

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
FACULTY OF HUMANITIES
DEPARTMENT OF PHILOSOPHY

HABERMAS AND THE COSMOPOLITAN CONDITION

BY
AMSALU TEBEJE

June 2011

Addis Ababa

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**A THESIS SUBMITTED TO THE DEPARTMENT OF PHILOSOPHY, SCHOOL OF
GRADUATE STUDIES, ADDIS ABABA UNIVERSITY, IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE DEGREE OF MASTERS OF ARTS IN PHILOSOPHY**

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June, 2011

Acknowledgements

I would first of all like to extend my deepest gratitude to my teacher and advisor Mr. Daniel Smith for his invaluable scholarly comments, suggestions and questions throughout the course of the study. I should admit that Mr. Smith's critical and open mindedness gives a student the freedom to question and explore philosophical problems from different perspectives. This research will not be as it is now without his willingness and cooperation to make discussions, provide materials and to tirelessly read and comment on each and every part of the study.

My special thanks go to staff of philosophy department and my classmates in my graduate study. Especially, I would like to thank Dr. Bekelle Gutema for providing materials and clearing my confusions with regard to Kant's' scientific Racism and his cosmopolitan project. I also thank Mr. Shikur Seid for his willingness to provide materials and make discussions on human rights and related issues. I also thank my classmates especially Fasil Merawi and Biniam Mekonnen for the debate and discussions we made in regards to modernity and other philosophical problems which contribute to the richness of the study.

I owe debt to my family, friends and other people for their generous support, insights and assistance throughout the study. I appreciate Addis Ababa University for granting financial support for the study. Last but not least I thank Genet for her patience and persistence from typing to editing the study.

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Abbreviations of Major texts of Jurgen Habermas

- TCA 1 *Theory of communicative action vol.1, tr. Thomas McCarthy (Boston: Beacon press, 1987)*
- TCA2 *Theory of communicative action vol.2, tr. T. McCarthy(Boston: Beacon press, 1987)*
- PDM *the philosophical discourses of modernity, tr. Frederic Lawrence (Cambridge: MIT press, 1987)*
- PMT *Postmetaphysical thinking, tr.W.M.Hohnegarten (Cambridge: Polity press, 1992)*
- BFN *Between facts and Norms, tr. William Rehg (Cambridge: MIT press, 1996)*
- PNC *the post national constellation, tr.Max Pensky(Cambridge: polity press,2001)*
- TRS *toward a Rational Society, tr.J.J.Sapiro (London: Heinmann, 1971)*
- STPS *The structural transformation of the public sphere, tr. Thomas Burger and F. Lawrence (Cambridge: MIT press, 1989)*
- DW *The divided west, tr. Ciaran Cronin (Cambridge: polity press, 2006)*
- IO *The inclusion of the other: Studies in Political Theory, Cambridge: MIT Press. (1998).*

Abstract

The multi-faceted processes of globalization have been associated with the increasing interconnectedness of the world or the creation of a global village. These processes are, however, full of ambiguities in that they challenge human freedom, dignity, rule of law and democratic self-determination. Especially, economic globalization creates what Pheng Chea calls the “inhuman conditions” that describe the defective features of human existence due to commodification, technology and totalitarian domination. In this condition of human existence, cosmopolitanism is being advocated as a practical consciousness of universal humanism and as a political project to regulate the dehumanizing effects of economic globalization. The thesis explores and analyzes Jurgen Habermas’ conception of the cosmopolitan condition as constitutionally structured multi-level global governance without global government geared towards the global realization of peace, human rights, and democracy. Habermas upholds the enlightenment ideals of rationality, freedom, human rights and democracy based on the notion of communicative reason implicit in everyday use of language. Hence, Habermas defends the universality of the constitutional state subject to procedural discourse. The democratic ideal at the level of a state is to bring the political and economic system under the will of the people articulated in discourse. The global realization of human rights and democracy is conceived as the control of supranational and transnational governance by the will of world citizens developed in national and transnational public spheres. I argue that Habermas’ democratic theory seems to be unrealistic in existing liberal democracies where the autonomy of political discourse and public sphere is challenged by political and economic forces. Analogously, Habermas’ cosmopolitan project is problematic in that the development of cosmopolitan consciousness and global public sphere is compromised by economic globalization. In as much as national and transnational public spheres depend on uneven global economic structure; it is unlikely that Habermas’ project will realize the goal of overcoming global economic and social inequalities. I argue that the development of popular based nationalism in the postcolonial south can make the state serve the interest of the majority of the people and also challenge economic globalization.

INTRODUCTION

Globalization is a central concept describing the multi-faceted realities humanity face around the globe and a central theme of intellectual inquiry and reflection. Even if a precise definition of the term globalization seems to be evasive, the mention of it brings to the mind the increasing economic, political, cultural, and technological interconnectedness of the world as well as the inequality, exploitation and impoverishment that many people face around the world. Furthermore, the weakening of the nation state and the undermining of the democratic process is also connected with globalization. For many concerned with the human, inequality, injustice, loss of freedom and dignity is linked to economic globalization (one among the many faces of the globalization process) In this regard, in his book '*Inhuman Conditions: on Cosmopolitanism and Human Rights*' (2006), Pheng Chea associates economic globalization with what he calls "inhuman conditions", describing the defective features of human existence due to commodification, technology and totalitarian domination.

In this context of the 'inhuman conditions', cosmopolitanism is being advocated as a practical consciousness of universal humanism and as a political project to regulate the dehumanizing effects of economic globalization. In this respect, Jurgen Habermas, one of the most influential thinkers of critical social theory, may be said to provide a systematic cosmopolitan political project in a way to control economic globalization. In line with his view of modernity as an unfinished project, Habermas conceives a cosmopolitan condition as a global realization of peace, democracy and human rights. In other words, Habermas develops a cosmopolitan democratic project as a reconstruction and extension of the norms and institutions of the nation state. Clarifying the meaning, origin and varieties of cosmopolitanism is of paramount importance to introduce Habermas' project as well as the central questions and themes of this Research project.

The word cosmopolitanism is derived from the Greek word 'Kosmopolites'-world citizen. It conveys the idea that in spite of our local identity, culture or community, there is a single human community to which we all equally belong. Ancient Greek and Roman stoics identify reason, morality and law as constituents of the universal human community. To be a world citizen is to possess these qualities which transcend our locality or particularity.(Gir, 2006; Nussbaum:1997; Chea, 2006). "Hence, the cosmopolitan embodies the universality of philosophical reason itself,

namely, its power of transcending the particular and the contingent” (Chea, 2006:21). As such, for the Greeks and Romans, the humanity of human beings transcends particularism or particular ethnic, cultural, territorial and political affiliation. Nonetheless, Martha Nussbaum cautions us to note two things with regard to Greek and Roman idea of cosmopolitanism: first, to be a world citizen is not to undermine our local belongingness. Rather, to be a cosmopolitan is to belong both to our local community and the universal community of human argument and aspiration; second, according to Nussbaum, the Greek and Roman idea of cosmopolitanism was not a political project to establish a world state. Rather, “it was a moral idea, an ethic which dictates that we should pay first moral allegiance not to temporal power but to the community made up by the humanity of all human beings”(1997:31).

The Greek and Roman conception of cosmopolitanism as a moral idea was propounded by philosophers of the Enlightenment. However, within the Enlightenment discourse, there was a change from cosmopolitanism as a moral norm to cosmopolitanism as a political project. In this regard, in his ‘Perpetual Peace: a Philosophical Sketch’ (1795), Immanuel Kant presents a systematic formulation of cosmopolitanism as a political project. Kant developed his project against the background of absolute statism and anarchy characteristics of the modern European state system established by the Treaty of Westphalia in 1648. As such, “[i]n order to confront the violence and lawlessness that characterized existing relations between states, Kant reconstructed the cosmopolitan idea already established as a moral norm within the frame of Enlightenment thought” (Schlerch cited in Fine, 2007:24). Kant criticized classical international law in recognizing the primacy of power over law and developed of a cosmopolitan law to make both states and individuals subjects. Kant conceived this as an extension of democratic republicanism at the level of the state to a world level. However, Kant did not propound the idea of a world republic but preferred a voluntary league of states for the sake of securing peace and human rights. In addition, Kant conceived the cosmopolitan condition as a dictate of practical reason which condemns war. For Kant, practical reason necessitates not only the formation of civil society but also a cosmopolitan order.

Kant’s idea of democratic republicanism and the cosmopolitan condition grounded in reason could not withstand the emotional force of nationalism as a basis of identity and democracy in the emerging nation state. Historically, nationalism and the nation state become the basis of the

global expansion of democracy and capitalism. From this time on, philosophical reflections on cosmopolitanism were developed against nationalism.

In this regard, in their *Manifesto of the Communist Party* (1848), Karl Marx and Friederic Engels viewed cosmopolitanism as the necessary outcome of the global expansion of capitalism. Marx viewed nationalism and the nation state as ideological instruments of the bourgeoisie in the exploitation of the working class. Thus, Marx's cosmopolitanism is grounded on the unity of the working class against capitalist exploitation and the ideology of the nation state..Pheng Chea notes that "the aphorism 'the working men have no country' refers to the inevitable inability of bourgeois nations to command the loyalty of their proletariat in global exploitation and pauperization" (2006:27)

A revival of cosmopolitanism has been witnessed since 1990s following the end of the bipolar world order and the increasing globalization process. In line with the perspective of this research, we can identify two strands of cosmopolitanism, moral and political. Moral cosmopolitanism propounds the universality of the human and related moral obligation without, however, undermining particular identity. In this regard, Martha Nussbaum and Kwame Anthony Appiah advocate the idea of cosmopolitan patriotism referring to the commitment, love and compassion to the needs and interests of human beings. Political cosmopolitanism concerns itself with searching the possibility of realizing justice at the global level through cosmopolitan political institutions and democratic process.

In this debate, Jurgen Habermas develops a cosmopolitan political project based on the premise that globalization is the manifestation of modernity and requires a critical analysis. Among the many faces of the globalization process, Habermas insists that economic globalization undermines the nation state and threatens democracy. Furthermore, according to Pauline Johnson's observation, Habermas notes that "The structural violence of a world divided into have's and have not's, into winners and losers, constitutes a real attack on any hope for the "perpetual peace" of a cosmopolitan polity" (2006:100). Thus, Habermas argues that the modern notion of freedom, human rights, democracy and rule of law can be reconstructed to provide a normative account of cosmopolitan order.

