expanding on the legal categories of people who would be covered by the respective Conventions. However, the difficulty as Thompson (1999, pp. 111-125) sees it lies in how jurisdictional conflicts between international and regional layers of political authority can be reconciled by democratic means and, more importantly, how enhanced democratic accountability can be brought about when regional solutions promise to be more effective. It can therefore be argued that the infusion of democracy into the regional refugee regime, while desirable, is not a feasible solution in the absence of state consent and cooperation and an already existing alternative institutional structure organised along democratic lines. Indeed, negating the promise by regional institutions of a more inclusive and potentially more effective legal framework would undermine Held's efforts towards creating a more just (statist) world order. Concurring with Urbinati (2003, p. 77), then, it is democracy within and between states that first needs addressing to avoid allegations of neo-imperialism.

On an individual level, involuntary migration affects those individuals who have been forced to cross borders for human security reasons, therewith severing the uncritically assumed congruence by democratic theorists between citizens and their 'national decision-makers' (Held 2000, p. 18). The United Nations High Commission for Refugees (UNHCR) has been given responsibility for the protection and administration of ever-increasing 'population[s] of concern'³ (UNHCR 2006 Report, p. 3). As at 2006, the UNHCR puts the total population of concern at 32.9 million, with refugees accounting for 9.9 million and stateless persons 5.8 million (Ibid., p. 5). These figures may actually be higher because they include only those individuals registered as receiving assistance or protection from the UNHCR and its agencies (UNHCR 2000, p. 17).

This state of affairs not only has far-reaching consequences for international order and stability as alluded to before but for individuals themselves. Citizens that find themselves outside their national state of origin are asylum seekers and can no longer claim the national 'goods' that are due to them by virtue of the civil and political status that they may previously have held (Held 1995a, p. 177). Because they are no longer territorially bounded members of their national community, their citizenship status – civic and political – diminishes accordingly (Hassner 1998, p. 280). It is only when asylum seekers are granted refugee status that those individuals covered by the respective international and regional conventions can claim certain benefits within the international protection framework. Moreover, at

³ Persons of concern comprise refugees, asylum-seekers, internally displaced persons, refugees who have returned home, IDPs who have returned home, stateless persons and a category for other persons in a refugee or returnee-like situation.

the international level individuals cannot claim asylum as a matter of principle but are merely entitled to lodge a bid for asylum with no assurance that it will be granted (Lui 2002, point 4). As citizens without a state and without the possibility to claim entitlements, refugees, and in particular those seeking asylum, exist in what Pierre Hassner (1998, p. 276) terms a 'legal vacuum'. Indeed, asylum seekers are even deprived of their universal human rights, stripped of what Hannah Arendt (1977, p. 27) poignantly observes as their 'right to have rights'. This is so because human rights continue to rely on national governments for their realisation (Beetham 1998, p. 61). More importantly, the political nature of civil rights realisation is problematic within a global cosmopolitan framework for, as Urbinati notes, it breaches 'the Kantian *lex aurea*' that is premised on the 'containment of political power, not its *supererogation*' (Urbinati 2003, pp. 67-68). According to Lui (2002, Introduction), this state of affairs constitutes the 'dark side of globalisation'. But it is also the dark side of democracy for an individual's political agency and autonomy has been lost. Refugee status does not replace political agency and therefore individuals cannot work towards containing political power in a legitimate, democratic manner, other than by first having elected a world government that bestows upon them the status of world citizenship with *enforceable* entitlements.

At first glance, it appears that the need for such a world citizenship status could not come at a more timely point for an increasing floating population that requires a mechanism outside of positive law to guarantee some of their entitlements.

However, Lui's contention is that international protection is but a temporary solution – 'a surrogate state-citizen condition' – that prevails until a more permanent solution can be found 'through repatriation, integration or/and resettlement' (Lui 2002, point 57). In short, a solution is sought that re-establishes the citizen-state nexus. The irony here is that an increase in international and internal population displacement indicates that this may be a permanent affair that warrants permanent institutions and solutions (UNHCR Report 2006). A further irony is that we are experiencing an unprecedented surge in 'independent countries [that have] been demanding or installing or practicing democratic governance', as Diamond (1990, p. 48) points out, at the very moment when the existence of refugees signals an imperfect realisation of democratic reform and consolidation in refugee producing countries. Held, too, acknowledges this paradox (Held 1995a, p. 21). It becomes clear that a world citizenship status would still remain dependent on the benevolence and willingness of territorial entities to admit non-citizens into their fold, an impossible mission if the populations within a territory would decide by democratic referenda against such admission.

