

BORDERS, MEMBERSHIP AND MULTICULTURALISM
IN THE CONTEXT OF THE REFUGEE CRISIS –
COSMOPOLITAN AND COMMUNITARIAN APPROACHES UNDER
SCRUTINY



SOPHIE GELEP

JANUARY 2017

BORDERS, MEMBERSHIP AND MULTICULTURALISM
IN THE CONTEXT OF THE REFUGEE CRISIS –
COSMOPOLITAN AND COMMUNITARIAN APPROACHES UNDER
SCRUTINY

A THESIS SUBMITTED TO

THE GRADUATE SCHOOL OF SOCIAL SCIENCES

OF

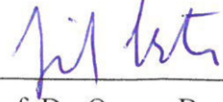
IZMIR UNIVERSITY OF ECONOMICS

BY

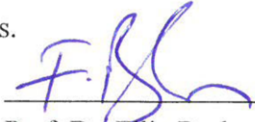
SOPHIE GELEP

JANUARY 2017

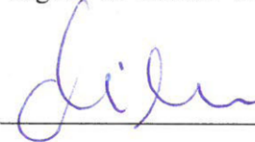
Approval of the Graduate School of Social Sciences.


Assoc. Prof. Dr. Osman Demirbař
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Political Science and International Relations.


Prof. Dr. Filiz Bařkan Canyař
Head of the Department

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Political Science and International Relations.

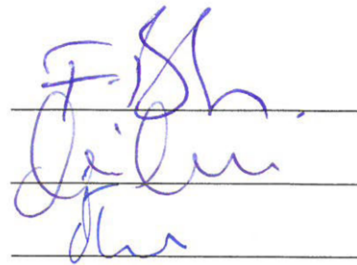

Assoc. Prof. Dr. Devrim Sezer
Supervisor

Examining Committee Members

Prof. Dr. Filiz Bařkan Canyař

Assoc. Prof. Dr. Devrim Sezer

Assoc. Prof. Dr. Ömer Turan



ABSTRACT

BORDERS, MEMBERSHIP AND MULTICULTURALISM IN THE CONTEXT OF THE REFUGEE CRISIS – COSMOPOLITAN AND COMMUNITARIAN APPROACHES UNDER SCRUTINY

Gelep, Sophie

Political Science and International Relations, Graduate School of Social Sciences

Supervisor: Assoc. Prof. Dr. Devrim Sezer

January 2017

This thesis takes the European refugee crisis as a point of departure to discuss the tense and almost warlike relationship between universalism and cosmopolitan rights on the one hand and particularistic cultural or national demands of self-determination on the other. By focusing upon the questions of open borders, just regulations of membership and multiculturalism, I seek to touch upon three significant key challenges liberal democracies will have to cope with in the course of contemporary global developments. Against the background of the nation-state's crisis and the rise of cosmopolitan norms, I will show that it is necessary to approach cross-national movements and political membership from a new angle, clearing up the blurry space between political choice and moral obligation. In order to appropriately face the challenges of globalization, politics shall target to reconcile the tension between republican and cosmopolitan demands of justice through strong post-national and deterritorialized forms of authority. Cosmopolitan thinkers such as Kant, Benhabib and Arendt will guide my way here. Further I will argue that it is vital to approach the challenge of multicultural societies, which are likely to be the framework of modern democracy in the 21st century, along Habermas' concept of deliberative democracy. Although contemporary claims for cultural recognition need to be taken seriously, I argue that Taylor's idea of politics of difference is misleading. Social integration ought to be carried out through the appropriate use of public and private autonomy, where the necessary distinction between the legal and the political remains in place.

Keywords: Cosmopolitanism, communitarianism, borders, membership, belonging, multiculturalism, recognition, authenticity.

ÖZET

MÜLTECİ KRİZİ BAĞLAMINDA SINIRLAR, ÜYELİK VE ÇOKKÜLTÜRLÜLÜK – KOZMOPOLİTAN VE KOMÜNİTERYEN YAKLAŞIMLARIN İNCELENMESİ

Gelep, Sophie

Siyaset Bilimi ve Uluslararası İlişkiler, Sosyal Bilimler Enstitüsü

Tez Yöneticisi: Doç. Dr. Devrim Sezer

Ocak 2017

Bu çalışma, bir yanda evrenselcilik ve kozmopolit haklar, diğer yanda partikülaristik kültürel ya da ulusal özerklik talepleri arasında cereyan eden gergin ve neredeyse savaşvari bir hal alan ilişkiyi tartışmak için; Avrupa'daki mülteci krizini kendisine çıkış noktası olarak almaktadır. Bu minvalde sınırların açılması, üyeliğin adil olarak düzenlenmesi ve çokkültürlülük sorunlarına odaklanarak; çağdaş küresel gelişmelerin beraberinde kotarılması gereken, liberal demokrasinin üç önemli anahtar meydan okumasını değinmeye çalışmaktayım. Ulus-devlet krizini ve kozmopolit normların yükselişini göz önünde bulundurarak, siyasî tercih ile ahlâkî yükümlülük arasındaki bulanık alanı netleştirecek yeni bir açıdan ulusaşırı hareketlere ve siyasal üyeliğe yaklaşımın gerekliliğini ileri süreceğim. Siyaset küreselleşmenin zorluklarıyla uygun bi şekilde yüzleşebilmek için, cumhuriyetçi ve kozmopolit hak talepleri arasındaki gerilimi güçlü uluslararası ve bölgesel egemenlikleri aşan otorite biçimleri yoluyla ortadan kaldırmayı hedef edinecektir. Buradaki tartışmalarına Kant, Benhabib ve Arendt gibi kozmopolit düşünürler kılavuzluk edecektir. Bunun ötesinde, 21.yüzyılda modern demokrasinin çerevesi olması muhtemel olan çokkültürlü toplumların getirdiği zorluklara Habermas'ın katılımcı demokrasi kavramı ile yaklaşmanın büyük önem taşıdığını tartışacağım. Kültürel kabul için çağdaş iddaların normatif mülâhazalarımızı bulması gerekliliğine rağmen, Taylor'ın farklılık siyaseti fikrinin yanıltıcı olduğuna inanıyorum. Yasal ve siyasal alanlar arasındaki zarurî ayırımı söz konusu olduğu yerlerde, kamusal ve husûsî özerkliğin uygun kullanımı yoluyla toplumsal entegrasyon gerçekleştirilmelidir.

Anahtar Kelimeler: Kozmopolitizm, Komüniteryenizm, Sınırlar, Üyelik, Aidiyet, Çokkültürlülük, Tanınma, Otantiklik.

TABLE OF CONTENTS

ABSTRACT	iii
ÖZET.....	iv
TABLE OF CONTENTS.....	v
LIST OF ABBREVIATIONS	vii
1. INTRODUCTION.....	1
2. CHAPTER: THE WORLD OF STATES AND COSMOPOLITANISM	8
2.1. Ethical and Political Dilemmas of the Nation-State in a Global World	8
2.1.1. The Crisis of the Nation-State	9
2.1.2. The Rise of Cosmopolitan Norms and the Human Rights Regime	12
2.1.3. Cosmopolitanism and National Sovereignty: A Discussion of Kant’s Right of Hospitality	17
2.1.4. “The Right to Have Rights”: Hannah Arendt’s Reflections on Human Rights and Civil Rights.....	25
2.2. Borders, Political membership and Cosmopolitan Politics	32
2.2.1. The Constitutive Dilemma at the Heart of Liberal Democracies: The Paradox of Democratic Legitimacy	33
2.2.2. Moral and Political Dimensions of Membership: Communitarian and Cosmopolitan Perspectives	35
2.2.3. Democratic Iterations: Seyla Benhabib’s Idea on Destabilizing Exclusion	37
2.2.4. Citizenship, Membership and Belonging.....	40

3. CHAPTER: MULTICULTURALISM AND THE POLITICS OF RECOGNITION	46
3.1. The Relationship between Identity, Authenticity and Recognition	48
3.2. Equality – Sameness: A Discussion of Politics of Recognition and Politics of Difference	51
3.2.1. Law, Politics and the Conception of the Good	55
3.2.2. Integration or Assimilation: The Habermasian Idea of “Unity in Political Culture and Diversity in Subcultures”	60
4. CONCLUSION.....	64
BIBLIOGRAPHY	71

LIST OF ABBREVIATIONS

CDU	<i>Christlich Demokratische Union Deutschlands</i>
ed	<i>editor</i>
eds	<i>editors</i>
EU	<i>European Union</i>
i.e.	<i>id est</i>
ibid	<i>ibidem</i>
No.....	<i>Number</i>
SPD	<i>Sozialdemokratische Partei Deutschlands</i>
UN.....	<i>United Nations</i>
UNHCR.....	<i>United Nations High Commissioner for Refugees</i>
Vol.....	<i>Volume</i>

1. INTRODUCTION

[...]I believe, that we may say: Europe as a whole has to act. The states must share the responsibility for asylum seeking refugees. So far universal civil rights have been closely tight to Europe and its history. This bond had been one of the founding impulses of the European Union. If Europe fails to solve the refugee question, this close bond with universal civil rights will break. It will be destroyed, and finally there will not be Europe as we envisaged and it will not be a Europe that as a myth of foundation even today we have to develop further (Die Bundesregierung, 2015: 3).

This is an excerpt of the German federal chancellor's speech at the summer press conference in August 2015 and one of the most important statements regarding the alarming numbers of refugees that had been arriving in Germany so far. Her welcoming attitude and her belief at this point to be able to deal with this challenge jointly by the European countries are obvious. But by using the term "universal civil rights" she also touches upon the core of the migration question: The utter confusion about rights and duties in migration politics.

If the chancellor intended to address the refugees, she should have probably said human rights instead of civil rights, since the term "universal civil rights" is in fact a contradiction in itself: Universality includes all human beings simpliciter, whereas the exclusive set of citizens is one to which the refugees definitely do not belong. This contradiction precisely pinpoints the dilemma between human rights and national sovereignty. While civil rights enjoy the positive validity of instituted law, the idea of human rights is a double-edged phenomenon: True, they acquire a concrete form in the frame of constitutions as guaranteed basic rights within a legal order of a nation-state, but at the same time they have "supra-positive" validity as rights that belong to each individual as a human being. This ambiguity has caused much confusion within contemporary political-philosophical debates. Scholars talk

about an ongoing paradox, a fateful tension that exists between human rights and popular sovereignty, two central normative ideals that constitute the pillars of the democratic rule of law, ensuring simultaneously norms of individual and public autonomy (Benhabib, 2007: 2).

“Modern democracies act in the name of universal principles, which are then circumscribed within a particular civic community”, be it a unitary state, a federal state, the European Union or another type of confederation (Benhabib, 2006: 32). As a result we encounter a permanent conflictual potential between universal rights that bind the will of the sovereign and the actual enactments of the democratic polity, which could possibly reject such interpretations (ibid: 33).

For a very long time, the problem of international or global justice has not received much scholarly attention in political philosophy. The paradigm of the nation-state had widely determined boundaries of academic attention. Normative political philosophy by and large dealt with domestic political issues. All this radically changed with the advent of globalization: in the absence of a system of international cooperation, no single country can deal with international conflicts and problems related to global justice on its own. The physiognomy of the world of states has changed to such a great extent that let appear the Westphalian system and its idea of the nation-state’s enclosed and fateful community obsolete. The leading priorities of contemporary political philosophy as well as domestic and international politics have become the protection of universal human rights and global justice (Kersting, 1998: 9).

Kant’s influential work “Perpetual Peace” still remains to be the starting point of all discussions on cosmopolitanism. Political theorists working in the Kantian tradition of cosmopolitanism try to develop Kant’s original theoretical framework further, looking for principles to sustain global peace, choosing the individual, the human being simpliciter as the main protagonist and orientation point for ascribing rights and duties. Their universal claims are built on radical egalitarianism eliminating any kind of partisanship to be realized by overcoming all political, national and cultural differences. The exclusionary view of citizenship as a status of political membership and belonging for instance is in their eyes not only obsolete but also inhuman. On the one hand cosmopolitan thoughts have become vital in a globalized world in order to

discuss the reconfiguration of citizenship and sovereignty, on the other hand supporters of the communitarian school heavily argue against a liberalization of border politics for the sake of cultural and political self-determination. Their main criticisms focus on the excessively individualistic nature of liberalism, presupposing a defective, very abstract conception of the self. In their eyes liberalism is devaluing, neglecting or undermining the community as an important ingredient in a good life.

Communitarians perceive the individual always as part of a particular community, embedded into particular sociocultural environments, which determine their identity, their interpretative patterns and opportunities in life (Taylor, 1992: 34-35). It is nowhere else that a person or a group of people gains voice and value, they believe.

Even though popular communitarian figures such as Michael Walzer identify the rule of citizens over non-citizens or the rule of members over strangers settled within their community as may be the most conventional form of despotism in human history, they still insist on the necessity of closed communities on different levels (Walzer, 1992: 84). To them a world without enclosed communities being able to protect and sustain their particular identity resembles more a scenario of deracinate people that have nothing more in common but their naked human identity (Walzer, 2006: 115). The cosmopolitan language on human rights and human duties appears to communitarians as a kind of semantic totalitarianism and blindness for difference and diversity as a source of sense and meaning (Kersting, 1998: 12). They argue that it is the nation itself that ought to interpret human rights and the content of citizen rights on the grounds of historically grown values and meanings. Communal bonds and cultural uniqueness set the ground for political engagement and normative obligations, they maintain.

Migration policies represent a core issue within the cosmopolitan-communitarian debate on popular sovereignty and human rights, since the project of post-national solidarity is a moral one challenging existing state boundaries. “[...] nowhere are the tensions between the demands of postnational universalistic solidarity and the practices of exclusive membership more apparent than at the site of territorial borders and boundaries.” (Benhabib, 2007: 17)

Today the relationship between universal norms and particularistic cultural and national identities has become incredibly tense, even warlike. Obviously history has

reached a period of massive transnational migration which cannot be denied any longer by the international community and especially by the European Union, which, as Angela Merkel has rightly emphasized, was founded on a strong engagement to promote and protect human rights, democracy and the rule of law worldwide.

Statistics are alarming: The UN Refugee Agency, a global leader in statistics on refugees revealed in the frame of the report “World at War: Global trends, forced displacement in 2014” that the year 2014 has shown an ongoing dramatic growth in mass displacement from wars and conflict, once again reaching levels unprecedented in recent history. Just one year before, UNHCR announced that worldwide forced displacement numbers had reached 51.2 million, a number not previously seen in the post-World War II period. Twelve months later, the amount had grown to salient 59.5 million. It was stated that “persecution, conflict, generalized violence, and human rights violations have formed a ‘nation of the displaced’ that, if they were a country, would make up the 24th largest in the world” (UNHCR, 2015: 5). This number consists of 19.5 million refugees, 38.2 million internally displaced persons and 1.8 million asylum-seekers.

The current refugee crisis has brought the European Union into a situation of utmost confusion. The full and long-term impact of a continual and rapidly accelerating immigration on social bonds, economic life and domestic security has largely remained unclarified. Member states refuse to stick to agreed European migration policy standards and principles, closing their borders and challenging the inner cohesion of the Union. In short the European Union seems to be entrapped among contradictory developments and principles which shift it toward cosmopolitan norms “in the treatment of those within its boundaries, while leading it to act in accordance with outmoded Westphalian conceptions of unbridled sovereignty toward those who are on the outside” (Benhabib, 2005: 675).

Even though political theorists may not deliver concrete political instructions to solve the crisis, they are despite all open questions indeed capable of contributing to the identification of correct priorities in fundamental questions of values, rights and duties. Against the background of the current refugee crisis I seek to discuss first of all cosmopolitan and communitarian perspectives on the democratic-republican ideal of popular sovereignty in order to be able to respond to some crucial normative

questions of our times such as: What do we owe people who seek entry into European countries? Shall we open our borders or is it legitimate to keep them closed for the sake of our national identity and well-being? Are the rights of asylum and refuge moral norms or are we dealing with enforceable obligations that sovereign nation-states have to obey? Surely these questions can only be answered by firstly touching upon contemporary developments such as the general crisis of the nation-state and the corresponding rise of cosmopolitan norms, which I will take as a point of departure in my thesis.

Before we can grasp the substance of these questions we need to understand the concept of the nation-state, its historical function and its exposure to the recent advent of the global human rights regime.

Kant was the first canonical political thinker who drew attention to the structural contradictions between universal moral norms and republican ideal of popular sovereignty. His cosmopolitan legacy culminating in the right to hospitality may serve as an illuminating starting point for my theoretical analysis, because his formulations permit us to capture the inner contradictions between universalism and republicanism.

“[...] we are here concerned not with philanthropy, but with *right*. [...] *hospitality* means the right of a stranger not to be treated with hostility when he arrives on someone else’s territory. He can indeed be turned away, if this can be done without causing his death [...]” (Kant, 2007 [1795]: 105).

The ambivalent character of the right to hospitality coined by its creator reflects the dilemmas of a republican cosmopolitan order in a nutshell: “How to create quasi-legally binding obligations through voluntary commitments and in the absence of an overwhelming sovereign power with the ultimate right of enforcement?” (Benhabib, 2006: 23).

Along the cosmopolitan-communitarian debate on this issue I seek to show that we need to distance ourselves from the radical claim for open borders or the total abolishment of the nation-state as much as from the idea of “boundaries around communities as historically contingent, morally neutral facts that are pre-conditions for moral and political discourses [...]” (Rehaag, 2006: 396).