Thus, this research is concerned with the exposition and critical examination of Habermas' cosmopolitan project. In order to achieve this, the research is organized in four chapters. In the first chapter, Habermas' critical reconstruction of democratic republicanism will be exposed. This will be attempted by clarifying his theory of rationality, society, morality and modernity. The second chapter deals with Habermas' critical analysis of globalization, the postnational constellation and the future of democracy. In line with this exposition, we will look at Habermas' argument for building a cosmopolitan democratic order, cosmopolitan solidarity and public sphere. In the third chapter, we will look at Habermas' view of the cosmopolitan condition as the constitutionalization of international law. Chapter four concerns my critical examination of the overall aspect of Habermas' democratic and legal theory as well as his cosmopolitan project. Finally, there will be a conclusion.

Chapter One: Habermas' Critical Reconstruction of Democratic Republicanism

The life long project of Jurgen Habermas may be said to be directed toward a reconstruction of the enlightenment confidence in reason as a basis of progress and human emancipation. In this regard, in *'The Structural Transformation of the Public Sphere'* (1962), Habermas locates the enlightenment ideals of equality, freedom, and democracy in the bourgeois public sphere which he considers as a sphere of critical debate between individuals with regard to the common good. This work represents Habermas's first attempt to ground critical social theory in intersubjective reason. It also shows his effort to transcend the philosophy of the subject that Adorno and Horkheimer claimed as leading to the dialectic of Enlightenment. In his monumental two volumes *'Theory of Communicative Action'* (1987), Habermas develops the idea of communicative reason implicit in every day use of language. In this regard, "the public sphere remains an ideal, but it becomes a contingent product of the evolution of communicative action, rather than its basis (Calhoun, 1716:32).

The focus of this chapter is a critical exposition of Habermas's democratic and legal theory. This will be done by exposing the idea of communicative rationality (post metaphysical reason) as a universal account justification in theoretical and practical discourse. Following this, an exposition of Habermas social theory will be attempted. This will be the ground to discuss the discourse theory of law and democracy.

1.1. Postmetaphysical Reason

Habermas' universal normative account of political and legal theory can be understood in the context of post metaphysical thinking. Metaphysical accounts of reason are based on a single or fixed overarching principle or world view which is taken to be the source of being, thought and action. What Habermas calls the philosophy of the subject such as Kant's provide a universal conception of knowledge and morality by grounding it in the subject. They attempt to answer how individuals ought to act as well as the best way of organizing social and political order. That is, "Just as practical reason was supposed to orient the individual's action, so also natural law up to Hegel wanted to single out normatively the only reasonable social and political order"

(BFN:3). The Western Metaphysical tradition and the concept of universal reason have been criticized by Heidegger and others as domination. Scholars of the Frankfurt School (Horkheimer and Adorno) also criticize the enlightenment tradition as grounded in technological mastery of nature which in turn led to the dehumanization of humanity via administrative power and economic efficiency. Postmodernism also declares the end of metaphysical thinking and universal concept of reason.

Habermas realizes the oppressive and dominating aspect of Metaphysical thinking. However, he opposed the rejection of universal concept of reason along with metaphysics. According to Habermas, , it would be futile to provide a ground for criticizing social and political life without a universal concept of reason. As such, “Habermas defends the view that genuinely postmetaphysical thinking can remain critical only if it preserves the idea of reason derived from the tradition while stripping it of metaphysical trappings” (Honengarten, 1996::x). Thus, Habermas gives a universal account of reason as a basis of universal normative validity in the areas of morality, politics and law. Habermas affirms that “I have taken a different approach with the theory of communicative action, replacing practical reason with communicative one” (BFN: 31).

Habermas’ idea of communicative reason is based on a study of speech acts or utterances through universal pragmatics. At the centre of both Habermas’ theory of communicative action and his account of communicative rationality is the thesis that speech acts as the smallest unit of communication raise various kinds of validity claims (cook, 1997:5). Habermas gives three kinds of speech acts: connotative, regulative and expressive. These correspond to three kinds of validity claims: a truth claim in relation to the objective world; a rightness claim in relation to the social world and a claim of authenticity in relation to subjective world. Each of the validity claims is universal in that they are at least implicitly raised in every speech act. Furthermore, validity claims are universal or are not limited to the speaker or specific group. Validity means validity for every subject capable of speech and action. As such,” With any utterance then, a speaker lays claim to three dimensions of validity that transcend the particular context or the linguistic community in which the utterance is made” (Honengarten, 1996: ix).

Any communication presupposes at least a speaker and a hearer who raise claims to validity and 'Yes' or "No" positions to claims raised. Since the validity claims are criticizable, those who raise them are responsible to defend them. Thus, the rationality of speaking subjects is assessed simply on their ability to raise validity claims and if necessary provide reason. If speaking subjects can not agree on the issue at hand, it will be resolved through a process of argumentation. As such, the notion of communicative rationality can be explicated through a theory of argumentation. Habermas states:

Thus, the rationality proper to the communicative practice of every day life points to the practice of argumentation as a court of appeal that makes it possible to continue communicative action with other means when disagreements can no longer be repaired with every day routines , and yet are not to be settled by the direct or strategic use of force" (TNC1:18).

Communicative rationality rests in the final analysis on the procedures of argumentation. As such, Habermas identifies the ideal presuppositions of argumentation. Cook (1997) notes that Habermas distinguishes between conventional and post conventional forms of argumentation. The former does not go beyond "yes" or "No" answer and the reason appropriate to it by the hearer while the latter represent critical and open ended argumentative process in which no validity claim is exempted in principle from critical examination. Despite these distinctions all forms of argumentation depend on the following idealizing presuppositions.

1. The most basic of these idealized presuppositions is the presupposition that participants in communicative exchange are using the same linguistic expressions in the same way. This is obvious but interesting point, which clearly illustrates an idealized presupposition. It is a presupposition because communication would not proceed if those involved did not think it was at least approximately satisfied (in this case that a shared language was being used). It's idealized because no matter how closely it is approximated, it is always counterfactual (because, in this case, the fact is that all meanings are to some degree personally defined).
2. Another basic idealized presupposition of argumentation is the presupposition that no relevant argument is suppressed or excluded by the participants.

3. Another is the presupposition that no persuasive forces except that of the better arguments are exerted.
4. There is also the presupposition that all the participants are motivated only by a concern for the better argument.
5. There is also the presupposition of attributing a context transcending significance to validity claims. This presupposition is controversial but important (and becomes expanded and clarified in the presuppositions of discourse, see below). The idea is that participants in communication express their claims with a validity that is understood to have significance beyond the specific context of their agreement.
6. the presupposition that no validity claim is exempted in principle from critical evaluation in argumentation;
7. The presupposition that everyone capable of speech and action is entitled to participate, and every one is equally entitled to introduce new topics or express attitudes, needs, or desires (1997:30-31).

The presuppositions (1 and 4) are implicit in all everyday forms of communicative action. Presuppositions (5 and 6) are applicable only in some forms of communicative action or in post-conventional forms of argumentation. Habermas calls discourses those forms of communication that come sufficiently close to actually satisfying these presuppositions. Discourses often occur within rationalized forms of argumentation that self-reflectively refine their procedures of communication, and as a result have a more rigorous set of presuppositions in addition to the ones listed above.

A striking feature of discourse is that validity claims tend to be explicitly thematized and here is the presupposition that all possible interlocutors would agree to the universal validity of the conclusions reached.

Habermas especially highlights this in what he calls theoretical discourses and practical discourses. These are tied directly to two of the three dimensions of validity discussed above: theoretical discourse concerns validity claims thematized regarding objective states of affairs; practical discourse concerns validity claims thematized with regard to the rightness of norms

governing social interactions. Habermas understands such presuppositions to be responsible for generating the self understanding and continuation of theoretical and practical discourses.

Ideal Presuppositions of discourse points to the idea that the validity of an understanding reached in theoretical or practical discourse, concerning some factual knowledge or normative principle, is always expanded beyond the immediate context in which it is achieved. The idea is that participants in discourses such as these presuppose that any understanding reached could attain universal agreement concerning its validity if these discourses could be relieved of the constraints of time and space. As such, these idealized presuppositions direct discourses concerning truth and normative certainty beyond the contingencies of specific communicative situations and towards the idealized achievements of universal consensus and universal validity.

In the *'Philosophical Discourse of Modernity'*(1987), Habermas criticizes what he calls philosophy of the subject or subject centered reason for giving priority to purposive rationality. Communicative reason integrates instrumental reason with the moral/practical and aesthetic or expressive dimensions. Habermas continues the project of critical theory of society without metaphysical foundation. Indeed, He argues that the concept of communicative rationality is already operative in the every day linguistic practice of modern societies. Communicative rationality fails prey neither to repressive objectivism against which the critics of enlightenment have warned nor to the perils of a relativism that would undermine the very basis of a critical theory of society (Cook, 1997). .

Cook (1997) elaborately explains the Habermasian postmetaphysical yet non defeatist notion of communicative rationality. Cook points out five lines of argument for the post metaphysical aspect of communicative rationality. The first is that in contrast to substantive conception of rationality, communicative rationality resides in various dimensions of validity and formally defined procedure of argumentation. Second, in contrast to foundationalism and an exalted role of philosophy to establish all foundations of knowledge, Habermas prefers reconstructive sciences which provide hypothetical or fallibilistic knowledge. Third, in contrast to the conception of reason that stands above history and beyond the complexities of social life, communicative rationality is historically situated. Even though validity claims are context transcendent, they are developed in specific contexts of communicative action. Fourth, communicative rationality as a historically defined practice of linguistic activity signals

Habermas' change of paradigm from the philosophy of consciousness. Thus, the ego or self is conceived as constituted in every day communicative action. Fifth, the multidimensional nature of communicative rationality which includes validity claims to truth, rightness and subjective truthfulness overcomes logocentrism (which emphasizes theoretical reason).

Cook also identifies two arguments to substantiate the non defeatist aspect of communicative rationality. First, validity claims are conceived to be context transcendent in which case communicative rationality over come any form relativism. Habermas attributes universal validity to proportional truth and normative rightness in a double sense. First, there is the idea that everybody would agree on a validity claim. In addition, what is agreed is true for everyone. Second, communicative rationality is non defeatist to the extent that it attempts to maintain undamaged subjectivity and intersubjectivity (Cook, 1994:4).