On a related note, Held's democratic cosmopolitan law seeks to go beyond the state-citizen order by investing compulsory jurisdiction in an International Court of Justice, preferably allowing individuals to claim entitlements by virtue of their having crossed a border (Ibid., p. 279). Neff (1999, p. 117) vindicates this contention when he argues that the legal cosmopolitan project is premised on making 'the whole idea of citizenship

irrelevant'. Indeed, cosmopolitan law differs from international law in that, as Hassner argues along Kantian lines, it embraces 'individuals as members of the human race [...], irrespective of the state they belong to' (Hassner 1998, p. 285). Such promising prospect may augur well for refugees, citizens without a state, for those in transit, or internally displaced persons but it does not resolve the deeply entrenched normative and gendered inequality that continues to thwart the participation of particularly women in public affairs. Walby is instructive here. She argues that while in theory human rights may 'appear' to provide a platform for 'the expression of many equality concerns', in effect the continuing normative bias in the concept of equality results in a perpetuation of the existing system which feminists the world over see as biased in favour of males (Walby 2003, p. 20). She goes on to note that 'historically the human rights approach has been more concerned with minimum standards than with full equality' (Ibid.). The creation of Held's just world order cannot avoid paying attention to this normative bias if over half of the world's population is to emerge victorious from a social marginalisation that prevents the exercise of political agency. As alluded to before, Held (1996, p. 319) agrees that the centrality of the rule of law and considerations of social justice must be 'in-built' into a cosmopolitan democratic project. The exercise of multiple democratic political agencies invested in individuals remains limited because normative social, economic, religious and cultural sources of inequality and bias continue to thwart the exercise of political autonomy for many. In this respect, Andrew Linklater

issues a word of caution. He argues that those currently in favour of a 'global citizenship' tend to advocate extending 'the moral rather than the political boundaries of community' (Linklater 1999, p. 39). Indeed, political cosmopolitans such as Held are charged with being 'impatient with Kant's *longue durée*' (Urbinati 2003, p. 76). It is not difficult to see why.

Taking the International Criminal Court (ICC) as an example, it currently has jurisdiction over the gravest breaches against human security and places the state and its officials at the centre of investigations as potential perpetrators of crimes against humanity, war crimes and the crime of genocide (Franceschet 2006, p. 31). Referral to the Court can be made directly by states or through the United Nations Security Council, as was the case with resolution 1593 which referred the conflict in Darfur for investigation to the ICC on 31 March 2005 (point 1, UNSC Res 1593 (2005)). Such prevailing state-centric conception for international legal recourse has raised doubts as to whether realising global democracy through an International Court of Justice would actually yield positive results for the refugee community (Crawford and Marks, 1998, p. 83). In any case it seems paradoxical for refugees or asylum seekers to initiate proceedings against a nation that has allegedly violated their right to seek asylum when the 1951 Convention governing refugees does not stipulate a guaranteed right to enjoy asylum. It would be more plausible to initiate international juridical proceedings against the state that has violated an individual's right to life, liberty and security of the person, the very violation that prompted trans-border flight in the first place. However, the fact that asylum seekers find

themselves outside their home country but have not yet been accepted into the legal fold of a host country makes this an implausible task. Even if refugees would want to directly claim potential human rights violations committed by the state of origin from an international or global legal mechanism, Crawford and Marks (1998, p. 83) contend that as potential citizens of the world or groups representing them, they would have to gain legal standing. The result would be a reversal to overlapping jurisdictions of political authority, the very situation that prompted the establishment of a territorially based state system in the first place.