As (Benhabib, 2007) argues we must develop post-Westphalian conceptions to come to terms with normative regulations of people's movement across states' boundaries. Europe has to stop leaving immigration and asylum policies in that murky space between political choice and moral constraint, in order to appropriately face the challenges posed by an increasingly global world. To reconcile once again the tension between republican demands and cosmopolitan principles our political answer to worldwide interconnectedness and interdependence must be the foundation of new "deterritorialized" and "denationalized" forms of authority (Bohman, 2004: 346). I aim to demonstrate that we do not need to choose between republicanism and cosmopolitanism, but rather ought to acknowledge their uneasy compatibility.

While the first section of the first chapter on cosmopolitanism and the world of states has been dedicated to the question if we shall open our borders, I aim to continue with a discussion of moral and political dimensions of membership and belonging by critically analyzing the contributions of cosmopolitan and communitarian perspectives. Against the background of globalization and increasingly fractured societies it is vital in my view that we approach questions of membership and belonging in a new way. What consequences must the admission of large numbers of refugees and asylees then have on the concept of political membership and belonging? Shall we admit refugees as full members of our society or shall we see them solely as beneficiaries of temporary sojourn being expected to leave again? On what normative pillars shall we build the concept of membership in liberal democracies against the background of increasingly deterritorialized politics (Benhabib, 2007: 12)? While cosmopolitan thinkers target to transcend liberal nationhood, some critics such as Will Kymlicka have favored instead a taming model in order to reach just regulations of membership. I will elaborate my answer along Seyla Benhabib's proposal of democratic iterations within the context of deliberative democratic theory. I will argue as well that the Habermasian model of deliberative democracy based on discourse theory is the proper frame to reform principles of political membership by renegotiating the thin lines between place of residence, civil rights and democratic right of self-determination (ibid: 31).

The second part of this thesis is dedicated to the nearby question of what is supposed to happen after migration has already taken place and as a result many different cultures are brought together into one specific community. Which steps should be

taken after immigrants, refugees or asylum seeking people have been actually admitted and begin to bear citizen's rights? In order to discuss the concept of a multicultural society it is necessary to consider the notion of difference and commonality. How can we harmonize these concepts? We have to discuss the meaning of equality and integration to make clear that uniformity or assimilation has nothing to do with it. Apart from ceding each of us the same rights as all other citizens, what does respecting people as equals entail (Gutmann, 1994: 4)?

Charles Taylor's significant work about politics of recognition represents a milestone within the discussion on multiculturalism. However, as I see it, Taylor's perspective appears not so much a better alternative to political liberalism as a useful and illuminating criticism of some of its weaknesses. His critique makes us reconsider the political substance of equality and equal recognition. But as much as I share his high esteem of identity, authenticity and recognition, I doubt that liberal societies shall be pushed to actively promote conceptions of the good life, in order to acknowledge and respect differences.

I will demonstrate that Taylor's politics of difference will erode the necessary distinction between the legal and the political and in the end it will erode also the frame of neutrality that makes politics work. "The assimilation of political discourses to the clarification of a collective ethical self-understanding does not sit well with the function of the legislative processes they issue in" (Habermas, 1996: 24). Therefore I will follow the Habermasian approach of discourse theory which breaks with the communitarian, purely ethical conception of civic autonomy, "where there is a necessary connection between the deliberative concept of democracy and the reference to a concrete substantively integrated ethical community" (ibid: 24).

To approach the difficult question of how to properly integrate the other I will conclude my thesis with Habermas' brilliant idea that the treatment and inclusion of the "other" shall not be accomplished through an ethical-cultural integration, but requires political regulations, which are motivationally and rationally rooted in the idea of constitutional patriotism properly understood.

2. CHAPTER:

THE WORLD OF STATES AND COSMOPOLITANISM

2.1. Ethical and Political Dilemmas of the Nation-State in a Global World

The nation-state has indeed played a crucial historical role in processes of democratization in Europe. But history has taught us also the nation-state's dark side, where the proper balance between nation and state has gotten out of control. Precisely this tension between nation and state comes to the fore in the approaches of cosmopolitans and communitarians who, in my view, provide radically different conceptions of legitimacy and integration. In this chapter I seek to clarify their different approaches to the nation-state and the question of who the people is supposed to be.

I will demonstrate why the nation-state system which has been exposed to some serious ethical and political dilemmas for a long time cannot any longer sufficiently deal with the problems facing us in the present. This insufficiency is, in my view, mainly due to the gradual rise of the human rights regime and cosmopolitan norms. But what is the nature of these new standards of justice that have begun to undermine popular sovereignty? For some communitarian critics cosmopolitan norms represent just another type of struggle for power, an artificial universalistic morality which by no means can claim supranational validity. For cosmopolitan authors they are the coin of today's moral and political demands and justifiably so. This debate seems to boil down to the following question: Shall we give preference to cosmopolitan demands of justice or to values of republican self-governance? On the cosmopolitan

side I will take a close look to the “founder” of cosmopolitanism, Immanuel Kant, and the cosmopolitan thinker Seyla Benhabib in particular. The communitarian point of view will be shaped by Michael Walzer, who clearly illustrates a non-cosmopolitan thinking of global justice for the sake of republican self-determination.

In the last section of this chapter I will focus on Hannah Arendt’s perspective on the problem of statelessness and refugees in order to draw attention to some of the ambiguities within the Kantian cosmopolitan heritage. Drawing on the mass migration movements between World War I and II, Arendt illustrates her idea of “the right to have rights” by pointing to the meaning as well as consequences of refuge and statelessness in a world of borders. On the vivid background of the current refugee crisis Arendt’s concept of the right to have rights once again reveals its ongoing relevance. Her historical-political analysis of the disasters within the 19th and 20th century enriches our understanding of human rights. Even though some scholars criticize Arendt’s skepticism to justify her position on human rights from the standpoint of moral or legal philosophy, in my view she seems to be quite right when she argues that the debate about rights, in particular under conditions of statelessness, cannot be adequately understood in terms of abstract philosophical speculations. She proposes a completely new and much more political vision, which on the one hand underlines the fragility of human rights, and on the other, helps us face the tension between cosmopolitanism and republicanism (Förster, 2009: 6).

2.1.1. The Crisis of the Nation-State

The modern state apparatus of the nation-state had set the benchmark for its historical success. While empires collapsed under the pressure of social integration processes, the territorial state with its distinguished administrative organization holding the monopoly on the legitimate use of violence was able to cope with upcoming challenges of social, cultural, and in particular economic modernization (Habermas, 1999: 131). The convoluted and long-lasting processes of nation building had functioned as a catalyst in the transformation period of the early modern state into a democratic republic.

In the aftermath of the French Revolution the classical meaning of “nation” as a descent community sharing a common cultural background met the meaning of a constitutive people. Conceptually viewed, citizenship and national identity consist of

separate ideas, but in the course of the revolution “nation” transformed from an apolitical dimension, i.e., communities of shared descent integrated geographically through settlements and neighborhoods and culturally through their common language and traditions, into a constitutive component of the political identity of the demos. The creation of this imagined, deep horizontal comradeship brought into being a strong bond of solidarity between individuals who had never known each other before. Nationalistic ideas and sentiments were able to generate enthusiasm and proved to be much effective in appealing to crowds consisting of strangers than the so-called prosy and abstract concepts of popular sovereignty and human rights. Hence it was “the nation or the unique spirit of the people – the first truly modern form of collective identity- [that] provided the cultural basis for the constitutional state” (Habermas, 1999: 113). Correspondingly the concept of citizenship gained a significant national dimension whereby political rights of citizens presupposed the exclusive belonging to a specific cultural community. As Habermas states, the nation is Janus-faced. Although the source of democratic legitimation consists of a voluntary act of free and equal citizens, “it is the inherited or ascribed nation founded on ethnic membership that secures social integration” (ibid: 115). While citizens constitute themselves as an inclusive and heterogeneous political community on their own initiative, nationals, despite the problematic character of a homogeneous national identity as such, are born enclosed regarding the other automatically as a stranger not as a possible or actual fellow citizen.

As a result the very concept of the nation-state seals a fateful tension between universalism of an egalitarian legal community and the particularism of a community unified by their cultural background. The source of this tension seems to be located between legitimation and integration: Shall we build these concepts on cultural or political grounds?

Evidently the idea of the nation as the cultural basis of the constitutional state may be replaced by another shared spirit, which seems to be the case in the United States of America where the more inclusive concept of civil religion appears to have led to a political unification of the people. In a nation, which perceives itself as a nation of citizens, people mainly appear as patriots who uphold their constitution as an achievement in the context of the history of their land. Since its unity by contrast to the nation as a pre-political union does not require cultural homogeneity, the

American Republic tends to have a more inclusive conception of the nation or the people. Within a more cosmopolitan frame of a social contract each individual can easily be recognized as a member of an ethnic or cultural group as well as a citizen enjoying equal protection and equal recognition. We must come to terms with the inherent substantial vacuum in the legal design of the constitutional state: Who is the people? How should the people be like? As Habermas puts it:

“There is a conceptual gap in the legal construction of the constitutional state, a gap that is tempting to fill with a naturalistic conception of the people. One cannot explain in purely normative terms how the universe of those who come together to regulate their common life by means of positive law should be composed” (Habermas, 1999: 139)

Communitarians underline this naturalistic conception of the people, because they tend to picture the people as culturally unitary and homogenous. They barely broach the issue of the dynamic and fractured identity of the democratic people as bearers of human rights on the one hand, and as bearers of citizens’ rights on the other. Continuously, citizen’s identity is culturally underpinned, while human rights are banned to be merely contextual (Benhabib, 2007: 124). The major disagreement between cosmopolitans and communitarians stems precisely from their different conceptions of national legitimation and integration. For cosmopolitans the democratic people mainly constitute themselves as sovereign because they uphold certain principles of human rights, for communitarians it is the nation that interprets and articulates human rights and the content of citizen rights on the grounds of historically grown values and meanings. Human rights then become the thinnest of moral components in the suggested robust netting of cultural ties and bonds (Benhabib, 2007: 124). So we seem to be face to face with two radically different options: either we shall seek to combine a democratic republic with an inclusive non-naturalistic concept of the people in order to live up to its own principles in the age of globalization or we shall view ethnic, historical and cultural bonds as the only possible ground that holds political communities together (Habermas, 1999: 116).

My analysis in this work is based on one basic premise: two hundred years after globalization has changed the political and demographic landscape, the traditional concept of the (ethnic) nation-state has reached its limits. Multiculturalism, global economic/ technological interdependencies and supranational organizations such as the European Union fundamentally challenge states’ internal and external

sovereignty. In fact “the nation-state is too small to deal with the economic, ecological, immunological, and informational problems created by the new environment; on the other hand, it is too large to deal with the aspirations of identity-driven social and regionalist movements” (Benhabib, 2007: 4). Due to these global developments as well as arising tendencies towards supranationalism and multicultural societies, it appears necessary to reconsider the concept of the nation-state. We must think of possible alternatives such as the fusion of a nation of citizens and the ethnic nation, since normatively speaking, social boundaries of an association of “free and equal consociates [are] perfectly contingent” (Habermas, 1999: 139).

2.1.2. The Rise of Cosmopolitan Norms and the Human Rights Regime

Kant’s diagnosis is that peoples of the earth have entered “in varying degrees into a universal community, and it has developed to the point, where a violation of rights in one part of the world is felt everywhere” (Kant, 1795/2007: 107). A point is reached where no individual is left untouched by globalization. As a result of this slow but influential transformation in our cosmopolitan political consciousness over the last two centuries, today we witness the proliferation of public debates, most notably in Europe, in which not only scholars, intellectuals and politicians but also ordinary citizens engage in normative debates aiming to reach new guiding principles for global politics. Global risks have generated an overall awareness that helps to cultivate the belief in a globally shared future and correspondingly the political necessity of a more cosmopolitan future (Beck, 2010: 227). Consequently the political theory of cosmopolitanism has emerged as a moral and political project, assigning certain moral duties in order to protect human beings simpliciter regardless of any particularities such as gender, race or nationality.

Following the Kantian tradition cosmopolitans identify the individual instead of nation-states or other types of political associations as the primary unit of moral concern. Even though states remain a meaningful mediator in the envisaged world-federation/world-republic, cosmopolitanism emphasizes universal commitments to the individual’s moral worth and dignity (Brown and Held, 2010: 1). It endorses the moral attributes of individualism, egalitarianism and universalism and carries those principles beyond the borders of the nation-states. By engaging in debates about global institutionalism they campaign for reforming supra-national institutional

structures while interrogating the nation-state's prerogative of sovereignty and existing principles for the treatment of the others beyond our borders (ibid: 3). Even though critics argue the moral approaches of cosmopolitanism are infeasible, the fact remains that the peoples of the world must respond as a global civil society to global challenges simultaneously and in concert (Beck, 2010: 217).

In "Another Cosmopolitanism" Seyla Benhabib elaborates her observation of the rise of an *international human rights regime*, since the 1948 declaration of human rights in the aftermath of World War II. By the term "regime" she categorizes a set of interrelated and overlapping regional and global regulations that are based on human rights treaties, international agreements and international soft law, with the consequence of a complex system of international interdependence. She considers the transformation of human rights codes into general norms aiming to influence the policies of sovereign states as the most promising trend in global politics (Benhabib, 2006: 27). The concept of crimes against humanity, genocide and war crimes, humanitarian interventions and human rights standards in transnational migration mark the milestones of those universal developments. Nevertheless, we must recognize that this human rights regime is very fragile and still in its infancy.

Benhabib illuminates her theoretical standpoint by referring to a transition from international to cosmopolitan norms of justice (ibid: 16). The term globalization, she argues, does not capture the political relevance of cosmopolitan norms that "whatever the conditions of their legal origination [are], accrue to individuals as moral and legal persons in a world-wide civil society" (Benhabib, 2006: 16). International justice had generally been put forward through multilateral agreements or internationally established organizations. Cosmopolitan norms may arise through treaties as well, but instead of providing only states with certain rights they target the legal status of the human *simpliciter* as a world citizen. Cosmopolitan norms go beyond liberal international sovereignty by formulating a lawful space for a domain of rights-relations which would be obligatory for state actors as soon as they get involved with individuals of other polities. Correspondingly the relationship between such universal norms and particularistic cultural and national identities becomes a source of conflict as well as a matter of public and academic controversy. Unlike communitarians who flatten claims for morality to those considered valid by particular ethnic, cultural and political communities, and against all post-modernist

arguments that political norms cannot be assessed through moral ones, Benhabib insists on the “necessary disjunction as well as the necessary mediation between the moral and the ethical, the moral and the political” (ibid: 19).

What can be the philosophical foundations of cosmopolitan rights claims? As Michael Ignatieff remarked “human rights is the language that systematically embodies [the] intuition” that “our species is one, and each of the individuals who compose it is entitled to equal moral consideration” (Ignatieff, 2001: 3). Along with cosmopolitan norms they have become the coin of today’s moral and political demands. For some scholars they are the yardstick of how we measure progress of mankind, but some other critics highlight their problematic implications such as interventionism or modern imperialism (ibid: 53).

It is now common to differentiate between philosophical and political approaches to human rights, since the idea of natural rights has been mistaken to refer to a set of moral properties or attributes of human beings. But it is not necessary to follow this naturalistic fallacy. Human rights defenders today are less concerned with philosophical justifications but rather with their practical realization. Their premise is clear: “They may not exist in nature and they do not reproduce on their own, but they can exist” (Ingram, 2008: 402). Benhabib follows this approach arguing cosmopolitan norms are part of a revolutionary beginning.

The legitimacy of a *novo ordo saeculum* cannot be justified through antecedents, it is only possible to evaluate consequences that occur afterwards. Cosmopolitan norms create “new moral facts” by establishing new domains for meanings and renegotiation of human relations (Benhabib, 2006: 73).

The contemporary reformulation of the Kantian cosmopolitan pacification of the state of nature between states encouraged dynamic efforts to install efficient supranational institutions all over the world. Those ambitions target at the enhancement of the organizational framework necessary for a performable politics based on human rights. However equally strong objections were made by radical sceptics criticizing those efforts as a self-defeating moralization of politics and as an undermining of independent sovereign polities (Habermas, 1999: 218). For instance a very serious critique had been raised by Carl Schmitt who viewed cosmopolitan rights as a new form of imperialism. Humanity, Schmitt argued, is misused here as

an especially useful ideological instrument. Additionally supranational organizations such as the United Nations and their actions would follow the same logic, finally turning “into a perversion of the goal it is supposed to serve” (Schmitt, 1991: 76). From Schmitt’s perspective politics of human rights serve the implementation of norms, which are part of artificial universalistic morality. Habermas counterargued that the idea of human rights is not solely originated in morality, but also results from the modern concept of individual liberties and hence must be understood juridical in character. Basic rights, Habermas writes, regulate matters on such an abstract level “that moral arguments are sufficient for their justification. [...] The guarantee of such rules is in the equal interest of all persons qua persons, and thus [...] they are equally good for everyone” (Habermas, 1999: 223).

By the 1990s, theoretical disputes over universalism versus particularism had been superseded by controversies about the philosophical and political dimensions of universal human rights. Communitarians perceive the cosmopolitan discourse shaped by human rights and moral duties towards the other as an utter oversimplification, a reductive totalization, eliminating all differences between people that actually create sense and meaning. According to communitarians such as Charles Taylor, standards of justice are interrelated with the cultural background of particular societies and therefore differ from one context to another. Moral and political judgements will be closely bound to the respective language of reasons and the interpretive framework within which agents contemplate their world, hence it is useless to start a political undertaking by prescind from the interpretive dimensions of human beliefs, practices, and institutions (Taylor, 1985: 31).