1.2. Theory of Communicative Action

Habermas develops universal pragmatics to provide a normative and philosophical foundation for social theory. The theory of communicative action will answer: how modern social order is possible? What are the pathologies of modern societies? And what should be done to alleviate the pathologies of modern societies? In the following discussion, we will see Habermas' distinction between communicative and instrumental action, and his two level theory of modern societies, that is, life world and system.

The theory of communicative action distinguishes two concepts of rationality and how they guide action. These are instrumental and communicative rationality. Instrumental reason presupposes the subject object model of cognition and aims at calculation of self-interest in terms of means and end. The type of actions in this category are "either instrumental when they are directed at efficient intervention in a state of affairs in the world (e.g. through labor), or strategic, when they guide attempts to successfully influence the decisions of other actors (e.g. in relations of domination) (Deflem, 1996:2). Communicative rationality, on the contrary, presupposes "a community of speaking and acting subjects" (TCA1:13). Communicative rationality guides actions that aim at mutual understanding or a common interpretation of the world. For Habermas, social actors can reach understanding and coordinate their action through language.

On the basis of the two modes of rationality, Habermas provides a two level theory of society. These are the life world and the system. The life world is a pregiven, intuitively present horizon of society, culture and personality. It is not questionable; rather it is “the unquestioned ground of everything given in my experience, and the unquestionable frame in which all the problems I have to deal with are located “(TCA1: 131). It is the location of cultural background, shared values and competence of individuals. Habermas states

The solidarities of groups integrated by values and the competence of socialized individuals belong, as do culturally ingrained background assumptions, to the components of life World (2003:577)

In line with the three validity claims inherent in speech acts, Habermas insists that the life world is a resource for shared interpretations of the world, normative standard of society and identity formation for individuals. As such, “the life world is the world of socialization and culture where in the operative rationality is that of consensual values, and norms or ‘communicative rationality’ (Stacy, 2000:130). For Habermas, culture, society and persons are the structural components of the life world. Communicative action serves cultural reproduction, social integration and socialization. The life world thus can be understood both as a horizon and resource for the possibilities for changing or channeling culture and society. “The interactions woven into the fabric of every day communicative practice constitute the medium through which culture, society and persons get reproduced “(TCA1:138). These processes, for Habermas, cover the symbolic structure of the life world. As such, it has to be distinguished from the material substratum of life world. This Habermas calls the system.

The system refers to the political, administrative, and economic sphere of life where action coordination is guided by instrumental rationality. In other words, rationality is judged in terms of power and money. In contrast to the life world, “the conclusive and self-justificatory nature of power and money means that there is no need with in the system for consensus oriented discursiveness in the coordination of system actions (Stacy, 2000:130-131).

Thus, Habermas’ account of modern society is based on the development of different forms of rationalization processes which lead to the separation of the system from the life world. Through processes of rationalization, the system functions independently of the life world through the

steering media of power and money. In other words, communicative action based on arguments of speaking subjects to reaching understanding is no longer applicable to the system.

1.3. The Uncoupling of System and Life world: Life world, System and Law

Habermas' account of modernity and the pathologies of modern societies involve an explanation of the separation of life world and system, and subsequent rationalization processes. Rationalization of life world describes the idea that knowledge can not be justified on the basis of tradition, convention or authority. Rather knowledge claims have to be validated only through process of argumentation. Rationalizing life world means that every day communicative practices of the life world context are to be achieved through the rational potential of mutual understanding in language.

Habermas provides a historical account of rationalization process of the life world in European societies since the middle ages. In this regard, the emergence of modern science and rejection of traditional world views and authorities (church and Aristotelian science) resulted in the differentiation of value spheres into scientific, moral and aesthetic with the corresponding validity claims to truth, rightness and authenticity. As such, social coordination in the life world is achieved by communicative action oriented to reaching understanding.

The separation of life world and system involves the legal institutionalization of instrumental action embodied in the subsystems of state and economy. In this regard, the most significant historical event in the separation of life world and system is the emergence a modern European state organized on the basis of rule of law. According to Habermas, the modern European state that emerged in the 17th century institutionalizes market economy on the basis of the constitutional guarantee of individual rights. "The functional differentiation of state and economy produces an expansion of both an administrative state apparatus dependent on taxation for its resource, and a market economy institutionalized via private law, and dependent on the framing conditions and infrastructures guaranteed by the state" (PNC:138). As such, the system is separated from the life world and functions through the steering media of power and money. In other words, communicative action based on the arguments of speakers to reaching understanding is no longer applicable to the system.

Thus, the emergence of modern law is significant in the separation of life world and system. According to Habermas, the uncoupling of system and life world is central in the account of European modernization process as well as the problems surrounding this process. The uncoupling of system and life world is not problematic by itself because the modern state and economy plays significant role in enhancing productivity and efficiency. The pathologies of modern societies are, however, the colonization of the life world by system imperatives. “This uneven or selective development of social rationalization processes gives rise to deformation the various domains of the life world, and those deformation main test themselves in social pathologies such as loss of meaning, anomie, and psychological disorder” (Cook, 1994:6)

By examining the role that law plays in the differentiation and re-integration of the system and life world, Habermas gives two accounts of law; Law as a steering media of the system and law as an institution. In the first case, law is viewed as the means of the system in the colonization of the life world. In the second case, Habermas takes law as an institution to realize the independent functioning of system and life world.

Habermas examines the instrumental rationality law engenders by analyzing the features of modern European law. In this case, Habermas identifies positivity, legalism and formality to be the structural properties of modern law. Positivity refers to the idea that law is not developed from tradition but expresses the will of a sovereign law giver. The law giver enacts laws and “regulates social states of affairs conventionally with juridical means of organization” (TCA1:259). Legalism implies that law does not consider the moral motives of subjects. Formality expresses the idea that what is not legally forbidden is allowed. Habermas explains how these properties are inherently instrumental as follows;

They define a system of action in which it is assumed that all individuals behave strategically, in that they, first, obey laws as publicly sanctioned agreement that can, however, be legitimately changed at any time; second, pursue their interests without regards to moral considerations; and third, in accord with these interest orientations, make optimal decisions in the frame work of existing laws. In other words, it is assumed that legal subjects utilize their private autonomy in a purposive rational manner (Ibid: 260)

Habermas (like Max Weber) asserts that law is important for the institutionalization of purposive rational economic and administrative action. But Habermas believed that law can not simply be seen as an embodiment of cognitive instrumental rationality. In other words, law can not be seen as a social fact beyond moral and practical justification. The functionality of money and power in the life world has first to be communicatively validated. AS such, law can be seen as an institution that changes the communicatively validity claims in the life world into strategic use in the economy and the state. Habermas explains this as follows;

Thus, for the institutionalization of purposive action, a kind of normative consensus is required, which stands under the idea of free (discursive) agreement and autonomous (willed) enactment, and which is characterized by formal properties of value rationality (Ibid: 256)

In this sense, Habermas argues that even if modern law is positivized into a functional, technical system, it can not be conceived something beyond normative justification. Habermas substantiates his argument by a historical account of challenges exerted by the life world against juridification. We have to note that “[t]he expression juridification refers quite generally to the tendency toward an increase in formal (or positive, written) law that can be observed in modern society (TCA1:357) .Here, Habermas underlines that the legal regulation of informal social matters must be distinguished from increasing density of law. He examines the systemic tendency of law and the response of the life world by identifying four waves of juridification in modern European history since the 17th century.

The first wave of juridification was effected during the period of Absolutism in western Europe. In this period, law differentiated state and economy. “The bourgeoisie state formed the political order within which early modern, occupationally structured society was transformed into a capitalist market society” (TCA1: 358). This legal order is characterized by positivity, generality and formality. It guaranteed the liberty and property of the private person. Law authorizes a sovereign state power with a monopoly on the use of force which is the sole source of legal authority. In short, “The sovereign’s monopoly over force, and the contractual rights and obligations of private persons, were regulated to legitimize the coexistence of a strong monarchical state and a market of free enterprise” (Deflem, 1996: 7)

The second wave led to the constitutional state in 19th century Germany. This led to the civil rights of individuals “though they do not yet democratically participate in forming the sovereigns will” (TCA2:359). Habermas recognizes that the juridification in this wave differs from the first in that the life world is recognized. He states:

The absolutist state had understood itself exclusively as an agent of subsystems that were differentiated out via money and power; it had treated the life world, pushed into the private sphere, as unformed matter. This legal order was now enriched by elements that acknowledge the entitlement to protection of the citizens modern life world. (Ibid: 360)

The third wave of juridification led to the democratic constitutional state which spread in Europe and North America from the French revolution. In this case, the constitutional state was democratized or citizens were accorded with the right to political participation. Law came to be seen as a reflection of general interest. “Laws now come into force only when there is a democratically backed presumption that they express a general interest and that all those affected could agree to them “(Ibid: 366). The two waves (2nd and 3rd) of juridification show the resistance of the life world against the steering media of administrative system that is, political power and bureaucratic efficiency.

The fourth wave of juridification is identified with the welfare state. This, unlike the second and third waves, led to the demand for freedom against the economic system. Law in this case secures individual freedom and social rights (manifestations of life world) against the imperative of the market. However, Habermas affirms that the ambiguity of freedom guaranteeing character of welfare state. He says “[f]rom the start, the ambivalence as guaranteeing freedom and taking it away has attached to the policies of the welfare state” (Ibid: 361). The reason is that the social services offered by state are guided by administrative efficiency and cost benefit analysis which erode the consensual values of life world in each area of life. Habermas states:

The negative effects of this to date, final-wave of juridification do not appear as side effects; they result from the form of juridification itself. It is now the very means of guaranteeing freedom that endangers the freedom of the beneficiaries (Ibid: 362)

The expansion of law in the life world means that social relations that have to be communicatively validated are now guided by money and power. Since legal regulations are measured in terms of system imperatives, the life world is colonized by law as a medium. As such, “law plays a significant role in this colonization by “Juridification” of the life world in

legal and bureaucratic processes “(Stacy, 2000, 131-132). Thus, Habermas opposed the juridification processes in contemporary welfare states.

As such, law can not be conceived to be independent of moral justification. Rather, law is a result of consensus and an institution that establishes the ‘normative anchoring’ of the steering media of money and power in the life world. Deflem describes Habermas view as follows.