For national citizens, the possibility for recourse to international law already exists under the International Covenant for Civil and Political Rights. However, there is a caveat. Tiunov (1992-19993, p. 334) points out that while individuals may be granted certain rights under international law making them subjects in certain circumstances this is conditional upon the adoption by their representatives in the international arena of Optional Protocols that allow them to lodge complaints of possible human rights violations to supra national human rights bodies such as the Human Rights Committee. This indicates that the state plays an enabling role in the fulfilment of its duty vis-à-vis citizens and non-citizens under its territorial jurisdiction. More importantly, access to such bodies does not change an individual's legal status. Tiunov (Ibid., p. 335) suggests that while individuals may become participants in international law this 'does not give them the capability to create norms of international law, to promulgate them, or to bear the responsibilities for their violations'. As a consequence, Tiunov concludes that while '[e]very subject

of international law is a possessor of international rights, [...] not every possessor of international rights is a subject of international law' (Ibid.). An International Court of Justice under present arrangements could not solve the vexing issue of an enhanced legal status necessary for refugees and asylum seekers to reclaim some form of entitlement and political agency. It also does not solve the problem of whom to include in democratic decision-making if the protection regime is geared towards a measure of statist rather than individual justice and towards international order and stability rather than security of the individual.

This signals a general problem with the all-affected principle. In his excellent survey, Karlsson (2006, p. 23) persuasively argues that it does not provide a viable solution 'for drawing [...] political boundaries'. Saward (2000, pp. 36-37), too, argues that even Held's faith in a new constitution for global governance held in check by cross border referenda overlooks the inherent tension that prevails between the desire for democratic governance and the reality of constitutional constraints upon what the demos may do. Democracy, it appears, must wait. In this regard, Thompson (1999, p. 120) makes a valuable point, namely that cosmopolitan democracy may exacerbate the existing tensions between democracy and the protection of individual rights. This is so since rights claims pursued through supranational authorities challenge the legitimacy of those local policies that have been endorsed by democratic means. It is instructive, as some authors have noted, that the cosmopolitan citizenship project may well have greater benefits by virtue of its non-legal character, namely to promote the necessary norms and consensus that

would enable it to get off the ground (Neff 1999, p. 117). In the meantime, refugees as potential world citizens are presupposed to be citizens of some national state or other political group that has international reach and legal standing. As it stands, however, especially asylum seekers require a mechanism outside of international law to regain their political agency as citizens of a state. For this, they would have to be endowed with legal personality at the supranational level. Their specific needs can only be met by translating their refugee status into a fully blown world citizenship status that is buttressed by democratic institutions needed to ensure accountability and autonomy. As a corollary, however, the assurance of democratic accountability and autonomy does not guarantee that entitlements will be guaranteed or even duly retrieved.

Held's political arguments are strongest when addressing the global reality of refugee affairs and the ideal of a cosmopolitan future. His weakness lies in how to reconcile prevailing asymmetries of power with new democratic processes and structures so as not to threaten the cosmopolitan project as an emancipative project. An analysis of the refugee problem has shown that the very existence of persons forced to flee their place of habitual residence is the direct result of an incomplete consolidation of national democracy in many places. At the same time, the unique politico-legal status of the state remains geared towards the survival of a diversified and territorially based state system, with protection *issues* taking precedence over the protection of individuals. This issue-specific set up alone weakens the ability of territorial and cosmopolitan democracy to become mutually reinforcing.

Consequently, the response of the international community to an international refugee crisis that has attained global proportions indicates a move away from cosmopolitan norms and towards the instrumental value of refugees in securing international peace and order. Creating a broader and more equitable base for the participation of non-governmental organisations and groups affected by refugees, as well as for refugees themselves, does not erase this instrumental value because cosmopolitan norms have not yet created the kind of political community and common purpose necessary for sustaining a global cosmopolitan democracy along the lines of democratic autonomy. In the absence of state consent on a common course of action along cosmopolitan lines, protection measures and institutions created to overcome the accountability gap must be imposed. This holds true for extending the legal recourse of individuals to a supra national international court of justice in the absence of state consent as well as for the creation of a judicial body that is independent from state interference. Held is therefore in danger of weakening rather than strengthening the cosmopolitan project. However, Urbinati's allegation that Held is impatient with Kant's *longue durée* can be countered by the fact that he devises both short and long-term ideals and presents but a *tentative* analysis of emerging trends. These legitimately warrant an ongoing and critical reappraisal of the status quo and the mapping of a possible future trajectory for international politics based on democratic autonomy. The issue of whether Held's ideas are indeed more aspirational rather than empowering at present should not deflect attention away from his far-reaching vision – a vision for which he deserves the credit that is due to him.

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