However, the human rights regime shows its full impact in global politics: The Universal Declaration of Human Rights (United Nations 1948) anchored a limited right to freedom of movement across borders through the right to emigrate but left out a corresponding right to immigrate (Art. 13). Article 14 recognizes the right to receive asylum under certain conditions and article 15 states that each individual has the “right to a nationality”. It continues with the declaration that no person shall be deprived of nationality and further shall enjoy the freedom to change his nationality. The Geneva Convention on refugees (1951) defined the status of a refugee as a politically persecuted person being trapped in conditions of well-founded fear of

persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

But as Benhabib rightly points out, there is a significant lack of specific addressees. The Universal Declaration remains silent on states' performance of duty such as to grant entry to immigrants, to maintain the right of asylum, and to open up negotiations on citizenship to alien residents (Benhabib, 2005: 674). The declaration underlines the sovereignty of states and hence manifests internal contradictions between universal human rights and territorial sovereignty that are "built right into the logic of the most comprehensive international law document in the world" (ibid: 674). Neither the agreements of the Geneva Convention nor the appointment of the United Nation's high commissioner on refugees have changed the fact that this convention still is binding on the signatory states alone and may even be ignored by signatory states themselves (ibid: 674).

The European Union in many respects represents an exception: Traditionally competences in the domain of migration and asylum in Europe rested with the member states. Nevertheless, since the abolition of internal border controls and migration movements had raised new security risks, the European states agreed that national regulations in asylum and migration policies were no longer sustainable. After a general specification of the legal conditions for a joint European asylum policy within the Amsterdam treaty in 1999, the member-states agreed on the Tampere program, which was supposed to transform the Union to a space of freedom, security and right. The underlying idea in this decision was to create a legal space of protection binding for all members where asylum seeking people are being treated rightfully and equally. In concrete terms the result was that each European country had and actually still has to meet the European minimum legal standard in migration policies, conduct all regulations posed by the Geneva Convention and uphold the principle of non-refoulement. The Hague Program specified the significance of the European Convention on Human Rights, the European Charter of Fundamental Rights and the Geneva Convention. In the course of a second phase the Union focused on burden sharing including renegotiating cooperation with third countries in order to prevent push factors for migration. However the refugee crisis has thrown us back to real politics. Nation-states reclaim prerogative over their refugee capacities. The refugee crisis has exposed the European Union to be more or

less dominated by a conglomerate of nation-states, which are not capable of coping with the crisis alone but which are also not willing to suffer the loss of individual agency. In order to understand those inherent contradictions between national sovereignty and cosmopolitan norms and to discover an alternative vision of international legal framework embracing universal justice, it is necessary to take a close look at Kant's cosmopolitanism and his concept of the right to hospitality.

2.1.3. Cosmopolitanism and National Sovereignty: A Discussion of Kant's Right of Hospitality

Even though Kant did not deal in particular with the issue of refugees, he was the first to sketch a comprehensive outline of cosmopolitan law. Contemporary disputes about cosmopolitanism are almost completely shaped by his moral and political philosophy touching upon the entire range of cosmopolitan thought including cultural, civil and political aspects. His vision to achieve universal justice via cosmopolitan right is still being regarded as an important forerunner for contemporary debates on global justice. His elaborations on sovereignty and cosmopolitan law will also play an important role for the theoretical context of this piece of work.

With his political essay "Perpetual Peace – A Philosophical Sketch", firstly released in 1795, Kant presented a revolutionary concept of a legal framework drawing a world scenario of a peaceful coexistence of all states, meant to conduct a rightful condition, one in which states, citizens and human beings simpliciter could enjoy their rights. He believed that such a condition could only persist if its principles are propagated within a greater framework of cosmopolitan law and universal public right (Brown, 2010). Using the formal design of a contract, resembling a peace treaty, he formulates three definitive articles based on the postulate that all human beings should be part of three different legal systems to sustain perpetual peace: domestic law (*Bürgerrecht*), international law (*Völkerrecht*) and cosmopolitan law (*Weltbürgerrecht*): "The civic constitution of every state shall be republican"; "the right of nations shall be based on a federation of free states" and "cosmopolitan right shall be limited to conditions of universal hospitality" (Kant, 2007 [1795]: 99;102;105). As Benhabib puts it in her work "the Rights of Others", for the first time in history the actual idea of a legal system beyond the borders of a particular

state shifted the attention from domestic politics to international politics, from regulations of interaction between individuals within one state to regulations of action between states and finally to “interactions between individuals who belong to different civic entities yet who encounter one another at the margins of bounded communities”, that is to say the relations between strangers and states (Benhabib, 2007: 27).

The right of hospitality, which Kant introduces in his third definitive article represents the core of his cosmopolitan legacy, the protective clue, which eventually points to the Kantian formula of humanity: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end” (Kant, 1993 [1785]: 36). The duty of hospitality is not concerned with philanthropy but with right. If a stranger seeks entry to someone else’s territory he can be refused only if this would not automatically entail his destruction.

Nevertheless, this right consists only of a right for temporary residency; the right for permanent residence remains a privilege awarded according to freely chosen special agreements and beneficiary contracts that go “beyond what is owed to the other morally and what he is entitled to legally” (Benhabib, 2007: 28). Benhabib situates Kant’s right of hospitality at the boundaries of the polity. “It delimits civic space by regulating relations among members, strangers and bounded communities. It occupies the space between human rights and civil and political rights” (ibid: 23).

But what exactly is according to Kant its legal and moral justification and why shall it bind the will of sovereign nations? The right of hospitality belongs to all human beings, because of their capacity to associate, but “they have it [also] by virtue of their common possession of the earth, where, as a globe, they cannot infinitely disperse and hence must finally tolerate the presence of each other” (Kant, 1795/2007: 106). Surely this notion was inspired by Kant’s positive understanding of the commercial and maritime dispersion of capitalism. He believed into the binding power of commercial relations of mutual interest between peoples all over the globe, even though he clearly posited himself against European imperialism during the colonialization period (ibid: 106). But the argument of a common possession of the earth disregards historically grown property relations among communities and since

existing property relations must be respected, the claim of “common possession of the earth” is inadequate to define grounds of cosmopolitan right.

Kant’s key premise here for the justification of the right of temporary sojourn seems to be located in the narrowness of the globe. But is this really convincing? People, surely will have to come into contact sooner or later, but can we deduce the premise that they must treat each other therefore with respect and dignity? In order to avoid a naturalistic fallacy we must describe the spherical surface of the earth rather as a circumstance of justice (Benhabib, 2007: 33). Exercising our external freedom means that sooner or later under certain circumstances we will have to transgress political boundaries and get in touch with fellow human beings of different political and cultural entities. Hence we must understand the “principle of outer freedom” as the appropriate justificatory premise that can ground the establishment of cosmopolitan right (ibid: 34).

What Kant had in mind was a world in which all people would be part of a civil order, entering into a condition of lawful association with each other. Providing basic legal mechanisms, his right of hospitality was supposed to ensure individuals’ peaceful and rightful association as equally free and reasoning mutual citizens of the world (Kant, 2007 [1795]: 106). However, his conception inescapably invites many juridical and moral questions. The crucial normative dilemma seems to arise from the ambivalence within Kant’s *jus cosmopolitanum*: Are the rights of asylum and refuge moral obligations or are we dealing with enforceable norms that sovereign nation-states have to obey?

Actually the duty to show hospitality to foreigners and strangers cannot be enforced; it remains a voluntarily act of the particular sovereign. Furthermore sovereign nation-states might use manipulative strategies such as the deposition of refugees in “safe third countries” to interpret conditions of endangered life or freedom in such a way to finally bypass the principle of non-refoulement. Thus, the right of hospitality imposes on states the *imperfect* moral obligation to help people whose life and liberty is highly endangered. We must call it *imperfect*, because it leaves open doors to exceptional cases or can be “overridden by legitimate grounds of self-preservation” (Benhabib, 2007: 36).

Surely Kant was aware of the weakness within *Weltbürgerrecht* when he stated that the challenge of establishing a perfect civil constitution is subordinate to the issue of a law governed external relations among states and cannot be accomplished unless the latter is also solved. However, what he had in mind was definitely not a so-called world government but instead a federation of independent nations. He rejected to repudiate the nation-state's sovereignty, and rather tried tame it with his moral philosophy by a simple appeal to reason relying exclusively on each government's own moral self-binding (Habermas, 1999: 197). Obviously, Kant did not escape the limited horizon of his historical experience shaped by the classical-modern world of nation-states and so any attempt to create a cosmopolitan institution empowered to enforce universal laws must have appeared to him in a way unrealistic or eager to turn into a world government bearing the imprint of a *universal monarchy* (ibid:198).

On the vivid background of the current refugee crisis the ambivalent character of the right of hospitality coined by its creator reflects the dilemmas of a republican cosmopolitan order in a nutshell: "How to create quasi-legally binding obligations through voluntary commitments and in the absence of an overwhelming sovereign power with the ultimate right of enforcement" (Benhabib, 2006: 23)? Even though Kant was the first to illustrate legal cosmopolitanism, he explicitly argued against the establishment of a higher authority, leaving the stage to free and independent nation-states. But at the same time it is vital to realize that he does not justify this limitation on communitarian grounds but with reference to his republican understanding of people's sovereignty.

In this sense, Kant's view of republicanism or civic patriotism does not entail "the notion of a nation in an ethnic sense" (Kleingeld, 2003: 304). Can we say then that Kant was successful in synthesizing the two ideals of republicanism and cosmopolitanism?

The tension between the demands of cosmopolitan justice and values of republican self-governance is so great in Kant's work, primarily because Kant cannot reconcile world government with the values of private and public autonomy (Benhabib, 2006: 26). He insists on the nation-state's internal sovereignty as a condition of global order, and hence does not provide his *Völkerbund* with capacities of global

governance which are actually necessary to implement cosmopolitan law (Bohman, Lutz-Bachmann, 1997: 8).

Why is Kant willing to limit his own cosmopolitan vision with reference to the republican principle of people's sovereignty? Is it really impossible to reconcile republicanism and cosmopolitanism once and for all in a neat manner? Bohman argues that by following the republican tradition Kant made the mistake to diagnose classical tyranny instead of modern domination to be the problem cosmopolitan politics ought to solve (Bohman, 2004: 350). Surely it is logical to argue, just like Kant did, that local sovereignty must be sustained for the sake of legitimate governance. However national publics are affected by international issues which reach beyond any particular polity. "Globalization has broadened the scope of potentially arbitrary authority" (Bohman, 2004: 342). We are facing an ongoing process of delinkage of people from political forums for efficient speech and action. Citizens today are involuntarily being involved in international agent's plans, not capable to freely choose to cooperate or to consent. As a result, people have entered "a kind of nonvoluntary inclusion in indefinite cooperative schemes, which is a form of domination" (ibid: 340). To overcome modern domination it is necessary to build and sustain democratic and institutionalized accountability which has to be appropriated to a cosmopolitan community.

Bohman maintains that republicanism provides the best interpretation of political cosmopolitanism and "that there is an obligation to form a political community beyond the nation-state" (ibid: 336).

Hence our political response to worldwide interconnectedness and interdependence must be the foundation of new "deterritorialized" and "denationalized" forms of authority (Bohman, 2004: 346).

Nevertheless, this way of reconciling republicanism and cosmopolitanism has not remained unchallenged. For instance, Michael Walzer, an advocate for the legitimacy of immigration restrictions, went so far as to call open borders unjust, speaking up for national self-determination and the nation-state's prerogative to exercise total control over political and territorial boundaries. Immigration policies shall be subject to what he calls the "internal decisions" of states which still remain to be, in his view, the only legal and territorial authority for a political community. Walzer is

using here the republican card against cosmopolitanism. He justifies restrictions on immigration on democratic/republican grounds according to which admission and exclusion represent the key factors for communal independence, expressing the deepest meaning of self-determination: we decide who we want to admit or exclude, because we are the sovereign. But interestingly, Walzer combines this republican justification with a communitarian defense of culture. In his view, the value of cultural distinctiveness presupposes closure to remain a stable and protected value of human life. Consequently “[...] closure must be permitted somewhere” (Walzer, 1992: 75). Without this principle, Walzer argues “*communities of character*, historically stable, ongoing associations of men and women with some special sense of their common life”, cannot exist (ibid: 83). To form a political community, the sovereign state or another communal authority must establish its own admissions policy to control and if necessary to stop the flow of immigrants to protect and sustain the cultural character of the community (ibid: 75). For Walzer, the right of self-determination reigns supreme; and this may eventually, as we observed in many European countries during the refugee crisis, lead to the denial of moral and legal commitments of nations to the rights of refugees and asylees on the grounds that letting them in would be diluting or spoiling the distinctive communal and cultural identity of the host country.

On the background of his theory of "complex equality", Walzer illustrates a non-cosmopolitan thinking of global justice, claiming that justice is primarily a moral standard within particular nations and societies, not one that can be deduced from a universalized abstraction.

It is hard to specify its philosophical foundation or principles, since refusal or approval are barely issues being raised within a particular society. They begin to matter between peoples that do not share a common descent. To argue that we can establish it simply by imagining “what a society would be like if this duty were rejected” (Rawls, 1971: 115) is missing the fact, Walzer argues, that rejection is not an issue within any particular society ; “the issue arises only among people who don’t share, or don’t know themselves to share, a common life. [...] It is the absence of any cooperative arrangements that sets the context for mutual aid (Walzer, 1992: 67). It goes beyond political, cultural, religious or linguistic barriers.

With the illustrative example of two strangers accidentally meeting each other in the desert, Walzer tries to clarify his problem with the absence of a cooperation framework: what do these strangers owe to each other? For Walzer the answer is that mutual aid has to be given on the premises that (1) one of the concerned is in urgent need of it and (2) that risks and costs arising from this act of help will remain relatively small. Consequently the right of hospitality does not oblige for anything, and indeed not for a permanent residency (ibid: 67). As many other advocates of community control, Walzer defends that defining conditions for first entry, be it for immigrants or refugees and asylees, shall remain a sovereign privilege of the nation-state and that further alternative methods to meet its responsibilities, such as foreign economic and development aid or “encouraging refugees to return to their homes or not to leave at all” ought to be permissible (Benhabib, 2007: 119). Even though he recognizes that it is often morally necessary to admit refugees on a large scale, he states that the right to restrain the flow must remain a feature of popular self-determination. The principle of mutual aid may only modify but not fundamentally change admission policies rooted in a particular community’s perception of itself (Walzer, 1992: 75-76).

Cosmopolitan authors are highly skeptical of Walzer’s deduction from the value of the distinctiveness of different cultures and polities to the necessity for closure and the justification for a sovereign to solely control communal boundaries. They do not agree with his methodological “fiction of a unitary cultural community and the institutional polity”, since democratic societies mostly consist of pluralist traditions of many cultural groups and subgroups, cultural traditions and counter traditions formed through several and diverse periods of immigration (Benhabib, 2007: 120).

I do agree here with Benhabib who criticizes Walzer’s attempt to create a false and imaginary “we”, supposedly an identity without inner contradictions or conflicts (Benhabib, 2007: 120).

As Benhabib states, all claims to develop “post-Westphalian” conceptions are bound to be meaningless as long as they turn a blind eye to the normative regulation of people’s movement across states’ boundaries (Benhabib, 2005: 673). The nation-state’s crisis, globalization and multicultural movements changed the borders between citizens and residents, nationals and foreigners and thus those borders have

to be renegotiated within a transnational context. It needs to be acknowledged that Benhabib does not wish to sacrifice democratic autonomy. Nor does she defend the impossible and undesirable task of establishing a so-called world government. She simply calls attention to the need for “sub-national as well as supranational spaces for democratic attachments and agency” (ibid: 674). Following Walzer in his emphasis on the political significance of the republican sovereign’s democratic claims including the protection of its distinctive cultural identity, she stands up for a corresponding strengthening of emerging cosmopolitan norms.

Even though Kant’s failed to foresee the negative dynamics of capitalism and globalization, it is significant how perfectly he anticipated the emergence of a global civil society which he envisaged as a crucial mechanism in the development of a cosmopolitan consciousness worldwide and as a significant political agent capable of influencing the policies of the nation state through naming and shaming. The development of a global civil society in the wake of global communication shows that the idea of cosmopolitan law is not a fantastic illusion, but “a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity” (Kant, 2007 [1795]: 108). Of course, a well-functioning global public sphere requires supporting structures promoting an ongoing public communication among spatially distant participants. But in the end, the cosmopolitan public sphere will be the place where the problem of democratic sovereignty can be solved collectively by international actors, “emerging out of civil society and gaining the attention of the cosmopolitan public” (Bohman, 1997: 198).

The European refugee crisis has also demonstrated the importance of a European public sphere in order to debate the refugee crisis as what it is: Not a national, but a European issue. As Habermas argues in his criticism of the Lisbon treaty, it will not be enough that European politics become institutionalized and European citizens participate in elections for a European Parliament. In order to make factual use of this right for election and to generate a sense of common bond and solidarity to face challenges collectively, Europe needs a Europe-wide communication context enabling a transnational open and transparent discursive exchange of arguments and opinions (Habermas, 2008: 107). Transnational civil society organizations and non-governmental communities may function as a mobilizer for various publics to exert their influence for the sake of accountability.

“There can be no European federal state worthy of the title of a European democracy unless a European-wide, integrated public sphere develops in the ambit of a common political culture: A civil society encompassing interest associations, non-governmental organizations [and] citizens movements” (Habermas, 2000: 160).

However, we shall not forget that “transnational civil society and global public spheres are not identical with democracy but rather provide a communicative and associational infrastructure for it” (Bohman, 2004: 351).

2.1.4. “The Right to Have Rights”: Hannah Arendt’s Reflections on Human Rights and Civil Rights

Before turning from the issue of sovereignty and hospitality to moral and political dimensions of membership, I will focus on Hannah Arendt’s perspective on human rights which sheds light on both the ambiguities of Kantian cosmopolitanism and the current refugee crisis. She draws our attention to what happens in a world of borders, if citizens are being deprived of their political community or nationality. As she puts it in the second part of her work “The Origins of Totalitarianism”:

“Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to a community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right of freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion [...] (Arendt, 1962: 296).