In the case of money media, exchange relations have to be regulated in property and contract laws, while the power medium of the political system needs to be normatively anchored by institutionalizing organization of official bureaucracies (1996:6)

In this respect, for Habermas, law can solve social coordination problems in modern societies. This is to be conceived in the context is pluralization of modern societies and demands of the system. Pluralization means that modern societies do not have common religious authorities and world views. Consequently, the life world can not provide unquestioned common ground for consensus. The demand of the system means that individuals should be free to pursue their goals based on instrumental reason. Thus, for Habermas, Modern law can be conceived as a social mediation between facts and norms;

On the one hand, legal rights and statutes must provide something like a stable social environment in which persons can form their own identities as members of different traditions and can strategically pursue their own interests as individuals; on the other hand, these laws must issue from a discursive process that make them rationally acceptable for persons oriented toward reaching understanding on the basis of validity claims (Habermas, 1996)

1.4. Discourse Theory of Law and Democracy

Habermas’ democratic and legal theory can be understood within the framework of theory of communicative action and his two level theory of modern societies. We can mention here that action coordination in the life world is achieved through communicative action while instrumental reason operates in the action coordination of the system. In this regard, the major problems in modern societies can be classified in to two: first, the colonization of the life world by systemic imperatives; Second, pluralization of modern societies, that is, the absence of common religious authorities and world views. This makes the modern life world unable to provide unquestioned ground for consensus.

Habermas' discourse ethics attempts to give a universal ground for the justification of norms in the context of pluralization of modern societies and encroachment of system imperatives; "Just those action norms are valid to which all possibly affected persons could agree as participants in a rational discourse" (BFN:107). This makes possible to justify questions of justice (morality) and questions of the good life (individual happiness and the good of communities) which concerns ethics.

Habermas turns to democratic and legal theory precisely because modern social orders are not only achieved by moral norms but also by laws and political institutions. Habermas maintains that the legitimacy of a political order rests on the democratic process of opinion and will formation. Democracy as a process of generating consensus deals with the practical question of how citizens can shape their lives in the context of systemic imperatives (power and money). The problem is "how can the power of technical control be brought within the range of the consensus of acting and transacting citizens?" (TRS: 57). Habermas lucidly describes the aim of democratic legitimation as follows:

A radical democratic change in the process of legitimation aims at a new balance between the forces of societal integration so that the social-integrative power of solidarity – the "communicative force of production" can prevail over the power of the other two control resources i.e money and administrative power, and there with successfully assert the practically oriented demands of the life-world (1992:444).

Habermas' democratic and legal theory gives a normative account of the legitimacy of political systems and legitimate law making. In this regard, his work can be read as a reconstruction of the normative potential of liberal and republican models of democracy. The former prioritizes the constitutional guarantee of pre political rights of individuals and view the democratic process and its outcome as legitimate in as much as it promotes the interests of individuals. The latter emphasize the notion of popular sovereignty, that is, self governance through active participation in the democratic process upon which the legitimacy of law and the political system depends. Habermas project of democratic and legal theory will attempt to strike a balance between human rights and popular sovereignty.

It has to be mentioned at the out set that Habermas rejects the empirical conceptions of democracy including pluralism, elitism, rational choice, and systems theory. Pluralism and Elitism replace individual agency by organized groups and political elites respectively. Rational

choice theory views the democratic process as the instrument of individual economic self-interest. Systems theory rejects both individual and collective agency. We will briefly look at those theories which will be of paramount importance to understand Habermas's legal and democratic theory.

According to Habermas, empirical theories of democracy employ an instrumental conception of political power. Pluralism holds that political and administrative power represent social power, and social power in turn is conceived as the ability of organized interests to shape the political process. According to Habermas, pluralists maintain that party competition and general elections are the media through which social power is transformed into political power distributed between an incumbent government and oppositions. Pluralism would like to restructure the normative model of liberalism by replacing individual citizens and their individual interest with large organizations and organized interests. It also views the political process as a mechanism to meet values and interests assuming that all organized interests have equal opportunities to influence the decision making process. However, according to Habermas, the assumptions of pluralism has been falsified on the ground that interest groups are selective, members are inactive and have little influence on organizational policy.

The failure of pluralism leads to elitist conception of democracy. This views politics solely in terms of the competition and bargaining among leaders. However, for Habermas, elitism can not explain "how" a politics basically initiated by elites [can] also satisfy the interest of nonelites" (BFN: 332)

Following the failure of elitism, systems theory emerges and holds that the administrative system operates independently of society. "Systems theory immediately abandons the notion of individual and collective agency" (BFN: 334). According to Habermas, this view arises from the conception of modern societies as a network of autonomous sub systems. As such, it is only the modes of operation internal to each system, and not the intention or interests of participating actors which is central for the interaction between such systems. This leads to the rejection of the hierarchical concept of society centered in the state. In as much as the political system is a subsystem among systems, systems theory can not explain how the political system should be able to integrate society as a whole and consequently makes opinion and will formation

irrelevant. Habermas concisely describes the failure of empirical theories of democracy and systems theory to give normative account of politics as follows.

“The history of the “realistic” approaches leads, on the one hand to an economic theory of democracy that would inform us about the instrumental features of democratic will formation and, on the other hand, to a system theory that would inform us about the importance of this will formation. Both approaches operate with concepts of power that are insensitive to the empirical relevance of the constitution of power under the rule of law, because they screen out the internal relation between law and political power.” (BFN: 336).

In the following discussion, I will expose and examine the discourse justification of constitutional state. From this, we will see the role that procedural democracy plays in the legitimation of the exercise of political power in modern societies.

1.4.1. Discourse Justification of the Constitutional State

Habermas conceives law as a social mediation between facts and Norms. On the one hand, law is the expression of the will of a law giver entailing a threat of punishment. As such, law appear to be a social fact that every one should follow .on the other hand, individuals will obey the law if they find it reasonable ,that is, law shall entail a claim of reason to ensure legitimacy.

In the course of western philosophy, metaphysical thinking ground the legitimacy of laws in common tradition, morality, structure of the cosmos or will of God. However, for Habermas, legitimacy of laws in post conventional societies must be grounded without clinging to metaphysics. The discursive process must be the basis of the acceptance of laws by persons oriented to reaching understanding through validity claims.

What grounds the legitimacy of rules that can be changed at any time by the political law giver? This question becomes especially acute in pluralistic societies in which comprehensive world views and collectively binding ethics have disintegrated. Societies in which the surviving post traditional morally of conscience no longer supplies a substitute for the natural law that was once grounded in religion or metaphysics. The democratic procedure for the production of law evidently forms the only post metaphysical source of legitimacy (BFN: 448)

Thus, to understand Habermas’ position, it is of paramount importance to re-examine the theoretical account given by classical liberals and civic republicans. While Classical liberals (such as J. Locke) derive legitimacy of law from individual rights, civic republicans (Aristotle, Rousseau) emphasize democratic processes to reach agreement on the common good .The latter

view human freedom not in terms of pursuing private interest but self-governance through political participation.

The central tenet of liberal democracy is the notion of individual rights (human rights). The legitimacy of a political system rests on the protection of these pre-political rights of individuals. It makes a distinction between society (individuals) and state. Hence, political power emanates from the people but is exercised by specific organs of the state. The political decisions are expected to balance the interests of competing parties, interests and values. The state should secure fairness of results through universal and equal suffrage, and representation composition of parliamentary bodies and mode of decision making. Thus, “the democratic process and balance of power between citizens and state more generally are ensured by the constitutional protection of individual right, rule of law, separation of power, and statutory, control” (Johnson, 2006:80). For Habermas, the liberal model is not oriented toward the input of a rational political will formation but toward the output of government activities. He states:

The liberal model hinges not on the democratic self-determination of deliberating citizens but on the constitutional framework for an economic society that is supposed to guarantee an essentially non political common good by satisfying personal life plans and private expectation of happiness (BFN:298).

In contrast, civic republicans emphasize the notion of popular sovereignty. In this model, political authority resides in the people and it can not be delegated to representatives. Politics is expressed as self-governance to realize collective values. According to Habermas, civic republicans give priority to opinion and will formation than rational outcomes of decision. “It is this collective deliberation that forms the medium through which the society constitutes itself as a political whole.”.As such, democracy becomes equivalent to self organization of a society as a whole. In this way, for Habermas, republicans forward an offensive understanding of politics against the state apparatus.

Furthermore, to the extent human rights are natural rights, classical liberals subordinate law to morality. Civic republicans, on the other hand, legitimize law on the basis of ethics understood as a reflection of a community’s’ shared values and tradition of the good life. But for Habermas, neither morality nor ethics can account for legitimacy of laws. Accordingly, Habermas offers discourse theory of law which will give equal weight to Human right and popular sovereignty, without however, reducing law to morality or ethics.

Thus, Habermas formulates the discourse principle D for the justification of norms in general. D states “just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses” (BFN: 107). D applies for the impartial justification of norms in general and is neutral with respect to morality and law. From D Habermas derives the moral and democratic principle. The differentiation of the moral and democratic principle, for Habermas, is based on the reference and kind of reason involved in their justification:

With moral questions, humanity or a presupposed republic of world citizens constitutes the reference system for justifying regulations that lie in the equal interest of all. In principle, the decisive reasons must be acceptable to each and everyone. With ethical political questions, the form of life of the political community that is “in each case our own constitutes the reference system for justifying decisions that are supposed to express an authentic, collective self understanding (Ibid: 108)

It is important here to note that Habermas’ distinction between law and morality is consistent with his distinction between ethics and morality in his discourse ethics. Ethical discourse concerns specific way of life while moral discourse claims universal significance. Nevertheless, Habermas does not mean that morality and law are distinct. Morality and law are different but complementary. Both serve to regulate conflicts and protect autonomy of all participants and affected persons equally. However, moral autonomy and legal autonomy differ in important ways. Moral self-determination appears as obedience to norms according to one’s own impartial judgment. Legal self-determination appears in dual form, that is, private and public autonomy. Legal freedom differs from moral freedom in that it includes free choice as rationally deciding actors and existential choice of ethically deciding persons. As such, “Unlike the moral autonomy that is equivalent to the capacity for rational self-binding, then, the autonomy of the legal person includes three different components; the jointly exercised autonomy of citizens, and the capacities for rational choice and for ethical self realization “(BFN: 451)

In addition, unlike morality which is concerned with interpersonal conflicts, law serves as a means for organizing political rule and provides binding collective goals. Hence, the justification of law can not solely be dependent on moral discourses. Rather legal discourses involve empirical, pragmatic, moral, and ethical questions. As such, for Habermas, law is not subordinate to morality. Rather they are complementary, that is, “Even if moral considerations are not selective enough for the legitimation of legal programs, politics and law are still supposed to be compatible with morality on a common post metaphysical basis of justification “(Ibid: 453)

It is possible here to state that Habermas' discourse theory of law differs and incorporates some elements from natural law theory and legal positivism. Habermas rejects the natural tradition which justifies positive law in terms of a pre-given supersensible order (that is in conformity with metaphysical tradition). He also rejects legal positivism which justifies laws based on the mere existence of a legal order (legality). He accepts legal positivism "if the legitimacy of positive law is conceived as procedural rationality and ultimately traced to an appropriate communicative arrangement for the law giver's rational political will formation and for the application of law" (ibid: 453). The natural law tradition can be reformulated in the form of discourse:

The leading question of modern natural law can then be reformulated under new, discourse theoretic premises. What rights must citizens mutually grant one another, if they decide to constitute themselves as a voluntary association of legal consociates and legitimately to regulate their living together by means of positive law? (Ibid: 453)

This is the function of the democratic principle for the justification of rights and law. In other words, the democratic principle establishes the procedure of law making. It simply states "only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted "(BFN:110). The internal relation between private autonomy and public autonomy requires a system of rights. In turn, the system of rights establish the necessary condition for production of law or "this system should contain precisely the basic rights that citizens must mutually grant one another if they want to legitimately regulate their life in common by means of positive law "(Ibid: 118). Habermas grouped systems rights into five categories.

The first three categories include basic liberties, membership rights and due process of law. These rights together guarantee private autonomy. However, for Habermas, these basic rights can not be understood as liberal rights against the state. This is precisely so "because they only regulate the relationships among freely associated citizens prior to any legally organized state authority "(Ibid: 122). These system of rights simply refers to reciprocal recognition of citizens in their role of addressees of laws. The fourth category includes the right to participation. This, according to Habermas, guarantees public autonomy which enables citizens to be the authors of their legal order or in other words, it enables citizens "to participate in process of opinion and will formation in which citizens exercise their political autonomy and through which they generate legitimate law" (Ibid: 123).

The four basic rights are irreducible. Without category (1-3) rights, there is no private autonomy. Without category (4), basic rights (1-3) will be paternalistic impositions which undermine public autonomy or the idea of self legislation. Further, Habermas adds welfare rights as a fifth category. This guarantees social and material conditions which are basic for citizens to exercise civil and political right

1.4.2. Communicative power and Deliberative Democracy

In the preceding discussion, we have seen how Habermas justifies the system of rights and the constitutional state by the democratic principle. In this part of our discussion, we will see how the exercise of political power in modern political institutions can be justified. The central point in this discussion is that how can the administrative state, according to Habermas's social theory, steered by political power, can be responsive to the demand of its citizens. In fact, in the constitutional state political power and law are interrelated. The law authorizes some exercises of power while political power provides coercive sanctions to make law socially effective. In addition, the political system also produces laws and decisions. As such, law and political power are structurally and systematically interrelated. Despite this fact, Habermas insists that the legitimacy of laws as well as the political system emanates from discursive opinion and will formation. As such, it is demanding to see what political power and what politics are meant in Habermas

Habermas presents the discourse concept of political autonomy which has a significant implication for the conception of political power. According to Habermas the exercise of political autonomy implies the discursive formation of a common will not the implementation of the laws. As such, "politics can not coincide as a whole with the practice of those who talk to one another in order to act in a politically autonomous manner" (BFN: 150). Hence, for Habermas, "The concept of the political in its full sense also includes the use of administrative power within a political system, as well as, the competition for access to that system" (Ibid).

Habermas borrows the concept of communicative power from Hanna Arendt to describe the outcome of discursive formation of will as well as to differentiate it from administrative power. According to Habermas' interpretation, Arendt conceives power not as violence or the capacity to instrumentalize the will of others for one's purpose. For Arendt, power is the human ability

not just to act but to act in concert. It does not belong to individuals but to a group. According to his reformulation, communicative power comes from people's public use of their reason. He states:

A communicative power of this kind can develop only in under formed public spheres; it can issue only from the structures of undamaged inter subjectivity found in nondistorted communication. It arises when opinion- and- will formation instantiates the productive force of the "enlarged mentality" given with the unhindered communicative freedom each one has "to make public use of one's reason at every point" (BFN: 148)

This kind of power is different from administrative power. For Arendt political power is an authorizing force expressed in the creation of legitimate law and in the founding of political institutions. According to Habermas, Arendt shows that this kind of power is manifest in political orders that protect political liberty, in resistance against repression, and above all in freedom founding acts that bring new institutions and laws into existence. Furthermore, communicative power, for Habermas,

emerged in its purest form in those moments when revolutionaries seize the power scattered through the streets; when a population committed to passive resistance opposes foreign tanks with their bare hands; when convinced minorities dispute the legitimacy of existing laws and engage in civil disobedience; when the sheer "joy of action" breaks through in protest movements (Ibid)

Habermas underscores that legitimate law emanate from the formation of communicative power. It is related with citizens' exercise of political autonomy and both law and communicative power has their source in opinion and will formation. For Habermas, it is communicative power which must be the basis of the Administrative system (sanctioning, organizing, and executive function of government). In other words, an administrative system is authorized to implement collectively binding decisions which it does only through law. In this respect, for Habermas, law is a medium through which communicative power is translated in to Administrative power. Habermas states

We can then interpret the idea of the constitutional state in general as the requirement that the administrative system, which is steered through the power code, be tied to the law making communicative power and kept free of illegitimate interventions of social power i.e. of the factual strength of privileged interests to assert themselves). Administrative power should not reproduce itself on its own terms but should only be permitted from the conversion of communicative power (BFN: 150).

It is from this perspective that one can analyze the discourse concept of democracy. Deliberative democracy gives much emphasis on the procedure of democratic opinion and will formation which will have the potential to generate rational outcomes. It is modeled in the liberal account of rule of law and constitutionalism (such as Rawls). However, unlike Rawls, Habermas grounds constitutionalism and rule of law on communicative reason. Thus, the political public in which discursive opinion and will formation produce communicative power assumes a central place in Habermas' democratic theory. Habermas substantiates the idea of deliberative democracy by borrowing Joshua Cohen's definition;

"The notion of a deliberative democracy is rooted in the intuitive idea of a democratic association in which the justification of the terms and condition of association proceeds through public argument and reasoning among equal citizens in such an order share a commitment to the resolution of problems of collective choice through public reasoning, and regard their basic institutions legitimate insofar as they establish a frame work for free public deliberation." (1996:446-47)

However, Habermas insists that the emphasis placed on deliberation which is the affirmation of popular sovereignty must be differentiated from Rousseau's concept of civic republicanism. According to Habermas interpretation, Rousseau emphasizes the formation of a general will which rests on the cultivation of virtue among citizens. Habermas criticizes Rousseau because the latter conceives the general will as a "consensus of hearts rather than of arguments" (Ibid: 446). According to Habermas, the virtue and morality Rousseau identifies must be placed in the process of public deliberation. B. Manin (cited in Habermas, 1996:446) elucidates the idea of deliberative democracy in contradistinction to liberal and republican models of democracy as follows;

It is necessary to alter radically the perspective common to both liberal theories and democratic thought: the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is, deliberation itself... A legitimate decision does not represent the will of all, but is one that results from the deliberation of all. It is the process by which every one's will is formed that caters its legitimacy on the outcome, rather than the sum of already formed wills. The deliberative principle is both individualistic and democratic... we must affirm, at the risk of contradicting a long tradition, that legitimate law is the result of general deliberation, and not the expression of general will.

Thus, for Habermas, the legitimacy of laws and the political system in general depends on the process of discursive opinion and will formation. Deliberative democracy puts much emphasis on the procedures of opinion and will formation which, for Habermas, will have the potential to

generate rational outcome. It specifies the ideal procedures of deliberation and decision making. According to Habermas, institutionalized legal procedures must guarantee the fulfillment of the preconditions of communication required for fair negotiations and free debates. Habermas accepts the five postulates that Joshua Cohen identifies to constitute ideal procedure of deliberation and decision making:

1. Process of deliberation should be argumentative
2. Deliberations should be inclusive and public. All parties that may be affected should have equal chance to participate in deliberation.
3. Deliberation should be free of external coercion ; participants must be free to be bound only by the presuppositions and rules of argumentation
4. Deliberations should be free of internal coercion. This concern the equality of participants expressed in equal opportunity to be heard and introduce topics. Furthermore, agreement or disagreement expressed in the form of yes or no stance should be motivated by the unforced force of the better argument. (BFN:305-6)

Habermas also adds three other conditions that concern political deliberation

1. Deliberations for rational consensus can in principle be indefinitely continued. However, political deliberations must be concluded by majority vote. The decision of the majority is rational until the minority convinces the majority that their position is correct.
2. Political deliberations should be open to issues that concern the interest of all.
3. Political deliberations should allow participants to change and reshape their needs, and values. This explains the idea that arguments may not be based only on a value consensus previously developed in shared tradition and forms of life. (Ibid)

According to Habermas, those ideal procedures of deliberation and decision making are universally applicable to any human association.

1.4.3. The 'Two-track' Model of Deliberative Politics

In line with the distinction between communicative and administrative power, Habermas offers a two-tier level of the legitimation of exercise of power in constitutional democracy; the formal and informal spheres of politics. The informal sphere consists of a network of spontaneous, chaotic and anarchic source of communication and discourse. Habermas call this "civil society." "The institutional core of "civil society" is constituted by voluntary unions outside the realm of the state and the economy" (Ibid: 483). It includes voluntary organization, churches, cultural associations, independent media, and political associations. According to Habermas, the distinctive aspect of civil society is that it is not institutionalized or organized to take decisions. Rather "they generate a communicative power that can not take the place of administration but can only influence it" (Ibid: 452).

The formal sphere of politics refers to the organized arena of communication and discourse that take decision (including parliament and cabinets, and the administrative system (bureaucracy and judicial system). Based on this model, Habermas states that the legitimacy of laws, policies and decisions of the state depends on how the informal opinion and will formation is taken into account. The two track view of democracy demands that formally institutionalized deliberation and decisions must be open to input from informal spheres. Habermas states that:

Democratic procedure, which establish a network of pragmatic considerations, compromises, and discourses of self-understanding and of justice, grounds the presumption that reasonable or fair results are obtained in so far as the flow of relevant information and its proper handling have not been obstructed (BFN:296).