It is precisely in this context that Arendt introduces her concept of the “right to have rights“. To grasp her political and philosophical intention it is necessary to look briefly at her previous discussion of imperialism which starts with the European “scramble for Africa” and ends with “The Decline of the Nation-State and the End of Rights of Man.” In the course of the colonization period the white European colonizer transgressed moral and civil limits on African territory that normally monitored the exercise of power in their homeland (Arendt, 1962: 504). Free of any legal sanctions the exported means of military forces culminated in the dehumanization of the other and early practices of genocide, which as Arendt suggests finally found their path back to Europe in the 20th century like a boomerang.

In her discussion of imperialism Arendt gives several reasons for this total loss of rule of law, beginning with the instrumentalization of the nation-state for the benefit of the greedy bourgeoisie.

At the center of Hannah Arendt's critical assessment on human rights stands the fate of stateless people and refugees in the context of the breakdown of multi-national and multi-ethnic empires after World War I. The collapse of the remnants of old empires in Europe brought into existence new nation-states each of which consisted of a much more heterogeneous demos. The perversion of the modern nation-states from a source of law into one of arbitrary discretion by political elites claiming to act for the sake of the nation reached its peak when states started to enforce massive denaturalizations against unwanted minorities, with the result of millions of refugees, displaced and stateless peoples across borders (Arendt, 1962: 61). According to Arendt, this situation of millions of stateless people became the actual fruitful ground for the totalitarian dehumanization processes during the 20th century which degraded human beings into inferior subjects "unworthy of living." What had been organized and realized during the colonialization period in Africa found its way back to Europe. Arendt concludes that if a nation-state does not guarantee and protect the civil rights of its citizens anymore, those people will be thrown out of legal relations within a system of sovereign nation-states, because eventually nobody will declare his willingness to ensure human rights effectively.

"The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in the abstract nakedness of being human" (Arendt, 1962: 299)

On the vivid background of those historical facts and the powerlessness of international organizations or agreements, such as the minority treaties concluded between Woodrow Wilson and the associated powers, Arendt claims that "the very phrase 'human rights' became for all concerned—victims, persecutors, and onlookers alike—the evidence of hopeless idealism or fumbling feeble-minded hypocrisy" (ibid: 269). She goes so far to say that the assumption of natural rights as universal and inalienable rights conceals the actual catastrophe of statelessness. The serious problem to her was that the rights philosophers ascribed to nature were missing political counterparts. Arendt's criticism surely does not target the clarification of a

legal-theoretical dispute over human rights but rather to generate awareness for their historical inefficiency. The primary question she poses, is which right must be guaranteed to persons to protect them from complete lack of rights? Unlike Kant who appears to have defined his conception of the right to hospitality with reference to the natural law tradition and the narrowness of the world, Arendt as a critic of philosophical discourses of legitimation offers her conception of a “right to have rights” as a politically coined solution of the problem. It is the reflection of her belief that humans “are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights” (ibid: 301).

The phrase “the right to have rights” entails two different meanings of right. The first one invokes “a moral claim to membership and a certain form of treatment compatible with the claim to membership” (Benhabib, 2007: 56). The second use of the term right means civil rights that accrue to us as citizens of a state. Benhabib maintains that with this implication “rights” refer to a triquetrous relation between the individual “who is entitled to rights, others upon whom this obligation creates a duty, and the protection of this rights claims and its enforcement through some established legal organ, most commonly the state and its apparatus” (ibid: 57). The previous usage of rights shows another structure, leaving unanswered who in fact is to give or withhold such recognition. However Arendt aims to “reorient politics away from the use of power from above, away from individual and collective will, away from laws and institutions, toward what she calls the intersubjective *space of appearances*” (Ingram, 2008: 410).

Arendt, as a civic republican envisaged authentic politics, people being authors of their own rule of law. The meaning and significance of politics for her lies in creating and maintaining such a space of political freedom, a realm in which people can be recognized as interlocutors, as equal partners in action and deliberation. She justifies this argument by claiming that rights in the first instance shall not be subject to moral ideals or abstract philosophical concepts. Since she was equally skeptical of state guarantees or declarations, she emphasized the importance of establishing rights from the bottom up, through constant practices of communication and interaction (Ingram, 2008: 410). She feared a political culture reduced to the pursuit of ends, because it may eventually transform politics to an instrumental action justifying means of coercion, domination and force to pursue particular ends. Arendt calls her

ideal of politics *isonomia* expressing the idea that human beings “are not equal before law...but rather simply that all have the same claim to political activity” (Arendt, 1962: 22). Hence equality is guaranteed through political activity itself reaffirming mutually guaranteed rights. In the course of these practices of political interaction and mutual recognition, contention and cooperation, people establish a common public-political sphere (Ingram, 2008: 410). From this perspective equality is not a natural right, does not automatically exist in laws or institutions but is attained through continuous practice.

Arendt’s answer to the question of who should guarantee the rights to have rights is: “Humanity itself. It is by no means certain whether this is possible” (Arendt, 1962: 298). Despite her criticism of the paradoxes of the nation-state as a political entity rooted simultaneously in the idea of both a democratic demos and an ethnic nation, the nation-state still serves as a protective mechanism ensuring the exercise of citizen’s political autonomy evolved in public discourses. She follows the Kantian rejection of a world government on the grounds that political debate and negotiation can only take place in a proper, limited political framework of mutual recognition and interaction. Since Arendt rejects directing politics according to goals or ends, she offers to follow “principles”, not ones of legal or moral nature, but the spirit animating individual and collective action.

When she talks about a sphere above nations to guarantee human rights, she does not envisage a sphere of international law or state/world sovereignty but a sphere animated by exactly this political spirit maintaining mutual recognition and equality through permanent political activity.

The manifestation of such principles can only be sustained via action: they are “as long as the action lasts but no longer” (Arendt, 1968: 152). Indeed, both Kant and Arendt in their own ways deal with the issue of universal moral norms, which specify what human beings owe to each other. While Kant was concerned with the duty to provide people in need with refuge, Arendt focused on the duty to prevent people from denying others the right to have rights, or in other words the right to belong to a political community (Benhabib, 2007: 57). Her considerations illuminate the importance of preventing people from becoming stateless and of belonging to a political community as an essential need of people that shall not be turned down. We

become aware of the political significance of belonging to a political community and of a new understanding of rights politics that makes it antecedent to and partially separate from the state, law, and morality.

As many critics and commentators argue, the anarchical structure of the international arena is mainly due to the non-enforceable nature of the Kantian cosmopolitan norms, and the absence of a sovereign international agency capable of enforcing the rights of strangers worldwide. Cosmopolitan rights remain a voluntary act of states' authorities, even though they are subject to international norms and to refugee conventions that incorporated Kant's principle of non-refoulement. States themselves are the principal signatories, able to strengthen or to weaken cosmopolitan norms. Even a bounded international community such as the European Union, embedded in a legal framework of cosmopolitan norms with binding policies and regulations such as the Dublin Regulations, so far appears paralyzed to hold together backsliding nation-states aiming to sabotage a common refugee policy in the face of the high numbers of asylum seeking refugees and migrants. Unlike the economic crisis the refugee crisis infiltrated into the Union, rendering Brussels' political gradualism obsolete and imposes the question of a conscious constitution: Can Europe do justice to its liberal core principles?

The European Union seems to be entrapped among contradictory developments and principles which shift it toward cosmopolitan norms "in the treatment of those within its boundaries, while leading it to act in accordance with outmoded Westphalian conceptions of unbridled sovereignty toward those who are on the outside" (Benhabib, 2005: 675).

At this point in my discussion, let me clarify my own position in this public and scholarly debate: following Habermas' and Benhabib's lead, I would like to argue that what we need at this critical juncture is neither a complete repudiation of moral norms in the name of politics nor a complete repudiation of politics in the name of moral norms, but rather the necessary disjunction and mediation between the moral and the political.

Communitarian critics, who perceive the cosmopolitan discourse shaped by human rights and moral duties towards the other as an utter oversimplification or a reductive totalization have a point when they fear an *unmediated* moralization of law and

politics (Habermas, 1999: 233). But they are mistaken that such a moralization can only be avoided by “keeping international law free of law and law free of morality” (ibid: 233). As Habermas argues the concept of the constitutional state demands that the coercive forces of the state shall be challenged both externally and internally via legitimate law; and democratic legitimation of law is supposed to guarantee that law is reconciled with recognized moral principles. Cosmopolitan law is hence a logical extension of the idea of the constitutional state, because it eventually creates symmetry between the juridification of social and political relations within and outside of the state’s borders (ibid: 233).

In our analysis so far we have approached the question of what we owe refugees from different angles. It is my contention that from Kant’s right of hospitality we can deduce the first reason for obligatory help: the principle of mutual aid, not based on the justificatory premise of the sphericity of the earth, but on the principle of outer freedom, rightly pointed out by Seyla Benhabib. From a moral perspective it does not matter if the asylum seeking person is a victim of political persecution or existentially threatened by hunger or other fundamental needs. If their rejection will lead to their destruction, entry must be permitted.

However, I will argue that the current legal characterization of the refugee status as a politically persecuted person being trapped in conditions of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, anchored in the Geneva Convention (1951) is a deep reflection of Arendt’s elaborations on the infinite and special danger of statelessness that needs to be prevented unconditionally. Refugees differ from other people in need because they are deprived of the right to have rights. Since both their private and public autonomy is violently repressed, they are able neither to shape their own individual lives nor to exert any influence on political life. Theoretically speaking needy people in comparison to refugees may still have the chance to get actively involved in politics to improve their situation. As soon as they are deprived of their fundamental right to participate in politics or public affairs they become “refugees”. In my opinion it is of utmost importance to uphold in particular the refugee status as what it is and to grant asylum first of all to persecuted people.

Nevertheless, Europe cannot ignore an important second reason as to why we have moral obligations towards refugees. I want to argue that besides the principle of mutual aid we have the duty to make up for the wrongs or harms which we politically or economically caused in the past or still cause in the present. The difference between the principle of mutual aid and that of reparative aid lies in the fact that we do not owe the duty of reparative aid to all individuals, but in particular to people that have suffered from our harm. Reparation or compensation must be the consequence of our irresponsible treatment of the third world countries. As Bohman remarks, “global interdependence refers to the unprecedented extent, intensity and speed of social interactions across borders, encompassing diverse dimensions from trade to cultural exchange to migration” (Bohman, 2004: 339). The outcome of such actions of international cooperation that control and regulate financial markets “influence the life possibilities of indefinite others” (ibid: 339). Our global economy has systematically exploited developing countries, obviously contributing to their disability to overcome poverty. Also did many potential host countries their stint in the outbreak or escalation of civil wars. Financial systems and the armament industry, supporting tyrants to equip military and extend their power have done as much harm as arms deals and foreign policies of many states. Furthermore, first world countries are with their above average emission standards most responsible for the climate change, which will hit first and foremost the third world. We must not only speak of moral obligations towards politically persecuted people, but also of economic refugees, civil-war refugees and climate refugees.

Left with Kant’s ambivalent legacy, cosmopolitans are, I argue, right to attempt to add more conditions to the phrase “the destruction of the other”. When Kant wrote “Perpetual Peace”, globalization was still in its infancy. Today and in particular against the background of the current refugee crisis globalization has revealed its dialectical components. Bohman is therefore right in coining a term like “modern domination”. Europe has to frame immigration and asylum policies in accordance with and in consideration of the reasons I raised for moral obligations, instead of leaving it in the murky space between political choice and moral constraint, in order to be able to face the challenges globalization poses in the present in a satisfactory way. Since it turned out to be hard to create “quasi-legally binding obligation through voluntary commitments and in the absence of an overwhelming sovereign

power with the ultimate right of enforcement”, nation-state’s sovereignty needs to be restrained (Benhabib, 2006: 23). To reconcile the tension between republican demands and cosmopolitan universal principles supranational institutions have to be reformed to become juridically and politically strengthened. Our political answer to worldwide interconnectedness and interdependence must be the foundation of new “deterritorialized” and “denationalized” forms of authority (Bohman, 2004: 346).

We are facing today the necessity to form a transnational and democratic community which encompasses a juridical as well as a political dimension. Like Bohman I believe that we need to create “juridical institutions that establish the international political community as an addressee of legal claims and constitute enforceable universal rights of membership” (ibid: 351). At the same time a political community cannot be backed up solely by juridical institutions with coercive force. There must exist a broader political scope in which the authority of those institutions is made legitimate and democratically accountable (ibid: 351). A European civil society must be strengthened through democratic attachments and institutions to question and shame states in cases of unjustified refoulement. In addition to this such a civil society will sustain public autonomy.

2.2. Borders, Political membership and Cosmopolitan Politics

Since human beings are highly mobile, large numbers of people regular attempt to change their residence and their membership, moving from unfavored to favored environments. The refugee crisis represents one of those regularly attempts triggered through the Syrian civil war. But exponentially rising economic and social lacks of prospects in third world countries also motivate people to migrate and search for better living conditions. Caught in the tension between human rights and preservation of popular sovereignty, liberal democracies seem yet to explore new paths of negotiation to do justice to both of these core principles.

Kant’s cosmopolitan vision was for historical reasons narrowed down to temporary sojourn. With the hindsight of two hundred years and against the background of the gradual emergence of a global human rights regime, today’s cosmopolitan’s concerns reach beyond Kant’s cosmopolitan horizon, trying to cross his suggested unbridgeable gap between the right of temporary sojourn and that of permanent residency. Left with Kant’s conflicting legacy, cosmopolitan liberals support

conditions of membership and belonging on behalf of *the other* in order to mitigate practices of exclusion within liberal nationhood. Recognizing the increasing porosity of borders and the rise of supranational agency, cosmopolitans postulate the emergence of new forms of membership calling for a reconsideration of the state's prerogative over the distribution of political membership, such as the resituating of citizenship (Benhabib, 2005: 674).

Republicans and communitarians by contrast insist on Kant's position which awards the right to distribute membership exclusively to the national sovereign. They view membership as a "social good constituted by our understanding". They claim "its value is fixed by our work and conversation; and then we are in charge (who else could be in charge?) of its distribution" (Walzer, 1992: 66). By emphasizing the importance of mutual trust and common sense as the sufficient basis of democratic processes, they warn that a demos must be careful in the acceptance of foreigners to prevent discord, to sustain a specific political and ethnic culture or to impede social tensions.

In this part of my thesis, I will discuss the following questions: Should host countries see refugees as full members of their polities or solely as beneficiaries of temporary sojourn expected to leave again? What consequences can the admission of refugees and asylees have on the concept of political membership and belonging? On what normative pillars shall we build the concept of membership in liberal democracies against the background of increasingly deterritorialized politics? (Benhabib, 2007: 12).

2.2.1. The Constitutive Dilemma at the Heart of Liberal Democracies: The Paradox of Democratic Legitimacy

As I argued before, the idea of a democratic nation-state is a Janus-faced invention, one that is based on an inherent tension between universal human rights and particularistic cultural and national identities. The paradox, as Benhabib points out, is that "modern democracies act in the name of universal principles, which are then circumscribed within a particular civic community", may it be unitary state, a federal state, the European Union or another type of confederation (Benhabib, 2006: 32). Thus we encounter a permanent conflictual potential between universal rights that bind the will of the sovereign and the actual enactments of the democratic polity,

which could potentially neglect such interpretations (ibid: 33). While most liberals favor to restrain the sovereign's power by means of legal regulations embracing universal rights claims, democrats tend to oppose this type of prepolitical interpretation of rights. They believe that the rule of law beyond a democratic space for open negotiation and reinterpretation loses its legitimacy, since a democratic community is supposed to give itself its laws through the sovereign will of the people, even though circumscribed within certain limits.

Thus in the first scenario human rights are meant to provide legitimate obstacles that prevent the sovereign will of the majority from encroaching on individual liberties, in the second scenario human rights owe their legitimacy to the sovereign self-determination achieved by a political community (Habermas, 1999: 299).

Seyla Benhabib diagnoses here an important corollary, a paradox she considers to be internal to democracies. With every self-legislating act a people binds itself not only to general laws of self-government, it also reappropriates its own identity. Hence the unity of the demos ought to be understood as an ongoing procedure of self-constitution through more or less conscious conflicts of inclusion and exclusion: those who can be considered as full members of the political entity are distinguished from outsiders, such as refugees and migrants, who only fall under the democratic states' protection within the legal framework of human rights (Benhabib, 2005: 675). Since every democratic entity has disenfranchised some, while recognizing certain individuals as full citizens, we observe that popular sovereignty indeed is not identical with territorial sovereignty.

Refugees, asylees or other foreigners are brought under the authority of a democratic sovereign but they do not have a voice in the articulation of the laws by which the demos rules them and itself as a whole. Their status is mostly regulated by mutual treaties among sovereign entities or additionally by the "murky space defined by respect for human rights on the one hand and international customary law, on the other" (Benhabib, 2006: 35). Obviously "the rights and claims of others are [being] negotiated upon this terrain flanked by human rights on the one hand, and sovereignty assertions on the other" (Benhabib, 2007: 47). Ideally speaking the people ought to be the author as well as the addressee of the law but the rising discrepancy between *populus* and *demos* challenges the proper relation of private and

public autonomy. What consequences can the admission of refugees and asylees have then on the concept of political membership and belonging?