On this basis, Habermas claims that the political system must not take decisions based solely on criteria of efficiency. It should also not serve particular interests that have access to administrative power through unofficial paths of influence and ignore the democratic process. Rather the political system must pay attention to the democratic process and the demand of citizens.

The two track structure of deliberative politics will show how informal opinion and will formation can influence the formal sphere of politics. In this regard, Habermas burrows the 'sluice model' of the circulation of power from Bernard Peters to describe how deliberative politics can be applied to existing constitutional democracies. According to Habermas's

interpretation, Bernard Peters explains the circulation of political power by conceiving the political system in terms of centre and periphery. The centre refers to formal spheres of politics and the periphery refers to informal spheres of politics. Hence, for political decisions to be legitimate, opinion and will formation at the periphery must be decisive. Habermas states that:

This sociological translation of the discourse theory of democracy implies that binding decisions, to be legitimate, must be steered by communication flows that start at the periphery and pass through the sluices of democratic and constitutional procedures situated at the entrance to the parliamentary complex or the courts (and, if necessary, at the exist of the implementing administration as well). (BFN: 356)

Habermas, however, acknowledges that politics in Western democracies can not meet such strong conditions. This implies that political decisions are sometimes determined by interest groups, big corporations, and administrative routines. “However, the question remains whether the settled routine of bureaucratic decision making in accordance with the dictates of established power constellations can be shifted to realize the potentials dormant in the systems description of its own legitimacy (Johnson, 2006:90). As such, for Habermas, two further conditions are necessary to avert the influence of illegitimate social forces and the administrative system. First, the peripheral networks of opinion and will formation must be able to perceive, interpret, and present generalizable social problems. Second, besides the function of signaling problems, the informal sphere must attempt at effective thematization and problematization which is crucial to influence the formal spheres of politics. Habermas explains these function of the political public sphere as follows.

From this perspective of democratic theory, the public sphere must, in addition, amplify the pressure of problems, that is, not only detect and identify problems but also convincingly and influentially thematize them, furnish them with possible solutions, and dramatize them in such a way that they are taken up and dealt with by parliamentary complexes (BFN:359).

1.5. Civil Society and the Political Public Sphere

It has been shown in the previous discussion that Habermas conceives the legitimacy of the political system in terms of the interplay between the informal public sphere and the formal decision making bodies. In fact, we can assert that deliberative politics gives primacy to the informal public sphere in which communicative power is produced. In this part of our discussion, we shall clarify the notion of the public sphere, and its institutional manifestation in current societies.

We can define the public sphere negatively, i.e., the public sphere is not an institution or organization. “The public sphere can best be described as a network for communicating information and points of view” (BFN: 360). The public sphere depends on the communicative action of citizens. It is an intersubjectively shared space created when speakers come together in a speech situation. Unlike success oriented actors who observe themselves as something in the objective world, communicatively acting subjects create a shared space. As such, we can situate the public sphere in the life world in as much as it is reproduced through communicative action. However, the public sphere does not assume the function of either institutions of the life world or system “Rather the public sphere distinguishes itself through a communication structure that is related to a third feature of communicative action: it refers to the functions nor to the contents of every day communication but to the social space generated in communicative action “(ibid).

According to Habermas, an intersubjectively shared space of a speech situation can be conceived in the physical presence of speakers and hearers. The architectural metaphors of forums, stages or arenas represent the linguistically constituted space in these simple interactions. However, for Habermas, the public sphere is the extension of the public spheres (forum, stages) created by simple interactions without physical presence.

The more they detach themselves from the public physical presence and extend to the virtual presence of scattered readers, listeners, or linked by public media, the clearer becomes the abstraction that enters when the spatial structure of simple interaction is expanded to a public sphere (BFN:361).

We can view the public sphere in the broader sense to include a literary and political public. The political public sphere raise issues and engage in critical debate. The political public sphere is a sphere of opinion and will formation. However, participants in the political public sphere are not concerned with passing binding decisions. To this extent, “the communicative structures of the public sphere relieve the public of the burden of decision making; the postponed decisions are reserved for the institutionalized political process” (Ibid: 362). Further more, the shared understanding of social problems and the political function of the public sphere depends on the private sphere of life. The reason, according to Habermas, is that the social problems that arise from systemic deficiencies (economic and political system) are felt and experienced in individual life histories. As such, “problems voiced in the public sphere first become visible when they are mirrored in personal life experiences” (Ibid: 365). As long as those problems are expressed

literature (specialized for articulation of values), Habermas holds, the literary public sphere is related with the political public sphere. It is in this sense that we can take citizens as playing two roles: first, as members of society, citizens play the roles employees, consumers, tax payers, students, tourists; second, as bearers of the public sphere, citizens engage in critical debate by the exposing the failures of the political and economic system.

Habermas notes that the public sphere is linked to private spheres and to the thick network of interactions found in families, friends, neighbors, work colleagues etc. In addition, Habermas maintains that the public sphere is the abstraction of and extension of the spatial structure of simple interactions in private spheres. “Thus, the orientation to reaching understanding that is predominant in every day practice is also preserved for a communication among strangers that is conducted over great distances in public spheres whose branches are quite complex (BFN:366). As such, the difference between public and private spheres can be conceived not in terms of fixed set of issues or relationships but by different conditions of communication. In other words, the public sphere deals with problems experienced in individual life histories. According to Habermas, a modern bourgeoisie public sphere was developed in 17th and 18thc century European societies as the “sphere of private persons come together as a public” (ibid).

Nevertheless the public sphere in our time is rediscovered in the form of civil society organizations and associations. However, certain qualification with regard to the term “civil society” is necessary in order to distinguish between the bourgeoisie public sphere and the current civil society. Civil society in the liberal tradition refers to the economic sphere of life. According to Habermas, Hegel defines civil society as a “system of needs”. It refers to the market system involving social labor and commodity exchange. Nevertheless civil society in our time does not refer to either the economy or the state. It refers to non-governmental and non-economic organizations and association

civil society is composed of those more or less spontaneously emergent associations. *Organization and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public spheres. The core of civil society comprised a network of associations that institutionalized problem solving discourses and questions of general interest inside the framework of public spheres. (BFN: 367)*

Civil society organizations must also be distinguished from those associations which dominated the public sphere through mass media such as advertising agencies and party propagandas.

Habermas claims that the political public sphere depends on the constitutional guarantee of basic individual rights (which promotes the integrity of private spheres) and political rights of assembly and association. Freedom of speech along with freedom of assembly and association determine the scope of different types of association such as religious associations, voluntary associations etc. The media infrastructure of public communication is guaranteed by freedom of press, radio, TV, Internet etc. The political system is tied to the public sphere and civil society through the activities of political parties and election.

Habermas also emphasizes that the political public sphere and sphere of private life are dependent on one another. Furthermore, the domination of public sphere by the state will result in the destruction of the private sphere. He describes the consequence of state control of the public sphere by taking the case of totalitarian societies of bureaucratic socialism as follows:

Administrative intrusions and constant supervision corrode the communicative structure of every day contacts in families and schools, neighborhood and local municipalities. The destruction of solidary living conditions and the paralysis of initiative and independent engagement in ever regulated yet legally uncertain sectors go hand in hand with the crushing of social groups, associations, and networks; with indoctrination and the dissolution of cultural identities; with the suffocation of spontaneous public communication. Communicative rationality is thus destroyed simultaneously in both public and private contexts of communication (BFN: 369).

In addition, the strength and fate of civil society and the public sphere, Habermas holds, is not solely dependent on the constitutional guarantee of basic rights. Rather, the vitality of the public sphere is also dependent on an energetic civil society. This in turn rests on the supportive spirits of cultural tradition and socialization. In this regard, “A liberal political culture rooted in motives and value orientation certainly provides a favorable soil for spontaneous public communication” (1996:453). This exposes the fact that the political public sphere depends on the actors active engagement which explains Habermas’ assertion that the public sphere reproduce itself by the “self-referential character of the practice of communication in civil society” (BFN: 369). Actors who support the public sphere engage in two activities; one, they influence the political system; second, they attempt to revitalize and enlarge society and the public sphere.

It is quite clear here that deliberative politics involves the interplay of a public sphere with institutionalized decision making bodies. However, Habermas believes that civil society can not be viewed in terms of a force that will bring societal self organization as a whole because of its own self limitation which include the following;

1. A robust civil society can develop only in liberal culture where one can find strong private spheres and a rationalized life world.
2. Actors in liberal public spheres acquire only influence not political power.
3. Policies in complex societies have a limited effect on law and administrative power. In this regard, civil society can not aspire to bring social revolution or a complete re-organization of society. As such, civil society can have an indirect effect on the self-transformation of the political system.(BFN:371-72).

Chapter Two: Democracy, the Nation-State and the Postnational Constellation

In the preceding chapter, we have seen that Habermas reconstructs the Enlightenment ideals of freedom, democracy, and rule of law on the ground of intersubjective reason, that is, communicative rationality which is shown to be implicit in everyday use of language. It has also been shown that Habermas' democratic and legal theory is a complement and continuation of critical social theory and discourse ethics. In this respect, democracy as the locus of producing consensus is considered significant in defending the colonization of the life world by economic and political forces. This, in turn, demand that the political system should be tied to the life world in that both administrative power and the laws of the state can be taken to emanate from communicative power produced in the political public sphere. Thus, the two-track structure of deliberative politics depends on the interplay and interaction of the formal and informal spheres of politics. The two-track model of deliberative democracy explains Habermas's claim that rule of law and democracy is internally linked as well as human rights and popular sovereignty is inseparable.

Habermas develops the discursive and procedural conception of law and democracy in a way to account for the legitimacy of the European welfare state in face of multiculturalism and the rights of cultural minorities. Furthermore, Habermas holds that the weakening of the nation-state by economic globalization, which directly endangers democracy, demands the construction of a cosmopolitan democratic order. In this regard, Habermas insists that democratic experience of European nation states could provide a lesson to realize democracy beyond the nation state in such a manner to control economic globalization.

Thus, in this chapter, I will critically examine the relation between democracy and the nation-state, the significance of deliberative democracy for the problems facing European welfare state. Following this, I will look at Habermas's critical analysis of globalization, and his argument for building cosmopolitan democratic politics.