2.2.2. Moral and Political Dimensions of Membership: Communitarian and Cosmopolitan Perspectives

Michael Walzer is among the few contemporary theorists who have spoken up for the significance of membership. For him the first and most valuable good and set of possibilities people can allocate and distribute to one another is membership and the belonging to a particular community, which becomes also clear when he, like Arendt, argues that “statelessness [is] a condition of infinite danger” (Walzer, 1992: 66). “It is only as members somewhere that men and women can hope to share in all the other goods – security, wealth, honor, office, and power – that communal life makes possible” (ibid: 84). He does neither believe in stateless world in which no one is a member, nor into the possibility of a world government in which all peoples of the globe might become members. Drawing on Sidgwick, Walzer expresses his deep skepticism about the possibility of tearing down the walls of the state, which may eventually create a thousand petty fortresses, instead of a world without borders. The other possible scenario of a global state sufficiently powerful to dispose of the local communities would lead to a world held by political economists. The ultimate result of this second scenario would be a world of radically deracinated men and women (ibid: 74).

Even though Michael Walzer speaks up for national self-determination and the nation-state’s prerogative to exercise total control over its political boundaries, his positive valuation of membership seems to lead to an argumentative turn: the principle of self-determination in the distribution of membership held by territorial states is not absolute, he argues. “Naturalization, [...] is entirely constrained: every new immigrant, every refugee taken in, every resident and worker must be offered the opportunities of citizenship” (Walzer, 1992: 83). He fails to describe the guiding principles with which we can draw a clear line as to where mutual aid actually begins and ends, but in terms of naturalization he is much clearer: “The determination of aliens and guests by an exclusive band of citizens [...] is not communal freedom but oppression” (ibid: 84). In order to break with such practices, we must deny, he points out, the rightfulness of the denial.

However, the ground for Walzer's claims on a right to membership is partly inconsistent. Yes, he does recognize the danger of the denial of membership, but the consequences he draws from this recognition are rather moral concerns than legal obligations. He does not view the right to membership as a human right and hence fails to explain why existing polities ought to feel an obligation to naturalize foreigners (Benhabib, 2007: 119). What does he mean by "admission policies rooted in a particular community's understanding of itself" (ibid: 119)? He underlines this position also by normatively affirming the morally asymmetrical relationship of emigration and immigration anchored by the Human Rights Convention's declarations. Touching upon the rightfulness of a right to emigrate, he does not such criticize right away the non-existence of a right to immigrate. According to Walzer, the effect would be nothing but replacing commitment with coercion (Walzer, 1992: 75).

Even though Walzer appears somehow to agree with Arendt and Benhabib on the fact that depriving somebody of his or her membership remains a crucial factor for potential discrimination and abuse by political communities, he eventually insists on the exclusive prerogative of the popular sovereign to distribute or deny membership. To how many people, to what sort of people, for how long and for which purpose the sovereign awards membership shall indeed not be enforced through some external judge. But if communities are allowed to make membership as exclusive as they like, can we really achieve a just distribution of membership?

As one of the leading representatives of cosmopolitanism, Benhabib postulates that a cosmopolitan theory of justice cannot be limited to schemes of just distribution on a global scale, but must also embrace a vision of just membership (Benhabib, 2007: 3). Beginning with the assumption that the unified demos has become fractured through increasing multiculturalism, Benhabib seeks to strengthen the rights of others in their host countries and to denounce the rising discrepancy between *populus* and *demos*. She thereby touches upon one of today's core debates in cosmopolitanism namely public autonomy and democratic participation, the core of democratic self-governance. According to Benhabib:

"[...] just membership entails: recognizing the moral claim of refugees and asylees to *first admittance*; a regime of porous borders for immigrants; an injunction against denationalization and the loss of citizenship rights; and the vindication of the right of every human being

“to have rights,” that is, to be a legal person, entitled to certain alienable rights, regardless of the status of their political membership. Furthermore, just membership also entails the right to citizenship on the part of the alien who has fulfilled certain conditions. Permanent alienage is not only incompatible with a liberal-democratic understanding of human community; it is also a violation of fundamental human rights” (ibid: 3).

2.2.3. Democratic Iterations: Seyla Benhabib’s Idea on Destabilizing Exclusion

Arguing that political philosophy has not been able yet to bring the concepts of human rights and popular sovereignty together by equally doing justice to both types of freedom, Habermas offers a new approach viewing the democratic procedure from a discourse-theoretical standpoint. In this case a social regulation system can only claim legitimacy, if all those possibly affected by it could consent to it after participating in rational discourses. So if discourses represent the place where a reasonable political will can be developed by participants, trying to convince each other to find a consensus while bargaining in negotiations to balance their interests fairly, then the “presumption of reasonability, which the democratic procedure is supposed to ground, ultimately rests on an elaborate communicative arrangement” (Habermas, 1999: 300). This presumption of reasonability, Habermas states, depends on the preconditions under which forms of communication, inevitable for legitimate lawmaking, can be legally institutionalized.

Consequently the desired internal relation between human rights and popular sovereignty consists in this: human rights themselves are institutionalizing the conditions of communication for a rational and just formation of political will (Habermas, 1999: 300). Therefore they should not be viewed as constraints of popular sovereignty but rather as a necessary ground enabling conditions of lawful participation and communication.

For Habermas public and private autonomy clearly mutually presuppose each other. This mutual presupposition expresses the intuition that on the one hand only independent people with equally protected private autonomy can make adequate use of their public autonomy, and on the other hand people arrive at a consensual social regulation of their private autonomy only if they are actually being engaged in the exercise of their political autonomy as members of a political community (ibid: 301). Neither human rights nor popular sovereignty can claim to be superior over its counterpart.

Following Habermas in his discourse theoretical approach on liberal democracy, Benhabib deals with the “paradox” or tensions that membership criteria constitute for theorists of deliberative democracy. Generally, deliberative democratic theory holds that a legally legitimate institutional framework ought to guarantee that those affected by the institution could reasonably be persuaded and convinced to be bound by it. Hence:

“Every person, and every moral agent who has interest and whom my actions and the consequences of my actions can impact and affect in some manner or another, is potentially a moral-conversation partner with me: I have a moral obligation to *justify my actions with reasons* to this individual or to the representatives of this being” (Benhabib, 2007: 14)

Obviously the question of who ought to be included or excluded from public debates, poses an inherent difficulty to discourse ethics: since discourse theory holds a universal moral standpoint, it cannot delimit moral discourses to a demos circumscribed by territorial and national boundaries: All potential participants must be included. But a “shared feature of all norms of membership [...] is that those who are affected by the consequences of these norms and in the first place, by criteria of exclusion, *per definitionem*, cannot be party to their articulation” (ibid: 15). Evidently principles of discourse theory cannot be applied to the domain of political membership without taking other normative considerations into account.

Since it is impossible to entirely get around the fact that democracies cannot choose the boundaries of their own membership and since norms of membership will keep affecting those who have little voice in their articulation, some additional normative considerations are necessary. A discourse-theoretical approach must formulate significant conditions along which practices of inclusion and exclusion in sovereign nation-states can count as morally justifiable. Benhabib thinks that “there are certain practices of democratic closure which are more justifiable than others, but that potentially all practices of democratic closure [must remain] open to challenge, resignification, and deinstitutionalization” (Benhabib, 2007: 17).

What does she mean by that? Surely Benhabib strictly refuses to be pushed either to the radical open-border position holding that all criteria of exclusion are unjust, because they affect those who are not part of the legal enactments, nor to the radical-closed border position viewing boundaries around communities as historically contingent or morally neutral facts as preconditions for moral and political

discourses. Instead, she proposes to enable political communities to constantly rearticulate norms of membership to engage in self-reflexive discussions that periodically evaluate and modify exclusionary practices. The aim of such evaluative discourses which Benhabib calls “democratic iterations” is to destabilize exclusion:” We can render the distinctions between “citizens”, “aliens”, “us” and “them”, fluid and negotiable through democratic iterations” (ibid: 21).

But what exactly is the meaning of democratic iterations? Iterations are complex public debates, intensive exchange and deliberation, where civil society, public institutions or state organizations contextualize, discuss and reform universal rights and principles according to political and social changes (ibid: 179). The term had been coined by Jacques Derrida’s work in the philosophy of language. When we are repeating a term or concept, we never simply reproduce the same or original usage, which means that every repetition is rather a form of variation, a re-appropriation of the origin. Iteration means the dissolution of the original and its preservation through its continuous deployment at once. Benhabib calls them “linguistic, legal, cultural and political repetitions-in-transformation”, which not only rearticulate already established meanings but also change what is the valid or the general accepted view about an authoritative precedent (Benhabib, 2006: 48).

Rights and other norms of the liberal democratic state need to be constantly challenged and reformulated in the public sphere in order to affirm and enrich their original intention. These considerations have been also applied to the domain of law through the concept of jurisgenerative debates: These are also iterative processes, in which the democratic people conceiving itself as constrained by distinct guiding norms and principles, shall engage in iterative acts by re-appropriating and re-interpreting those norms, thereby showing it is not only subject but as well the author of laws (Benhabib, 2007: 181). Jurisgenerative politics can hence be understood as creative and complex measures that mediate between universal norms and the will of democratic majorities. As a result individual political autonomy and the meaning of cosmopolitan rights become constantly strengthened and affirmed (Benhabib, 2006: 48). Along those democratic iterative processes a people as a dynamic collectivity can periodically reconstitute itself to deal with the political question of who is supposed to belong to it. In this manner foreigners may become residents and finally residents may turn into citizens (Benhabib, 2007: 211).

The democratic people is required to determine new innovative laws and mores in rational discourses, which are less contradictory with cosmopolitan norms of universal hospitality. The question of who belongs to our people is defined exactly within those ongoing infinite processes of negotiation, where the people re-constitutes its political boundaries with every self-legislating act (ibid: 181).

2.2.4. Citizenship, Membership and Belonging

In the light of our discussion so far, we can view Benhabib's account of cosmopolitan membership as a comprehensive synthesis of three theoretical approaches: Kant's considerations on *Besuchsrecht* and *Gastrecht*, Hannah Arendt's *right to have rights* and a discourse theoretical standpoint. But unlike Arendt, for whom citizenship "was the prime guarantor for the protection of one's human rights", the challenge, Benhabib believes, is "to develop an international regime which decouples the right to have rights from one's nationality status" (Benhabib, 2007: 68). On the level of substance Benhabib's cosmopolitan right to membership is concerned with negotiating the complex relationship between rights of full membership, democratic voice and territorial residence.

Benhabib postulates that the political evolution of human communities has reached a point where citizenship is exposed to a slow process of disaggregation. Rising numbers of aliens and foreigners amidst the democratic people do not or do hardly share the collective identity of their host countries, although they are entitled to a set of certain rights and benefits as guest workers, permanent residents or asylees. She further diagnoses institutional developments "that unbundle the three constitutive dimensions of citizenship, namely, collective identity, the privileges of political membership, and the entitlements of social rights and benefits" (Benhabib, 2006: 45). Evidently those institutional processes have advanced furthest within the framework of the European Union. Rights are not anymore exclusively bound to nationality but rather complemented and accumulated within European citizenship, whereby privileges and benefits of political membership protect especially all those European citizens who may be resident in another European country than their own. Foreign permanent residents enjoy voting rights within parliamentary elections of the Union and in local elections of their host country. They may also stand for office in

local elections. European long-term residents cannot be denied of an equivalent package of social rights by their host country.

These are major developments towards a more inclusive approach to the other, even though EU's third-country nationals are excluded. They are still reliant upon regulations and agreements between their home country and the European Union. But also in this respect, as Benhabib closely observes, changes throughout the EU are quiet visible. In some European countries third-country nationals are now able to participate at least in local elections (ibid: 46).

We become aware of the fact that entitlements to rights and benefits are no longer solely bundled by the status of citizenship. After long-lasting evaluations of political membership, legal residents have finally been embedded into civil and social rights regimes, they are protected by supra-national institutions and legislations setting a framework of rightful condition on different levels hindering the state from encroaching on individual's basic rights (ibid: 46).

However, the status of undocumented refugees or people who illegally entered the European Union often remains highly critical. Furthermore during the examination period of asylum applications refugees may find themselves thrown back to conditions of absolute vulnerability, banned from public life and labor.

Since conditions of being outsider or insider have turned "tense" and "warlike", it is necessary to figure out new forms of political agency that foster a more and more inclusive approach to the concept of citizenship (Benhabib, 2006: 47). Benhabib emphasizes the importance of arranging the right to political membership according to practices that are "non-discriminatory in scope, transparent in formulation and execution, and justifiable when violated by states and other state-like organs" (Benhabib, 2007: 4). Correspondingly she claims that the nation-state's sovereign prerogative over citizenship and denationalization must be rearranged and limited by international courts and institutions in order to combat arbitrary violations of human rights. Cosmopolitan norms will show the way here. Will Kymlicka made an important point when he pushed Benhabib to clarify the content of her cosmopolitan norms. He agrees with her that cosmopolitan norms can and should be developed to contest exclusionary practices, discrimination or assimilation policies, but are they conceptually ought to *tame* or *transcend* liberal nationhood (Kymlicka, 2006: 133)?

While the former approach suggests to preserve the basic framework of liberal nationhood, the latter insists on new forms of post-national/cosmopolitan citizenship. Claiming that the concept of liberal nationhood incorporates practices of tolerance for cultural diversity, defenders of liberal nationhood emphasize the differences between the liberal and the “illiberal”, a term coined by Fareed Zakaria in 1997, who interprets illiberal democracies as a growing industry, a “disturbing phenomenon in international life”, which is hard to determine due to the fact that for almost a century in the west democracy meant actually liberal democracy and nothing else (Zakaria, 1997: 22). The liberal nationhood approach is articulated by the so-called *tamers* who commit themselves to take legal steps against discriminative practices by deploying a multicultural conception of the nation accommodating and integrating immigrants as well as refugees. They seem to support a multicultural conception of the state that legally recognizes the existence of sub-nations and migrants. Furthermore, they perceive the establishment of international agreements as a necessary tool to initially prevent aggressive behavior between nation-states.

The taming model would represent a more multicultural conception of liberal nationhood with relatively easy access to citizenship and reasonable accommodation of immigrant ethnicity within public institutions (Kymlicka, 2006: 130). *Transcenders* are much more radical in their claims and arguments, trying to create new types of post-national membership in order to undermine the bond between liberal democracy and nationhood. Institutionally they argue for instance that the political status of citizens in the EU shall no longer be mediated by national citizenship in order to entirely eliminate the risk of nationalistic outcomes. Benhabib herself implies that we are pushed beyond limits of liberal nationhood, where rights of immigrants are tight to the acquisition of citizenship and the acquisition of citizenship to national integration (ibid: 137). She refers to three claims here raised by immigrants in Europe that she thinks have challenged these links and thus transcend liberal nationhood: Local voting, naturalization of immigrants and accommodation of religious practices (ibid: 137).

But is delinkage between citizenship and nationhood really a necessary step to destabilize exclusionary practices? May be the unbundling of rights from citizenship would on the contrary lead to continued exclusion, a tool deployed by right-wing parties to circumvent a more racially and religiously unified conception of their

nation? (ibid: 138). To Kymlicka the unbundling is only legitimate as a transitional phase towards full citizenship. “The long-term goal must be rebundling of rights and citizenship”, as a way of promoting political socialization into the existing national political system, enabling immigrants to develop bonds of trust and attachment (ibid: 140). Instead of delinkage thinner models of national identity may work better as we can observe in the United States of America or in Canada. They did not renounce liberal nationhood in order to come to terms with the naturalization of immigrants. (ibid: 140). As against those who perceive cosmopolitan norms and liberal nationhood as an unhappy marriage he maintains that one distinct conception of the “nature and function of cosmopolitan norms is precisely to promote (a tamed form of) liberal nationhood, and that this conception is conceptually coherent, politically feasible, and morally progressive” (ibid: 133).

However, it is undeniable that the boundaries between civil rights and human rights have begun to vanish. Multicultural enclaves in large cities around the world are being interpreted as harbingers of a new type of citizenship, which is not any longer determined through exclusive loyalty towards a nation or national culture. The diversification of citizen’s rights has put the individual in the position to possibly adopt multiple forms of loyalty towards different ethnic, religious or national communities and to engage in cross-border networks (Benhabib, 2007: 174). Despite communitarian doubts that such an approach would generate enough mutual trust and commitment to sustain an efficient democratic society, Benhabib believes that multiple loyalties are even healthy for democracy. They need to correspond though with a loyal participation in representative institutions, which in return provide reliability, transparency and responsibility for their own electorate.

I believe that Benhabib was right to locate the *other* right upon this terrain flanked by human rights on the one hand, and sovereignty assertions on the other. From a normative point of view, we may say that transnational migration brings to the fore the constitutive dilemma at the heart of liberal democracies, because naturally questions of political membership lead us to the center of the democratic self-determination and self-constitution (Benhabib, 2007: 55). In order to optimize the conditions of just deliberative democracy, we must hence constantly aim to reconcile universal human rights, on one hand, and popular and territorial sovereignty on the other. In the context of globalization and increasingly fractured societies, Benhabib

has acknowledged the urgency of questions of membership and belonging in the most suitable way. We might argue that today's cosmopolitan debate is concerned with democratic participation and that Kant's distinction between the rights of guests and the rights of visitors is not applicable anymore.

Benhabib and Walzer agree on the fact that every society must have institutions enabling the *other* to become a fellow citizen. "It is not a questions of a world without borders, nor of abolishing all regulation" (Benhabib, 2009: 2). Both perceive statelessness as the supreme danger. Both claim that each new immigrant, every refugee approved, every resident and worker must be offered the opportunities of citizenship. But what makes Benhabib's position preferable is that she goes way further than Walzer in demanding to formulate regulations "as far as possible to go conform with human rights and support democracy" (ibid: 2). Benhabib approaches the problem of exclusion and discrimination by two different processes that I introduced earlier as democratic iterations and jurisgenerative debates. They are supposed to open up a public space, where norms become receptive for new semantic contexts: In democratic processes a people adopts national norms and reinterprets them along democratic iterations in the light of cosmopolitan norms. We must understand her analysis of diversified citizenship as a democratic iteration itself, which aims to promote less exclusive pillars of liberal nationhood. This is why Benhabib rightly asks, if democratic representation could be organized along lines reaching beyond the nation-state configuration. Her iteration made us think about new, more inclusive approaches and policies, where the acquisition of citizenship is not the only possible path toward national integration. On this view, the attempt to establish more and more sub- and supranational spaces endowed by democratic bodies and participation opportunities is not meant to replace existing forms of government but to ease this tension and to nip practices of exclusion in the bud. Diversified citizenship may open up new perspectives through which citizens renegotiate inherent contradictions within democratic constitutions.

However, Kymlicka is equally right when he argues that Benhabib's idea of unbundling citizenship from citizen rights shall only be legitimate as a transitional phase towards full citizenship. We do not have to reject the principle that acquisition and exercise of citizenship should be tied to some idea of integration into a citizen's nation. I want to leave Benhabib's iteration on diversified citizenship an open

question, a question that may be answered in a different piece of work. Whatever our final conclusion will be, we must realize that iterative processes of re-articulation and reconsideration themselves are what will bring us closer to the ideal of liberal democracy.



3. CHAPTER:

MULTICULTURALISM AND THE POLITICS OF RECOGNITION

Liberal democracy has always been closely tied to the principle of inclusion. Nevertheless, as I pointed out in the previous chapters, democracy shows contradictory dynamics towards exclusion: in order to constitute itself as a sovereign, a demos has to endow itself with a certain shape and character drawing a line between insiders and outsiders. The question of what the people actually is, leads to another significant point: How must the demos look like to generate a certain level of solidarity, a common political spirit in democratic procedures to conduct political public discourses effectively. A nation-state can only guarantee its stable legitimacy, if its members are bound through mutual duties by virtue of a shared sense of belonging to a political community.

“[...] Multicultural or global societies are likely to be the framework of the early part of the 21st century” (Chrysochoou, 2000: 344). Due to globalization and transnational migration movements, tendencies towards multicultural societies are rising. A multicultural society means multiple cultures of different origin and form united within one single polity. Since liberal democracies are committed to the principle to equal representation of all, multicultural societies automatically turn on the demand to figure out what it means for citizens with varying cultural identities to be recognized as equals in the way they are treated in political life (Gutmann, 1994:

3). A liberal demos has to ask itself, how to reconcile those differences to endow itself with a certain shape at all.

The concept of multiculturalism emerged at the end of the 1980s in the Anglo-Saxon immigration countries such as Canada as a continuation of the political and theoretical debates between liberals and communitarians. The liberal-communitarian dispute is primarily centered on the principles of freedom and justice, which form the conceptual basis of liberal societies. The main communitarian argument is that liberals tend to turn a blind eye to the dependence of humans on their social and political environment and therefore cannot adequately do justice to their aspirations of defending civic freedom. The Canadian philosopher Charles Taylor for instance criticizes the classical liberal idea for its atomistic conception of human existence, where society becomes a conglomerate of autonomous individuals, whose identities, capacities and objections exclusively stem from their subjective choices alone. Atomism thus appears to reject the dependence of humans and their identities on a larger cultural and social background. Taylor, on the contrary, defends a “social thesis” maintaining the image of the human being as a *zoon politikon* (political animal). On this view, humans are embedded in their sociocultural environment, which influences or even determines their identity, their values, interpretative patterns and opportunities in life (Taylor, 1992: 34). Hence civic freedom is not only about formal equality but about citizens being capable of knowing their own rights and being able to dispose of necessary resources to claim those rights. It is maintained that most people actually need a secure cultural context to give meaning and guidance to their choices in life.

Thus we must acknowledge that, so the argument goes, the ongoing existence and survival of the cultural context ranks among the primary goods which create the basic conditions for individuals to realize what they can identify as a good life (Gutmann, 1994: 5).

In order to discuss the concept of a multicultural society it is necessary to consider the notion of difference and commonality. How can we harmonize these concepts? In this context we have to bring up as well conceptual pairs such as equality – integration and uniformity – assimilation. What holds political communities together? Apart from equipping all citizens with the same set of equal rights and

duties, what does respecting people as equals entail (Gutmann, 1994: 4)? Shall we seek to combine a democratic republic with an inclusive non-naturalistic concept of the people in order to live up to its own principles in the age of globalization or are we underestimating the need of shared historical and cultural bonds? My analysis in this final chapter will focus on two leading political thinkers of our times whose perspectives arguably represent the best theoretical articulations of the strengths and weaknesses of multiculturalism. The first one is Taylor who, with his conception of the politics of recognition, has made a great contribution to the multiculturalism literature as well as to the debates about minorities and discrimination (Sheikhzageda, 2012: 36). In order to properly analyze Taylor's idea of politics of difference, I will firstly offer a detailed reading of his perspective and then continue with a critique which owes a great deal to Habermas' approach based on the unity in political culture and diversity in subcultures. Finally, I will provide a brief critical and comparative commentary on Taylor's and Habermas' perspectives.

3.1. The Relationship between Identity, Authenticity and Recognition

“*Culture* has become a ubiquitous synonym for *identity*, an identity marker and differentiator” (Benhabib, 2002: 1). The claims of diverse cultural groups in the name of equality and freedom have become an inherent part of the public sphere and typical of struggles for redistribution and recognition in modern liberal democracies. Besides the function of social distinction, culture today entails a different dynamic including the demand of cultural groups for legal recognition and even the redistribution of resources from the state in order to ensure the survival of their cultural particularity.

Accordingly, today many political theorists agree on the premise that an appropriate understanding of justice must entail at least two sets of concerns: struggles over distribution and struggles for recognition (Fraser and Honneth, 2003: 2). It is argued that only a framework that integrates both perspectives within a "two-dimensional" conception of justice, “can grasp the imbrication of class inequality and status hierarchy in contemporary society” (ibid: 3).

Two major historical changes are responsible for giving sense and meaning to this modern concept of recognition. The first one represents the collapse of social

hierarchies based on the principle of honor, which was directly linked to the intrinsic inequalities of the premodern societies. Democracy replaced the concept of honor by the notion of human dignity, which was to be shared by everybody, not just by an exclusive group of people such as aristocracy. The second important historical change involved the emergence of the idea of individual identity by the end of the 18th century.

The individual began to understand itself as an independent moral person carrying the notion of being true to itself and its particular way of being. The fundamental novelty of this idea is that the source we have to connect with is no longer god but instead deep within us (Taylor, 1994: 29). The direct result of this conception of individual identity has been the birth of a new concept: authenticity. The concept of authenticity underlines the uniqueness of each person by suggesting “that there is a certain way of being human that is my way. I am called upon to live my life in this way, and not in imitation of anyone else’s life [...]. If I am not, I miss the point of my life” (ibid: 30). We encounter a new and strong ideal focusing upon being in contact with oneself, the inner voice and substance that is constantly endangered to be lost through enforced conformity or by adopting an instrumental attitude toward oneself. Hence I can discover myself by being honest about my identity that only I can explore and communicate. In articulating myself, I am also defining myself. In this way a potentiality is being developed which is properly my own (ibid: 31). This idea can be applied to individuals as well as to a collectivity, as the bearer of one particular culture in the midst of other cultures.

However, we do not form individual identities on our own. Identity is developed dialogically: “we become full human agents, capable of understanding ourselves, and hence of defining our identities, through our acquisition of rich human languages of expression” (Taylor, 1994: 32). We define our identity continuously in dialogue with and often enough in struggle against others, who may want to see different characteristics or qualities in us. Thus my identity essentially depends on my dialogical relationships with my significant others.

Politics of equal recognition has taken various forms over time, and today it manifests itself primarily in the claims made by different groups and social movements in the name of equal status for all cultures and genders (Taylor, 1994:

27). These claims rest on the assumption that there is a dialogical relation between recognition and identity. It is maintained that identity is in particular shaped by acts of recognition, nonrecognition and misrecognition, so that a person or a group of persons may potentially suffer serious psychological damage, if society mirrors back to them a confining degrading or wretched image of themselves. Consequently a person or a group of people may eventually begin to absorb and internalize this imposed false identity. Being trapped within such a reduced mode of being can induce traumatic wounds. Accordingly Frantz Fanon for instance who focused in his work "The Wretched of the Earth" upon the psychology of the colonized and their path to liberation, argued that the only way the colonized may shake off the yoke of oppression and release themselves from their reduced mode of being primarily lies in the violent revolutionary struggle for freedom. Only the violent process of decolonialization, he maintains, may eventually heal the wounds of subjugation and misrecognition and transform the "thing" back to a "man" (Fanon, 2004: 2). We must understand recognition as a vital human need, instead of a kind of courtesy we owe people (Taylor, 1994: 26). May it be the colonized peoples of the earth, the foreigner or other discriminated minorities, as long as peoples or individuals are not being recognized of equal worth in societies the ideal of a healthy liberal community "whose members feel mutual bonds of solidarity, because they are all engaged in the same enterprise" remains remote. Sartre pointed out that authenticity plays a significant role in that context: Living authentically within the reality of a divided society means to acknowledge the political reality of class cleavages and conflicts between social and cultural groups to furthermore fight for the right of the marginalized or voiceless (Sartre, 1976: 108). He understood that anti-Semitism for instance is nothing else but the inauthenticity of the lower middle class. Instead of acknowledging the actual problematic of being discriminated socially in a class society, the anti-Semite chooses another "easier" vehicle to channel his emotions, hatred towards the other.

It is clear that the new understanding of identity and authenticity has introduced a new dimension into the politics of equal recognition. If the sphere of our personal relationships shall be guided by ethics of authenticity, than a civil society or political sphere must be correspondingly guided by politics of equal recognition.

3.2. Equality – Sameness: A Discussion of Politics of Recognition and Politics of Difference

The concept of politics of equal recognition actually entails two different strains to render practices of deliberate recognition, both connected to the historical developments I have touched upon in the previous section. As we will see, both approaches are based on the idea of equal recognition, entailing various common features and intersections. However, they can be differentiated from one another in accordance with the definition of equal status.

The first one, already familiar to us as perhaps the leading moral ideal of the liberal tradition, is the *politics of universalism* which has been the direct result of the historical transformation from an honor-based traditional society to a dignity-based modern society. Universalism underlines the equal dignity of each individual and the content of its politics focuses upon the equalization of rights to all citizens (Taylor, 1994: 38).

The second approach represents *politics of difference*, which developed out of the historical shift in the understanding of identity and authenticity. The idea of equal recognition is approached from another point of view here. While politics of equal dignity aims an identical set of rights and entitlements, politics of difference seeks to recognize something which is the unique identity of a particular group of people (ibid: 39). It highlights originality and authenticity, something which distinguishes a particular group from another. The idea is that what is wrong with politics of equal dignity is that it fails to appreciate and support distinctiveness. Precisely this denial, it is argued, has consciously or unconsciously established a mode of constant assimilation to a dominant or majority identity – a clear affront against the principle of authenticity (ibid: 38).

As a matter of fact politics of difference is not necessarily hostile to the principle of universalism and even carries a seed of universalism within itself. For it is also opposed to the stratification of society in terms of first- and second-class citizens. However, its demands turn out to be hardly reconcilable with politics of universalism: In the end it is demanding recognition for particular identities not for some universal rights. While the focus of politics of universal dignity fell for upon politics which were non-discriminative in scope and blind against differences

between citizens, politics of difference reformulates the meaning of discrimination and demands “that we make these distinctions the basis of differential treatment” (Taylor, 1994: 39). Some of the measures deployed in the name of politics of difference install a reverse discrimination, which is supposed to make up for damage that disadvantaged groups in society had to suffer from in the past. Its advocates defend it as a temporary measure that will eventually be replaced by difference-blind practices, as soon as this group of persons become actually equalized.

Nevertheless, this argument cannot justify some other measures being demanded in respect of difference, aiming to sustain and esteem distinctiveness, not just for a certain period of time in order to reestablish a leveled playing field, but forever. Taylor argues here that after all “if we’re concerned with identity, then what is more legitimate than one’s aspiration that it never be lost” (ibid: 40).

It might appear that politics of difference actually springs from politics of universal dignity. Its new definition of equality makes politics of difference a logical advancement of politics of universalism. Still, they differ from each other significantly. For the politics of universalism views human worth as a universal human potential, which is shared by human beings equally. It is this potential itself rather than what a person made out of this capacity that needs to be respected. The politics of difference recognizes a universal potential as well, but it is containing another version, which needs to be respected equally in every human being: the potential to form and define one’s personal identity, “as an individual, and also as a culture” (ibid: 42). Defenders of politics of universal dignity accuse advocates of politics of difference of violating the principle of non-discrimination. But at the same time universalists are accused of negating individual identities by pressing people into one homogenized form of being.

The controversy between these two liberal approaches is deeply felt in many societies today. Societies are becoming more and more multicultural. The challenge arises when significant numbers of citizens or residents from different cultures question our philosophical boundaries. We have to begin to deal with people’s sense of marginalization without compromising our fundamental political principles (Taylor, 1994: 63). In fact, we encounter here two different forms of liberalism, the first emphasizing universalism and the second one difference, and both reflect the

historical transformation that has occurred over the last two centuries in political theory and practice. But in what ways can they help us answer the questions I posed at the beginning of this chapter: How can we harmonize commonality and difference in order to hold political communities together? Apart from equipping all citizens with the same set of equal rights and duties, what does respecting people as equals entail (Gutmann, 1994: 4)?

The first one, based on the principle of non-discrimination and difference-blindness, can be understood as *procedural* liberalism. It maintains that a society can only claim to be liberal by adopting absolutely no particular substantive perception about the ends of life (Rawls, 1993). “The society is, rather, united around a strong procedural commitment to treat people with equal respect” (Taylor: 1994: 56). Neutrality is here not only a guideline for the equal treatment of citizens, but also a central feature of liberal institutions. A procedural republic stays neutral on the conception of the good life and dedicates itself to the task of dealing with everybody equally. At the same time it ensures that no matter which worldview citizens endorse, they remain committed to the principle of treating each other fairly. But how neutral can procedural liberalism in fact claim to be? It is suggested that this form of liberalism creates a neutral legal and political realm for people of all kinds of cultural backgrounds to encounter one another as equally respected citizens. To establish such a space of neutrality western liberal democracies have drawn a line between the private and the public, politics and religion. The harshest criticism is that their neutral set of difference-blind principles are nothing but a reflection of a hegemonic culture, oppressing weaker cultures and damaging their authentic existence. In fact the very idea of liberalism as such appears against this background like a particularism hidden behind the mask of the universal. (ibid: 44).

“Liberalism is not a possible meeting ground for all cultures, but is the political expression of one range of cultures, and quite incompatible with other ranges (Taylor, 1994: 62). Truly, liberal democracy encompasses within it a substantive idea of the good life. As Deweyan and Rockefeller pointed out we are dealing here not only with a political mechanism, but also an individual life-style. “Liberal democracy is a social strategy for enabling individuals to live the good life” (Rockefeller, 1994: 91). There is no way to get around the fact that no idea of the good life can claim neutrality. But does this necessarily lead to “directionless relativism” (ibid: 92)? So

far liberal democracy has represented also “a universal human aspiration for individual freedom and self-expression as no other culture does” (ibid: 90). This aspiration is an ideal we must constantly pursue through experience and experimental aid to make as objective value judgements as possible (ibid: 92).

However, advocates of politics of difference follow another path though and therefore opt for another model of liberalism, one we will describe as substantive liberalism. On this view a society can be organized in terms of a specific conception of the good life, without discriminating or endangering those who do not like to share this particular form of life or public definition of the good. “Where the nature of the good requires that it be sought in common, this is the reason for its being a matter of public policy” (Taylor, 1994: 59). Besides guaranteeing everybody basic rights regardless of their conception of the good life, substantive liberalism awards privileges on behalf of cultural self-perpetuation. They are ready to weigh up between the value of equal treatment and the importance of a culture’s survival. But besides the demand to let cultures defend themselves within “reasonable boundaries”, politics of difference insists on distributing recognition in particular to those that have been actively or passively marginalized so far. Multicultural curricula in schools or universities for instance are here deployed not so much in order to teach different cultural perspectives to everyone but for the sake recognizing the identities of those groups that have been historically and culturally excluded from mainstream society. And this is normatively justified with the assumption that recognition is vital for human/cultural identity (ibid: 66).

According to these considerations and claims for recognition and equality, Taylor argues, that it makes sense to demand as a matter of right that we begin the study of any particular culture with the presumption that all cultures are of equal worth.

We may justify this presumption through the acknowledgment that in the end all cultures created traditions or values that will entail aspects we share or we respect. Taylor claims, that we actually owe all cultures a presumption of this kind, because “withholding the presumption might be seen as the fruit merely of prejudice and ill-will. It might even be the tantamount to a denial of equal status” (Taylor, 1994: 67). In order to furthermore reach real judgements of worth it is then necessary to conduct a “fusion of horizons”, where we partly transform our own measures. “We learn to

move in a broader horizon, within what we have formerly taken for granted as the background of valuation can be situated as one possibility alongside the different background of the formerly unfamiliar culture” (ibid: 67). Yet Taylor rejects peremptory demands for favorable judgements of worth. Such demands deny that our measurements are a reflection of our particular civilization, so that measuring all cultures according to our subjective criteria may in the end paradoxically lead to what politics of difference actually sought to prevent: homogenization. Hence “the presumption of equal worth in every culture does not require of us to make peremptory or inauthentic judgements of equal value, [...] we ourselves are far away from the ultimate horizon from which the relative worth of different cultures might be evident” (ibid: 73).