2.1. Democracy and the Nation-State Constellation

The enlightenment discourse on democracy as a legitimation of a political system either prioritizing protection of the natural rights of individuals (the Liberal model) or promotion of popular sovereignty (the Republican model) was first actualized in the form of the Nation state. Habermas affirms that “The counterfactual content of the ideal of republican autonomy as it was developed by Rousseau and Kant was able to triumph over its many detractors only by establishing its “headquarters” in societies constituted as nation-states” (PNC:60). To day, with the exception of China (resembling Ancient Empires), Singapore (resembling city-states), Kenya (Tribal organization), Iran (theocracies), Habermas argues that the member states of the United Nation organization form the nation-state constellation. It is important to note that when Habermas associates democracy with the nation state, it does not necessarily mean that all nation states are democratic. “But whenever democracies in the western model have appeared, they have done so in the form of Nation-state” (Ibid: 62). As such, in as much as most of existing states are Nation-States, the discourse on democracy requires the analysis of the historical emergence and evolution of European nation-states. Thus, in the following discussion, we will see what actually a nation-state is, and the relationship between democracy and the nation-state within the framework of the historical development of modern European state.

The Nation-state may be said to be the democratization of the modern European state that emerged in the seventeenth century. The defining features of the modern state, as distinguished from city states and empires, are the rule of law, territoriality and sovereignty. The rule of law is central in the understanding of the modern state in that it marks the separation of state and society as well as governs the relationship between the two. The separation of state and society is conceivable if one recognizes capitalism and the bureaucratic state as distinct modern phenomena. According to Habermas, the separation of state and society was possible with the institutionalization of market economies on the basis of constitutional guarantees of individual rights. Thus, the rule of law becomes the guiding principle of the administrative state as well as the media of protecting civil society (the market) from the state. Habermas states:

The individualistic model of the legal system reflects a functional imperative of self-regulating markets, which depend on the decentralized decision of market participants. Law is not merely an organizational medium for the purposes of administration. It also shields a privatized society from the state, in so far as it steers the interaction between state and society along legal tracks. In this sense, the modern state can be understood as a legal state. (PNC: 63)

The separation of state and economy, Habermas holds, resulted in two significant consequences. First, the administrative state with the monopoly on the legitimate use of force was securely established. Second; state and economy come to be interdependent in that the administrative state depends on taxes collected from private spheres of society. The first feature is precisely described by Max Weber's definition of the modern state as "a human community that (successfully) claims the monopoly of the legitimate use of force"(Cited in Pierson, 1996:8). Weber's definition incorporates territoriality and the internal sovereignty of a state, that is, states claim constitutionally limited authority within their territorial limit. As such, the sovereign states are in a position to maintain peace and security which would be a basis to ensure other societal functions. Chris Brown enumerates those functions of the modern state as follows:

Protection of person's and property from physical attack; the enforcement of laws and contracts; the orderly exchange of goods and services; the husbanding of resources essential to the healthy survival of the population; and the maintenance of society's cultural, moral and legal norms, including the rights and obligations of individual and standards of distributive justice (1996:108).

There is also the external form of sovereignty in that the state is not subject to any outside authority. This explains the emergence of the modern state with its definitive features in 1648 with the Westphalian treaty in which the state was first recognized as a regime of governance. The Westphalia treaty recognizes only states as the sole actors of international relations. According to Habermas, classical international law laid the frame work of international relations and prescribes:

- a) *The qualification that potential participants must satisfy: a sovereign state must be able to exercise effective control over its social and territorial boundaries and maintain law and order.*
- b) *The admission requirements: state sovereignty rests on international recognition; and*
- c) *The actual status: a sovereign state can conclude treaties with other states. When conflicts arise, it has the right to declare war on other states without offering supporting reason (Jus ad bellum), but it may not intervene in the internal affairs of others states (the prohibition on intervention). (DW, 2006:119)*

At this point, it can be asserted that the sovereignty of state and the differentiation of state and society mark the European modern state. However, the European modern state was not strictly modern for two reasons. First, the modern European states were absolute monarchies, that is, state sovereignty was embodied in the prince. Second, despite the modern law's differentiation of state and economy and granting of rights to individuals, this was not democratic but paternalistic in that the law itself depended on the will of the sovereign.

Thus, the modern administrative state was democratized by the emergence of the nation-state with the French Revolution. In this respect, sovereignty was transferred from the monarch to the nation and "with the shift from royal to popular sovereignty, the rights of subjects were transformed into human rights and civil rights, that is, into basic liberal and political rights of citizens. (IO: 112). According to Habermas, the nation state becomes successful because it solves two problems at once: problem of legitimation as well as social integration. The problem of legitimation arose from "the pluralism of world views that followed the schism of the religions confessions gradually stripped political authority of its religions grounding in divine right" (Ibid: 111). As such, the nation-state comes to be conceived as a voluntary political order established by the people and legitimated by their will.

However, this political-legal transformation would be unstable if the problem of social integration was not solved by the idea of the nation which created self-conscious citizens. The nation, describing people of common descent, formed the powerful emotional basis of citizens' commitment and self-sacrifice which can not be achieved through the universal abstract ideals of popular sovereignty and human rights. As such, National consciousness became the cultural basis of democratic citizenship. Habermas states;

Only a national consciousness of belonging to the same people, common ancestry, language, and history, only the consciousness of belonging to the same people, makes subjects into citizens of a single political community-into members who can feel responsible for one another. The nation or the Volksgeist, the unique spirit of the people, the first truly modern form of collective identity-provide the cultural basis for the constitutional state (IO: 113).

As such, national consciousness formed the basis of citizens' commitment and self-sacrifice for republican values. Habermas affirms that "national consciousness and republican conviction in a sense provide themselves in the willingness to fight and die for one's country" (BFN: 495).

Thus, the Nation state became the truly modern form of political organization and social integration. With the embodiment of popular sovereignty, the nation-state marked the secularization of political power. It is in this sense that one can assert that the Enlightenment ideals of the universals rights of man and popular sovereignty became practical guides of political life only in the form of the nation-state. As such, “the democratic constitutional state by its own definition is created by the people themselves and legitimated by their own opinion and will formation, which allows the addresses of law to regard themselves at the same time as the authors of the law” (PNC; 65). In other words, democracy secures both liberal and political rights. The former refers to the so called natural and inalienable rights of individuals while the latter refer to the rights of individuals to participate in the political process.

This is not, however, to deny the fact that in the long tradition of liberalism, democracy could not fulfill both individual and social and economic rights. This is so because even if liberal democracy recognizes the legal equality of citizens to enjoy their rights, capitalism created socio-economic inequalities, poverty and class division. This explains Marx’s denunciation of the nation state as mere instrument of bourgeois economic interest. Marx also rejected bourgeoisie democracy because it is an ideological instrument masking the oppression and exploitation of the working class. Marx’s analysis formed the basis of the social revolutions of nineteenth and twentieth century Europe. This facilitated the transformation of liberal nation-state into welfare state. The welfare state demands state intervention to regulate socio-economic inequalities, Habermas notes that “The dialectic of legal equality and factual inequality gives rise to the social welfare state, whose principal goal is to secure the social, technological, and ecological conditions that make an equal opportunity for the use of equally distributed basic right possible” (PNC:65).

Even though the European nation state can be taken as central in the achievement of democracy as well as the global expansion of capitalist modernization, this is not to deny the fact that the historical achievement of the nation-state involved the exclusion of women, the oppression of minorities and the colonization of non-European societies. In this regard, Hauke Brunkhorst enumerates the contrasting interpretation of the nation state to include “the Arendtian face of violence, the Habermasian face of Administrative power, the Foucaultian face of surveillance and punishment, the faces of imperialism, colonialism, war on terror and so on” (2010:154).

In *“the origin of Totalitarianism”*, Hanna Arendt traced both the origin of totalitarian politics and the oppression of the Jews to the nation-state form in which “a nation within a nation could no longer be tolerated” (1966:11). Habermas also affirms that nationalism has been instrumental in devaluing other nations, for excluding and oppressing ethnic, national and religious minorities. Specifically speaking, for Habermas, nationalism can explain the historical oppression of the Jews because “in Europe, nationalism became allied with anti-Semitism” (IO: 111). The Nation-states of Europe were also the vanguards of imperialism and colonialism. One should bear in mind that “until 1945, the modern nation-state were the states of the regional societies of Europe, America, and Japan” (Brunkhorst, 2010:157).

Habermas associates the oppression and discrimination of religious, cultural, ethnic minorities in the experience of European nation states with the pitfall of liberal democracy. That is, in as much as liberal democracy justifies a political system on the basis of pre political individual rights, it can not account for the rights of minorities. Even if the right of minorities is accounted by republicans or communitarians, those can not justify the co-existence of multiplicity of cultures in a political system. In addition, the primacy that communitarians accord to group identities endangers individual difference. Thus Habermas’s justification of the co-genesis of human rights and popular sovereignty as well as the internal relation between democracy and rule of law enables him to give an account of multiculturalism and protection of minorities in existing constitutional democracies. The discursive justification of system of rights and the constitutional state is directed towards the inclusion of otherness, recognition of minority rights and laying the legal framework in which multiplicity of cultures, and world views can co-exist.

To this end, Habermas argues that in contemporary constitutional state *ethnos* and *demos* must be separated. That, is democracy can function without presupposing ethnic and cultural homogeneity. Habermas insists that the only thing democracy requires is a shared political culture grounded in consensus with regard to constitutional principles and procedures of decision making.

The discourse theory of law and democracy, Habermas holds, is sensitive to differences. This can be justified by the internal relation between human rights and popular sovereignty. In as much as individual identity can be articulated in intersubjective communication and recognition, the protection of individual rights implies the protection and recognition of group identity to

which the individual belongs. Habermas maintains that there are only two ways to deal with the problem of minorities who suffer from discrimination: secession or inclusion. Minorities can achieve equal rights through secession only if members are geographically concentrated. Otherwise, discrimination can be dealt with only through inclusion. Habermas states that “In general, discrimination can be eliminated not through national independence but only through a process of inclusion that is sufficiently sensitive to the cultural background of individual and group specific differences (IO: 145).