3.2.1. Law, Politics and the Conception of the Good

Taylor’s presentation draws our attention to new creative processes within liberal democracies, enriching our understanding of freedom, equality and fulfillment. His outstanding analysis shows us to which extent politics of recognition has already influenced liberal democratic policies and opens up new perspectives on the treatment of multicultural societies. As much as I support his claim to deepen ethics and politics of equal dignity, so that “respect for the individual is understood to involve not only respect for the universal human potential but also respect for the intrinsic value of different cultural forms through which individuals actualize their humanity”, I will continue with some serious criticisms of his politics of difference by drawing on Habermas’ perspective on the same topic (Rockefeller, 1994: 107). Nevertheless, in this chapter I seek to explain why Taylor’s careful and nuanced approach in the end is not the best way to deal with the challenges multicultural societies pose today.

Taylor suggests that our idea of procedural liberalism is not enough to cope with the recognition of cultural forms of life and mores that suffered from marginalization so far. He states that they require special collective rights such as guarantees of status and survival. His suggested second form of liberalism is being presented here as a correction of the “inappropriate” understanding of liberal principles (Habermas, 1994: 109).

Taylor's point of departure is that the protection of collective identities may conflict with the right to equal subjective liberties. Since the claim for the protection of the integrity of cultural traditions requires the consideration of their particularities, which procedural liberalism deliberately ignores, equal rights have to be implemented through "a politics of consideration of cultural differences on the one hand and a politics of universalization of individual rights on the other" (ibid: 111). Politics of difference is hence supposed to make up for the insufficiencies and injustices of the homogenizing practices within the universalist tradition. The actual problem begins though as I will point out in the following paragraph with his justificatory premise of the suggested second form of liberalism, which is based upon the conception of the good and the right, drawn from moral theory (ibid: 111). In contrast to the liberal tradition Taylor, as a communitarian thinker, calls into question an ethically neutral legal order, and further pushes the constitutional state if necessary, to actively promote conceptions of the good life, in order to acknowledge and respect differences (ibid: 111).

Is it necessary or reasonable to support a collectively pursued conception of the good in order to live up to the principle of equal dignity? In the following paragraphs I will show that such an approach, may despite its good intentions, eventually lead us down the wrong path, a path which further blurs the boundaries between normatively legitimate and illegitimate worldviews. Is a theory of rights, presented by Taylor as the difference-blind liberalism, indeed incompatible with the recognition of cultural forms of life and traditions? Is it necessary to create this substantive form of liberalism to make up for its supposed blindness?

Taylor ignores the fact that the consideration of collective interests is already built into the legal universalism of the modern constitutional state (ibid: 112-113).

He conceptualizes procedural liberalism merely as a theory which endows all legal subjects of the state with equally guaranteed individual freedoms of choice and action embodied through basic rights. In case of discord or conflict courts will have to decide about rights and duties; "thus the principle of equal respect for each person holds only in the form of a legally protected autonomy that every person can use to realize his or her personal life project" (Habermas, 1994: 112).

Habermas, as I pointed out earlier, insists that such a reductive conception of a theory of rights fails to acknowledge the internal connection between democracy and constitutional state. As Habermas argues in his discourse-theoretical approach, public and private autonomy always mutually presuppose each other. This mutual presupposition expresses the fact that on the one hand only independent people with equally protected private autonomy can make use of their public autonomy, and on the other hand, people arrive at a consensual social regulation of their private autonomy only if they are actively involved in the exercise of their political autonomy as members of a political community (Habermas, 1999: 301). Private legal persons may enjoy equal individual liberties only, if they themselves exercise their public autonomy properly by articulating and agreeing on certain common interests.

However, it is necessary, as Habermas argues, to ascribe each bearer of individual rights an identity which is understood as what it is: intersubjective. Habermas clearly follows Taylor's non-atomistic conception of human existence: "Persons, and legal persons as well, become individualized only through a process of socialization" (Habermas, 1994: 113). But from a liberal point of view cultural support is being justified not by the assumption that all cultures are in and of themselves valuable, but due to their function to support "individual self-respect and autonomy" (Spinner-Halev, 2006: 547). In order to establish a politics of recognition that respects and protects the integrity of each person within his or her cultural context, it is not necessary to deploy substantive liberalism to make up for inadequate equalization, but to foster a rightly understood theory of rights, a proceduralist conception of rights, which incorporates private and public autonomy and in the end protects the integrity of each individual in the life context in which his or her identity is defined (Habermas, 1992: 113). Thus a system of rights, properly understood, appears to turn a blind eye neither to unequal social conditions nor to cultural differences.

Habermas maintains that hence we shall seek to correct the selective reading of the theory of rights to foster a democratic understanding of the actualization of basic rights, instead of trying to complement supposed insufficiencies of procedural liberalism with "a notion of collective rights, that is alien to the system" (Habermas, 1994, 116).

Is it even possible to decide on which cultural groups shall enjoy state support? Do all cultural groups equally deserve support, or do some more than others do? There are many different groups, and even more ways to support them. It is hardly realizable to support all cultural groups or to support all the ones who deserve it the exact same way (Spinner-Halev, 2006: 556). Also it must be acknowledged that people are often members of different groups at once. Today we encounter a melting pot of cultures, rather than cultures with clear boundaries. We may even view them as “internally riven and contested” (Benhabib, 2002: 16). As Jeremy Waldron argued, just because people need cultural meanings, they are not necessarily attached to one cultural framework only. Especially in a globalized world, “cultures live and grow, change and sometimes wither away; they amalgamate with other cultures... To preserve a culture is often to take a ‘favored’ snapshot version of it and insist that this version must persist at all costs” (Waldron, 1992: 109-110). More importantly, it is hardly justifiable why one group shall be given preference over another. Yet, “a political community that aims to give support to every group that contributes to people’s self-respect will be supporting an impossible array of groups” (Spinner-Halev, 2006: 551).

Another significant point made from a feminist perspective draws our attention to the controversial case of providing cultural minorities who clearly treat women as subordinate members, with supportive “group rights”. “Shouldn’t we condemn group rights *whenever* a culture is unduly constraining of its members” (Okin, 1999: 5)?

Shall group rights or protections by the state also be accorded to groups which are illiberal or sexist? Despite all the evidence of discriminative cultural practices towards women, defenders of multicultural group rights barely broach the issue of the troubling tension between multiculturalism and feminism. In the case of strongly patriarchal organized cultures, establishing group rights are hardly in the interest of the women of those cultures, which allow practices as denuding veiling, polygamy or clitoridectomy.

Okin’s argumentation rightly points to the danger of losing the fragile achievements of feminist’s struggles which may be diluted in the end by intensified multicultural sensitivities (Honig, 1999: 35). The feminist perspective in fact reveals very clearly the weakness of Taylor’s politics of difference, which seems to turn a blind eye to

inequalities within cultural groups themselves. “Policies designed to respond to the needs and claims of cultural minority groups must take seriously the urgency of adequately representing less powerful members of such groups” (Okin, 1999: 23). Otherwise the label “culture” might be abused by some members of minority cultures to justify violations of human rights: “When men or states claim that “my culture made me do it”, they are claiming a kind of privacy or privilege that must surely be resisted for the sake of both human rights and “culture”” (Honig, 1999: 36).

Against the background of all these criticisms we may then ask ourselves how the relationship between law, politics and the conception of the good must properly look like. Habermas delivers here the right answer when he brilliantly argues that “to be sure, consideration of collective goals is not permitted to dissolve the structure of the law. It may not destroy the form of the law as such and thereby negate the difference between law and politics” (Habermas, 1994: 124). As a matter of fact it is the vanishing differentiation between law and politics that Habermas is concerned with here. He fears an ethical conflation of political discourse, where politics becomes assimilated to a hermeneutical procedure of self-explication of a collective cultural identity (Habermas, 1996: 24).

He admits that it is quite normal and acceptable that normative rules for modes of behavior are having an impact on a society’s political goals. As a result each legal system can be understood not simply as a reflection of universal basic rights but also as a mirror of a particular cultural context. Legislative decision-making processes are and have always been part of the actualization of the system of rights and a popular sovereign’s policies must be conceived as an elaboration of this system (Habermas, 1994: 124). The crucial point of Habermas’ argument lies in his expressed disapproval of the communitarian tendency to equate political opinion- and will formation with ethnic-political self-understanding. He corrects this misinterpretation by maintaining that processes of actualizing rights are only embedded, not consisting of discussions about a shared conception of the good (Habermas, 1994: 125).

From the discourse-theoretical point of view “democratic will-formation draws its legitimacy from “the communicative presuppositions that allow the better arguments to come into play in various forms of deliberation and from procedures that secure fair bargaining processes” (Habermas, 1996: 24). Consequently discourse theory

rejects the communitarian, ethical notion of civic autonomy, “where there is a necessary connection between the deliberative concept of democracy and the reference to a concrete substantively integrated ethical community” (ibid: 24). On this view, the system of rights is in harmony with universal moral principles which do not have to conflict with ethically influenced legal systems of particular legal communities, as long as the political legislature is closely tight to constitutional principles. “The ethical substance of a political integration that unites all citizens of the nation must remain “neutral” with respect to the differences among ethical-cultural communities within the nation [...]” (Habermas, 1994: 137).

3.2.2. Integration or Assimilation: The Habermasian Idea of “Unity in Political Culture and Diversity in Subcultures”

To turn back to my initial comment in the introduction of this chapter, a demos must generate a certain level of solidarity, a common political spirit in democratic procedures to conduct political public discourses effectively. A nation-state can only guarantee its stable legitimacy, if its members are bound through mutual duties by virtue of a common ethical-political self-understanding: How to reconcile cultural differences to endow a demos with a certain shape at all? What can be legitimate measures for a constitutional state to sustain the integrity of its people’s culture and politics?

Surely Taylor’s demand to extent questions of justice to conception of the good life finally leads to an understanding of law which conflicts with the imperative of moral neutrality. The treatment of the “other” shall not be accomplished through an ethical-cultural integration, but requires political regulations, which are motivationally and rationally rooted in the idea of constitutional patriotism properly understood. What does this mean exactly? In Habermas we encounter two levels of integration in order to reconcile differences among citizens, but only one, so the argument goes, can be judged as morally justifiable.

The first level entails the assent to the principles of the constitution. In this manner integration is applied only to the way “in which the autonomy of the citizens is institutionalized in the recipient society and the way public use of reason is practiced there” (Habermas, 1994: 138). The second level refers to the ethical-cultural integration of the other through the adoption of local way of life including practices,

customs and values. We are speaking here of adopting another particular cultural identity.

With regard to Taylor's powerful elaborations on the importance of a human being's authenticity and self-realization which means here to be true to my own originality and to realize a potentiality that is my own, we must negate the second form of integration, which is better be understood as a practice of assimilation. It is only the political socialization that can be demanded of immigrants. As a result immigrants are required only to demonstrate their willingness to accept the political cultural of their new home, but shall not be expected to give up on their particular cultural background. Obligatory assimilation for the sake of self-assertion of a predominant cultural way of life hence cannot count as a legitimate measurement for migration policies.

The political integration of immigrants enables the constitutional state to sustain the identity of its political community, which nobody is allowed to encroach upon, "since that identity is founded on the constitutional principles anchored in the political culture and not on the basic ethical orientations of the cultural form of life predominant in that country (ibid: 139).

I believe Taylor's major contribution to the debate on multiculturalism can be seen in his elaborations on the proper balance between the legal and the political. As much as I support Taylor's point of departure, the meaning and importance of human authenticity, I part ways here with his argumentation and follow the Habermasian approach, which insists that there is no need for another form of liberalism distinct from the procedural one, as long as we stick to the principles of deliberative democracy.

Surely, Taylor was right to acknowledge that behind conceptions of the good in fact exist minority groups marginalized by a societal majority, demanding to be recognized as equals. But as Galeotti truly pointed out, instead of being reduced to an issue of compatibility with practices of procedural liberalism, the struggle for acceptance of difference may also be better understood as a "contested attempt to reverse marginality and exclusion, to conquer fair access" (Galeotti, 2006: 572). The problem is that from the majoritarian point of view any perceived difference may it be ascriptive (such as race and ethnicity) or elective (such as culture and morality) is

actually construed as part of a fixed character of a particular group, being marked off from others (ibid: 573). Thus whether or not the individual has the option of rejecting these as ascriptive attributes, he or she is automatically being identified with them. “In this respect, incidentally, the reduction of social differences to differences in the conception of the good, that is, to an elective element, is deeply misleading” (ibid: 573).

However we encounter on both sides a similar arguments. When Habermas called for the moral duty to show empathy and to put ourselves into the position of the other, he is touching upon the same argumentative substance Taylor and Benhabib have highlighted. Each of the authors talks about rearranging our perspectives or values when getting in touch with others. It is precisely this path of evaluation and compromise, we actually need to make multicultural societies work: Through a “fusion of horizons” or “democratic iterations”, we learn to move within a broader horizon (Gadamer, 1975: 289-290). We can only reach conclusions by partly transforming our own measures. Nevertheless, it appears quite difficult to me that a fusion of horizons is more likely to happen in a society which clearly dedicates itself to the protection or promotion of a particular cultural form of life. As Rockefeller rightly argued, there is a clear tension between Taylor’s “defense of the political principle of cultural survival and his espousal of open-minded cross-cultural exchange” (Rockefeller, 1994: 93).

In this chapter, by drawing on Habermas’ critical perspective on multiculturalism, I have tried to show the limitations of Taylor’s otherwise illuminating conception of politics of recognition which may lead to the gradual erosion of one of the core principles of constitutional democracy – i.e., the principle of neutrality – in the name of protecting all cultures. Although the principle of equal value and its related idea of equal rights must be deepened and promoted in a way that incorporates the universal human potential in each individual as much as the intrinsic value of culture, it is clear that our universal identity as human beings simpliciter “is our primary identity and is more fundamentally than any other particular identity (ibid: 88).

As Rockefeller rightly argues, any attempt to posit somebody’s ethnic identity above an individual’s universal identity subverts the basic principles of liberalism and will further open the door to intolerance (Rockefeller, 1994: 88). It will also endanger

hard-won protection zones of neutrality such as public institutions as universities or governmental agencies.

In the age of globalization and increasingly pluralistic societies containing individuals with various worldviews and ways of life, it is of utmost importance to frame the burden of social integration through processes of political will-formation and public communication instead of building it upon an image of a supposedly homogenous people. Instead of holding on to an “imagined community” an artificial ideal of deep and horizontal comradeship, a nation-state should rather focus on forming a space where citizens can practice and affirm their private as well as political autonomy (Anderson, 2006: 7). It is as Habermas said: “the assimilation of political discourses to the clarification of a collective ethical self-understanding does not sit well with the function of the legislative processes they issue in” (Habermas, 1996: 24).

A common political culture must be delinked from pre-political identities to finally guarantee unity in political culture and diversity in subcultures (Habermas, 1999: 142). Surely constitutional patriotism plays a major role in such multicultural societies, but in the end it is a threefold set of rights that needs to be actively exercised in order to sustain healthy democratic processes within liberal democracy: liberal rights of freedom, political rights of participation and social/cultural rights of participation (ibid: 143).

4. CONCLUSION

Albeit we overuse terms such as “globalization” and “interdependence”, we appear to have never fully understood their total impact. For people from first-world countries they carry foremost positive connotations such as: free trade, porous borders, free travelling and so on. The refugee crisis today shows us the other side of the coin. Interdependence is not only about gain and profit any longer, but a problem to solve, a difficult task with an open end.

In the frame of this piece of work I intended to formulate three important questions following the logic of the new challenges migration poses to us. In the first place I asked if we shall open our borders. What do we owe to these people seeking entry into our country? Since we will be confronted with new fellow residents and citizens in future on a large scale, shall we agree on new principles of political membership and belonging to do justice to contemporary international developments? And what is going to be the right approach to ultimately deal with the challenge of multicultural societies?

By discussing these question in the frame of cosmopolitan and communitarian approaches, I aimed to give insights from diverging perspectives on this topic to further conclude then with informative answers and suggestions in order to identify correct priorities in fundamental questions of values, rights and duties. Evidently, the dimension of the refugee crisis has caught the European Union completely off-guard. European policy makers’ performances indicate little to no internal cohesion. Although it is clear that the refugee question is a problem of global nature, again the national priorities win the daily political battles. The self-centered national explanations have made us painfully aware of the fact that the European Union is not an independent political body yet (Schmid, 2015: 59). The gradual process of transferring essential fields of competences from the sovereign nation-states to the

European level remained widely postponed and unspecified. The nation-states have turned out to be stronger than expected and the peoples of Europe appear to be less European than we actually dared to hope. While Greece, Italy and other Eastern European countries were completely overwhelmed, Central European countries such as Germany remained silent for quite a long time, adhering to Dublin III regulations instead of sharing responsibilities in a solidary manner. When the German chancellor Angela Merkel opened the borders and the so called German *Willkommenskultur* towards the refugees, it was obviously rather the necessary prevention of a humanitarian disaster right in front of German borders than friendly German refugee policy generally speaking. Nevertheless she set an example of strong signal effect in the very beginning which ultimately led to a level of utmost political polarization in the aftermath.

Left wing parties such as “The Left” or the “The Greens” underlined that Europe’s and Germany’s history has always been shaped through immigration and shall be so in future even stronger. They demanded the immediate legalization of refugees that had already reached German territory and dismissed the idea of repatriation to be an utter illusion. Instead of focusing on isolating the European Union, they engaged in self-reflexive debates to come to terms with the challenge of deeper Europeanization and social integration. In an unexpected manner Angela Merkel, as the chairwoman of the center-right party “Christian Democratic Union” took a very liberal position as well and became famous for her generous refugee policy which found also support by the Social Democratic Party. However, it was precisely this leftist concentration on open border politics and post-national constellations that has failed to recognize the meaning of national sentiments and the voices of the unprivileged claiming to be left out by society. Threatened by the complexity and diversity of modern social order, the lower middle class seems to remain fearful and even nostalgic for a primitive community in which membership is easier to claim. German political parties became aware of the fact that the actual key problem regarding the approval of refugees on a large scale was not about costs or logistical issues such as accommodation, but rather the social-cultural acceptance capacity of German society. As a result, we encounter a radical political turn of CDU’ and SPD’s refugee policy, away from open borders and welcoming words towards discussions of ceilings, repatriation and the announcement of so-called safe third-countries such as

currently debated, Afghanistan. Ten thousands of Afghan refugees will be deported back to their home country, where, so the argument of the federal government and the minister of interior goes, still exist some supposedly “safe” regions to possibly flee to – a clear distortion of facts. We encounter here not simply a heavy breach of international law but also a kind of sheer cynicism. Instead of taking responsibility for the situation in a country where Germany waged a war that made local conditions even worse, large amounts of money will be transferred as a form of compensation. Surely, these measurements to stop the flow of refugees on a large scale have been obviously taken in order to harmonize inner political polarizations and to satisfy internal conservative voices. Finally, it appears that the idea of boundaries around communities as historically contingent, morally neutral facts that are pre-conditions for moral and political discourses [...]” (Rehaag, 2006: 396) was given preference over European liberal ideals of integrability and human rights. All these developments show that as long as the sovereignty of nation-states remains largely unchecked and competences of supranational institutions restricted, Kant’s cosmopolitan legacy culminating in his right to hospitality will remain what it was from the very beginning on: an *imperfect* moral obligation (Benhabib, 2007: 36). In a world of global economic/ technological interdependencies, where “the peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere”, we need to finally reconcile universal principles of cosmopolitanism with republican claims of self-determination properly (Kant, 2007 [1795]: 107-108).

We need to distance ourselves from the claim for radical open borders as much as from the idea of complete closure as well as from a world with no borders. In order to finally transform the European Union from an association of independent nations to a powerful supranational institution of a European people engaged in the same enterprise and bound through mutual feelings of solidarity, it is necessary to approach the question that already Kant failed to solve two hundred years ago: “How to create quasi-legally binding obligation through voluntary commitments and in the absence of an overwhelming sovereign power with the ultimate right of enforcement” (Benhabib, 2006: 23)? As Bohman remarks, people have entered “a kind of nonvoluntary inclusion in indefinite cooperative schemes, which is a form of domination” (Bohman, 2004: 340). To overcome modern domination and the

contemporary challenge of migration the international community needs to build and sustain democratic and institutionalized accountability which has to be appropriated to a cosmopolitan civil society. Hence our political answer to worldwide interconnectedness and interdependence must be the foundation of additional “deterritorialized” and “denationalized” forms of authority, a strengthening of European responsibilities and competences to establish a common, solidary European refugee policy and distribution keys (ibid: 346).

The refugee crisis is just the beginning of a new global challenge of just distribution to which we cannot turn a blind eye. The current legal characterization of the refugee status as a politically persecuted person anchored in the Geneva Convention (1951) is an achievement of utmost importance we need to uphold, because it recognizes the right of every person to exercise his or her individual external freedom and prevents people from the infinite and special danger of statelessness. As Arendt rightly points out, it is the loss of the right to have citizen’s right and hence the right to communicate, participate and create rights that makes refugees different from other people in need. Due to violent repression of their private or public autonomy they have no choice left to change their situation on their own accord. Besides the justificatory premise of exercising external freedom I identified two significant other reasons for the right to hospitality. It is necessary to compensate for harm which European countries politically or economically caused in the past or still cause in the present. We must acknowledge that “global interdependence refers to the unprecedented extent, intensity and speed of social interactions across borders, encompassing diverse dimensions from trade to cultural exchange to migration” and that “the outcome of such actions of international cooperation that control and regulate financial markets “influence the life possibilities of [...] others” (Bohman, 2004: 339). Economic exploitation, proxy wars, the western war industry and climate change mostly caused by the western world have contributed or are themselves the reason for the precarious situation in developing countries and the outbreak of large migration movements. I therefore deeply condemn the current European refugee policy, which is mainly focused on denial or upon finding so-called “safe” third countries in order to circumvent the duty to at least grant refugees a fair asylum application procedure. We recognize here Michael Walzer’s position who argued in favor of “legitimate” measurements such as financial aid to circumvent

responsibilities towards the other being existentially endangered on behalf of popular self-determination. Instead of taking this current political challenge as a trigger for broader supra-nationalization or equally distributing refugees within the Union itself with all its capacities, national catch all parties such as CDU and SPD today agree step by step to new so called “safe” third countries, measurements as subsidiary protection, deportation agreements and the building of reception camps in already overburdened countries such as Greece and Turkey. The idea of the European Union shall not be ending up to be a bloated nation-state. Left with Kant’s ambivalent legacy cosmopolitans are therefore right, as I argued, to attempt to add more conditions to the phrase “the destruction of the other”. Surely control must be exercised but much more important remains that Europe sticks to its core principles of integrability and inclusion, instead of turning into this occidental European island, closing off itself from the rest of the world. Not each nation-state, but the EU itself ought to be a space with porous borders, because in the end “a world without borders is a desert; a world with closed borders is a jailhouse; freedom can only prosper in a world with open borders” (Schmid, 2015: 64).

The second question I posed touched upon Kant’s suggested unbridgeable gap between the right of temporary sojourn and that of permanent residency and its contemporary relevance in the context of large migration movements around the world. I argued in favor of cosmopolitan thinkers who, left with Kant’s conflicting legacy, seek to broaden conditions of membership and belonging on behalf of *the other* in order to soften practices of exclusion within liberal nationhood. They acknowledge the increasing porosity of borders and the emergence of new forms of membership which necessarily call for a reconsideration of the state’s prerogative over the distribution of political membership, such as the resituating of citizenship (Benhabib, 2005: 674). Obviously boundaries between citizens, residents, nationals and foreigners have turned blurry and dynamic. In order to optimize conditions of just liberal democracy the gap between popular and territorial sovereignty needs to be constantly reconciled and challenged. While communitarians insist that “admission policies [must] root in a particular community’s understanding of itself” (Walzer, 1992: 75-76), I support the idea that it is rather necessary to establish mechanisms in order to destabilize practices of exclusion. I followed the discourse-theoretical approach that, so Habermas suggests, represents the proper answer to

liberal democracy's paradoxical political body. Evidently principles of discourse theory cannot be applied to the domain of political membership without taking other normative considerations into account. In this context Seyla Benhabib's concept of democratic iterations shows the proper way. Surely, as Benhabib argues "there are certain practices of democratic closure which are more justifiable than others, but potentially all practices of democratic closure [must remain] open to challenge, resignification, and deinstitutionalization" (Benhabib, 2007: 17). We shall further aim to formulate regulations in tune with human rights and democratic ideals (Benhabib, 2009: 2).

While political parties in Germany today talk about integration and language courses there are still hundreds of thousands of Turks, born and raised in Germany, who are not able to actively participate in elections, because they simply still have a Turkish passport. It will become much more urgent in the following decades to close this rising gap between territorial and popular sovereignty by sufficiently naturalizing immigrants. Instead of setting naturalization obstacles such as German language tests, which could hardly be solved even by native speakers, the Federal Republic of Germany needs to finally transform itself from an immigrant society to a pluralist democracy (Benhabib, 2009: 2). Germany as an immigration country has to engage in fundamental iterative processes to reach new conclusions in questions of political membership and belonging.

How shall the concept of a multicultural society then be deployed/lived? Against the background of increasingly multicultural societies and demands of recognition, integration appears to be the most difficult task of contemporary modern societies. In this respect today German politicians have agreed across party lines to promote integration as actively as possible, reaching from obligatory language courses to introductions to liberal democratic values, anchored in the German constitution. It is not expected that guests, new residents or citizens assimilate into a German way of life in a cultural sense, but into German political culture. However German politics, at the right as well as left side, have still, as I pointed out, have not accomplished the step from an immigrant society to a pluralist democracy, where people actively practice their private as well as public autonomy. This way, integration can never be fully achieved and the Habermasian ideal of unity in political culture and diversity in sub-cultures remains utopian. It seems to me that public recognition of foreign

cultures as a part of Germany is yet very little developed in German civil society. Instead of turning down cosmopolitan claims and a multicultural approach of society, German politics and German civil society must turn to a more authentically mode of being within the reality of a divided society which means to acknowledge the actual problem of the conflictual turning gap between the rich and the poor, instead of replacing it by discussion about “others” or larger xenophobic debates.

Despite my support for Taylor’s claim to deepen ethics and politics of equal dignity, I insisted that Taylor’s approach of politics of difference, where the state actively promotes a particular conception of the good life, in the end is not the best way to deal with the challenges multicultural societies pose today. Against the background of all nuanced criticisms I touched upon, I foster the Habermasian way of discourse theory which rejects the communitarian, ethical notion of civic autonomy, “where there is a necessary connection between the deliberative concept of democracy and the reference to a concrete substantively integrated ethical community” (Habermas, 1996: 24). Identity and culture are not of timeless substance, they develop and change within historical situations. As long as we treat each other with mutual respect and dignity I hope that one day discrimination will fall apart and different cultures can grow together in a fusion of horizons.

BIBLIOGRAPHY

Books

Anderson, Benedict. 2006. *Imagined Communities*. New York: Verso.

Arendt, Hannah. 1962. *The Origins of Totalitarianism*. Cleveland and New York: Meridian Books. World Publishing Company.

Arendt, Hannah. 1968. *What is Freedom? In Between Past and Future: Eight Exercises in Political Thought*. New York: Penguin.

Benhabib, Seyla. (ed.) 2002. *The Claims of Culture: Equality and Difference in the Global Era*. Princeton: Princeton University Press.

Benhabib, Seyla. 2006. *Another Cosmopolitanism*. Oxford: Oxford University Press.

Benhabib, Seyla. 2007. *The Rights of Others. Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.

Fanon, Frantz. 2004. *The Wretched of the Earth*. New York: Grove Press.

Fraser, Nancy and Honneth, Axel. 2003. *Redistribution or Recognition? A Political-Philosophical Exchange*. London. New York: Verso.

Gadamer, Hans Georg. 1975. *Wahrheit und Methode*. Tübingen: Mohr.

Habermas, Jürgen. 1999. *Die Einbeziehung des Anderen*. Frankfurt am Main: Suhrkamp Verlag.

Habermas, Jürgen. 2008. *Ach Europa! Kleine Politische Schriften XI*. Frankfurt am Main: Suhrkamp Verlag.

Ignatieff, Michael. 2001. *Human Rights as Politics and Idolatry*. Princeton, NJ: Princeton University Press.

Kant, Immanuel .1993. [1785]. *Grounding for the Metaphysics of Morals*. Translated by Ellington, James W. (3rd ed.). Indianapolis/Cambridge: Hackett.

Rawls, John. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.

Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.

Sartre, Jean-Paul. 1976. *Anti-Semite and Jew*. New York: Schocken Books.

Schmitt, Carl .1991. *Glossarium 1947-1951*. Eberhard Freiherr von Medem, ed. Berlin: Duncker & Humblot Verlag.

Taylor, Charles. 1985. *Philosophy and the Human Sciences. Philosophical Papers*. Cambridge: Cambridge University Press.

Walzer, Michael. 2006. *Spheres of Justice. A Defense of Pluralism and Equality*. New York: Basic Books.

Book Sections

Beck, Ulrich. 2010. The Cosmopolitan Manifesto, in Brown, Garret Wallace and Held, David, ed., *The Cosmopolitan Reader*. Cambridge: Polity Press.

Bohman, James. 1997. The Public Sphere of the World Citizen, in Bohman, James and Matthias, Lutz-Bachmann, ed., *Perpetual Peace. Essays on Kant's Cosmopolitan Ideal*. Cambridge: The MIT Press.

Bohman, James and Lutz-Bachmann, Matthias. 1997. Introduction, in Bohman, James and Lutz-Bachmann, Matthias, ed., *Perpetual Peace. Essays on Kant's Cosmopolitan Ideal*. Cambridge: the MIT Press.

Brown, Garret Wallace and Held, David. 2010. Editor's Introduction, in Brown, Garret Wallace and Held, David, ed., *The Cosmopolitan Reader*. Cambridge: Polity Press.

Brown, Garret Wallace. 2010. Kant's Cosmopolitanism, in Brown, Garret Wallace and Held, David, ed., *The Cosmopolitan Reader*. Cambridge: Polity Press.

Galeotti, Anna Elisabetta. 2006. Identity, Difference, Toleration, in Dryzek, John S. and Honig, Bonnie, eds. *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press.

Gutmann, Amy. 1994. Introduction, in Gutmann, Amy, ed., *Multiculturalism. Examining the Politics of Recognition*. New Jersey: Princeton University Press.

Habermas, Jürgen. 1994. Struggles for Recognition in the Democratic Constitutional State, in Gutmann, Amy, ed., *Multiculturalism. Examining the Politics of Recognition*. New Jersey: Princeton University Press.

Habermas, Jürgen. 1996. Three Normative Models of Democracy, in Benhabib, Seyla, ed., *Democracy and Difference*. Princeton: Princeton University Press.

Honig, Bonnie. 1999. “My Culture Made Me Do It”, in Cohen, Joshua and Matthew, Howard, eds., *Is Multiculturalism Bad for Women?* Princeton: Princeton University Press.

Kant, Immanuel. 2007. [1795]. Perpetual Peace. A Philosophical Sketch, in H. S. Reiss, ed., *Kant. Political Writings*. Cambridge: Cambridge University Press.

Kersting, Wolfgang. 1998. Probleme der politischen Philosophie der internationalen Beziehungen. Die Beiträge im Kontext, in Chwaszcza, Christine and Kersting, Wolfgang: *Politische Philosophie der internationalen Beziehungen*. Frankfurt am Main: Suhrkamp Verlag.

Kymlicka, Will. 2006. Liberal Nationalism and Cosmopolitan Justice, in Benhabib, Seyla. *Another Cosmopolitanism*. Oxford: Oxford University Press.

Moller Okin, Susan. 1999. Is Multiculturalism Bad for Women? Cohen, Joshua and Matthew, Howard, eds., *Is Multiculturalism Bad for Women?* Princeton: Princeton University Press.

Rockefeller, Steven C. 1994. Comment, in Gutmann, Amy. ed., *Multiculturalism. Examining the Politics of Recognition*. New Jersey: Princeton University Press.

Spinner-Halev, Jeff. 2006. Multiculturalism and Its Critics, in Dryzek, John S. and Honig, Bonnie, eds., *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press.

Taylor, Charles. 1992. Atomism, in Avineria, Shlomo and de-Shalit, Avner, ed., *Communitarianism and Individualism*. Oxford Reading in Politics and Government. Oxford: Oxford University Press.

Taylor, Charles. 1994. The Politics of Recognition, in Gutmann, Amy, ed., *Multiculturalism. Examining the Politics of Recognition*. New Jersey: Princeton University Press.

Waldron, Jeremy. 1992. Minority cultures and the cosmopolitan alternative, in Kymlicka, Will, ed., *The Rights of Minority Cultures*. Oxford: Oxford University Press.

Walzer, Michael. 1992. Membership, in Avineria, Shlomo and de-Shalit, Avner, ed., *Communitarianism and Individualism*. Oxford Reading in Politics and Government. Oxford: Oxford University Press.

Articles

Benhabib, Seyla. 2005. *Borders, Boundaries and Citizenship*. Political Science and Politics, Vol. 38. No. 4: 673-677.

Bohman, James. 2004. *Republican Cosmopolitanism*. The Journal of Political Philosophy, Vol. 12. No 3: 336–352.

Chrysochoou, Xenia. 2000. *Multicultural Societies. Making Sense of New Environments and Identities*. Journal of Community & Applied Social Psychology, Vol. 10: 343–354.

Förster, Jürgen. 2009. *Das Recht auf Rechte und das Engagement für eine gemeinsame Welt. Hannah Arendts Reflexion über Menschenrechte*. Zeitschrift für politisches Denken, Vol. 5. No. 1: 1-11.

Ingram, D. James. 2008. *What is a “Right to Have Rights”? Three Images of the Politics of Human Rights*. American Political Science Review, Vol. 102. No. 4: 401-416.

Kleingeld, Pauline. 2003. *Kant’s Cosmopolitan Patriotism*. Kant Studien, Vol. 94: 299-316.

Rehaag, Sean. 2006. *Book Review. The Rights of Others Aliens, Residents and Citizens, by Seyla Benhabib*. Osgoode Hall Law Journal. Vol. 44. No. 2: 395-402.

Schmid, Thomas. 2015. *Offenheit statt Abschließung*. Ein Plädoyer für Europas großen Anspruch. Blätter für deutsche und internationale Politik. Vol. 12: 59-68.

Sheikhzageda, Amir. 2012. *Was bedeutet eigentlich Multikulturalismus?* Newsletter Lehrstuhl Soziologie, Sozialpolitik und Sozialarbeit, Universität Freiburg. Vol. 11: 35-42.

Zakaria, Fareed. 1997. *The Rise of Illiberal Democracy*. Foreign Affairs; Vol. 76. No. 6: 22-43.

Internet

Die Bundesregierung. 2015. *Sommerpressekonferenz von Bundeskanzlerin Merkel*, 31. August 2015, Available from <<https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html>> [20.11.2016]

United Nations High Commissioner for Refugees. Reports 2015. *Global Trends: Forced Displacement in 2014*. Available from <<http://www.unhcr.org/556725e69.pdf>>. [15.11.2016].

Utlu, Deniz. 2009. *Interview with Seyla Benhabib. The Guest is Always a Fellow Citizen*. Available from <<https://en.qantara.de/content/interview-with-seyla-benhabib-the-guest-is-always-a-fellow-citizen>> [01.10.2016].