Furthermore, the discourse account of the legitimacy of laws depends not only on the protection of individual rights but also the exercise of rights to political participation. In this respect, recognition of differences requires that those who have been marginalized should participate to defend their rights. Habermas criticizes the welfare state in making previously marginalized groups such as women and minorities clients of the state. The reason for this assertion is that the protection of their rights amounts to the administrative supervision of their lives. According to Habermas, the protection of minority rights should be based on their political participation to define their interests and needs.

More broadly, in the domain of struggles for recognition of differences, the aim can not be the institutionalization from above of protections and benefits for previously disadvantaged groups, but must rather be the realization of full democratic dialogue in which every one affected has some input into the definition of needs and identities and how those will be promoted or hampered by state action” (IO, Cronin and Grieff, xxxi)

In summary, the discourse account of the constitutional state demands the redefinition and reconceptualization of the Nation-state or the combination of Nation and state. The term nation state does not refer to the existence of a single nation within a state. There are very few countries which could be described as a nation state. As such, Giddens (cited in Pierson, 2006:61) states that “a nation describes ‘a collectivity existing within a clearly demarcated territory, which is subject to a unitary administration, reflexively monitored both by the internal state apparatus and those of others...’”. In this sense, a nation-state simply describes the political and territorial organization in which different nations or peoples might exist. Thus, the following description of the Nation-state clarifies both its modern aspect and what we mean by the contemporary nation-state constellation.

In the modern world only one form of political community is recognized and permitted. This is the form we call the nation-state'. It is easy enough to discover. Nation-states have frontiers, capitals, flags, anthems, passport, currencies, military parades, national museum, embassies, and usually a seat at the United Nations. They also have one government for the territory of the nation-state; a single education system, a single economy and occupational system, and usually one set of legal rights for all citizens. (Smith cited in Pierson, 200:61)

2.2. Globalization and the Postnational Constellation

In the preceding discussion, we have seen that administrative power, territoriality, sovereignty and democratic self-determination constitute the central defining features of the nation-state. It has to be mentioned here that democracy, for Habermas, is the locus of human freedom in that it produces political solidarity among citizens independently of the state and the economy as well as it determines the legitimacy of laws, decisions and policies of government. In other words, democracy is central in defending the colonization of the life world either by illegitimate laws of the administrative state or market imperatives (logic of Money). Never the less democratic self-determination as well as the nation-state itself, Habermas holds, is now being undermined by the process of globalization. Globalization brings what Habermas calls the postnational constellation which at the same time provokes questions with regard to post national politics as well as the future of democracy in a cosmopolitan global order. Thus, in this part of the thesis, we will see what globalization and the post national constellation are and Habermas's argument for the construction of a cosmopolitan order.

There is no agreement among scholars with regard to the precise meaning of globalization. David Held and Anthony Mac Grew tell us that no singular account of globalization has acquired the status of orthodoxy (2000:2). However, we can understand globalization as the technological, cultural, economic and political processes leading to an increasingly interconnected world. Habermas uses the concept of globalization not as an end state but as a process. "It characterizes the increasing scope and intensity of commercial, communicative, and exchange relations beyond national borders" (PNC: 65-66). It includes the circulatory process of humanity, technology and nature via networks. According to Habermas, network is a central concept that may refer to means of transporting goods, persons, commodities, capital, electronic information transfer and information processing. Furthermore, "The term is just as applicable to the intercontinental dissemination of telecommunication, mass tourism, or mass culture as it is to the

border-crossing risks of high technology and arms trafficking, the global side effects of ever burdened ecosystems, or the supra-national or non-governmental organizations” (ibid:66)

While globalization has many faces, Habermas affirms that the most significant aspect of globalization affecting the nation-state is economic globalization. He presents four facts that characterize economic globalization: First, expansion and intensification of trade; Second, an increasing number and influence of transnational corporations along with world wide production facilities; Third, the increase in direct foreign investment. Finally, global capital flow through electronic networks of global financial markets as well as their autonomous functioning. Habermas makes it explicit that global economy is different from inter national economy in that the former is unregulated while the latter was regulated through the regulatory systems created after the second world war, “[t]he global economy was a very largely unregulated (and many would argue unregulatable) domain. The global economy as the matrix of “globalization” is a late twentieth century phenomenon” (PNC: 67).

Habermas argues that globalization undermines the defining characteristics of the nation-state and makes the postnational constellation a reality. First, globalization affects the capacity of Nation-states to provide public administration as well as protect its territoriality. According to Habermas observation, global capital flows affect the administrative state in so far as it becomes incapable to apply regulatory mechanisms for macroeconomic balance and redistribution. He states that “increased capital mobility makes the states access to profits and monetary wealth more difficult, and heightened local competition reduces the states’ capacity to collect taxes” (Ibid:69). Furthermore, environmental problems and ecological destruction as well as their solution transcend national borders. Second, increasing global interdependence challenges the sovereign status of the nation-state as prescribed in classical international law.

Habermas also notes that Global interdependence makes the realist description of state and international relations inappropriate for the post national condition. The reason is that “According to this model, the world of states consist of nation-states regarded as independent actors within an anarchic environment, who make more or less rational decision in pursuit of the preservation and expansion of their own powers” (Ibid). According to Habermas, while the sovereignty of states and monopoly of violence remain formally intact, the erosion of the administrative capacity of states, economic interdependence as well as mutual environmental

risks makes the realist model inadequate to explain state sovereignty in its full aspect. Habermas lucidly describes that:

Nation-states can no longer secure the boundaries of their own territories, the vital necessities of their populations, and the material pr-conditions for the reproduction of their societies by their own efforts. In spatial, social, and material respects, nation-states encumber each other with the external effects of decisions that impinge on third parties who had no say in the decision-making process. (DW: 176)

Habermas notes that governance regimes at the regional, international and global levels emerge in a way to fill the gap created by the loss of capacity and autonomy on the part of the nation states. These included GATT, WTO and special UN agencies. Other arrangements such as G-7 summits, NAFTA, EU makes the distinction between foreign and domestic policy blurry for nation-states.

Thirdly, globalization also affects the cultural substrate of civic solidarity in the nation-states. The solidarity basis for democratic self-determination, that is, the supposedly homogenous national culture is being undermined by global markets, mass communication, and mass consumption. According to Habermas, the ethnic, religious and cultural composition of European nation- states is also challenged by South-to-North and East-to-West migration.

To summarize, we can understand the contemporary condition that Habermas describes as postnational in three senses. First, it is politically postnational in that nation-states are incapable to meet the demands of their citizens. As such the postnational constellation describes greater interdependence among nation-states. To this end, there are inter state economic regimes and supranational political institutions functioning as regimes of governance beyond the nation state. Second, it is culturally postnational in that there is societal pluralization process which erodes homogenous national culture as a basis of democratic citizenship. Third, it is normatively postnational in that the democratic deficit facing nation-states and existing supranational institutions points toward the need to construct cosmopolitan democratic politics.

Habermas' critical analysis of globalization comes to the view that cultural pluralization is positive in the sense that it will create the opportunity to imagine and construct a cosmopolitan identity and solidarity. This is also positive in another sense that economic globalization can not

be regulated either by the obsolete nation-states or the existing supranational institutions. This necessitates establishing a cosmopolitan order in which cultural pluralization will be central for the legitimation of cosmopolitan politics.

2.3. Building Democratic Cosmopolitan Order

The postnational constellation we have discussed shows that globalization erodes the capacity of individual nation-states and at the same time there is no supranational political institution to regulate economic globalization. In this postnational conjuncture, Habermas notes that multinational corporations have become powerful competitors to nation-states. However; Habermas would like to understand the replacement of nation-states by MNCs not as shift of power but as the replacement of regulatory mechanism of power by money.

The fundamental dilemma in this shift is that power and money operate in a different logic. While power can be democratized, money can not. In addition money is undemocratic because it depends on exploitation and creates inequalities. “Thus, the possibilities for a democratic self-steering of society slip away as the regulation of social spheres is transferred from one medium to another” (PNC: 78). What kind of response is expected from nation-states and citizens? What sort of political order would be in a secure position to control economic globalization? Below, we will expose and examine Habermas response to the above mentioned questions and his political proposal in a post national condition.

It could be simply stated that Habermas prefers a cosmopolitan democratic order to regulate economic globalization. However, his response with regard to the fate of the nation-state is a little bit complex, or other wise stated, Habermas does not celebrate the end of the nation state. He also does not propound the formation of a world state. His argument rejects what he calls a defensive politics for the state and an offensive politics for cosmopolitan world order. The defensive politics for states need the political will to close the flood gates against pressures incoming from the outside. Habermas explicitly states the range and consequence of closing flood gates. He makes it clear that the traditional monopoly of the state to maintain law and order or its protective function can not be regained, “Under the changed conditions of the post national constellation, the nation state is not going to regain its old strength by retreating into its shell” (PNC:812).

Habermas also does not accept the offensive politics that demands the uncritical opening of nation-states to globalization networks. Offensive politics view the state as repressive and homogenizing entity which hinders the freedom of individuals. They welcome the opening of geographical and social borders as emancipation in two senses; as liberation of the oppressed from the normalizing violence of state regulation, and also as the emancipation of the individual from compulsory assimilation to the behavioral patterns of the collective” (Ibid). The problem Habermas sees in this position is that it can not explain how the democratic deficit at the nation state level (that arise because of globalization) can be compensated at the supranational level without new forms of political regulation.

Having rejected those extreme and polar opposite responses to the postnational constellation, Habermas presents his critical position with a metaphor of a balanced opening and closure of life worlds. Habermas views the successful regulation of society in terms of the balanced interaction between life world and system integration processes. The life world represents the horizon of collective identity in which social integration is achieved through communicative action via intersubjectively shared norms and values. System represent network of exchange constituted through market imperatives. Habermas argues that European history since the middle ages shows a successful opening and closure of life world. According to Habermas, new markets, new forms of communication, commerce and cultural networks would force a life world to open up itself.

In European history, the opening of life world was effected through modernization and rationalization process which led to disintegration of traditional authorities such as church and nobility. This process presents individuals and communities with the freedom to explore new possibilities to shape individual and collective identities. However, Habermas notes that in order to avoid consequent social pathologies such as anomie and alienation, “Life world that have disintegrated under the pressure of opening have to close themselves a new now, of course, with expanded horizons.” the emergence of the nation-state represented a successful closure of the emancipation enjoyed by the bourgeoisie. These emancipatory experiences were articulated in the ideals of popular sovereignty and human rights. Habermas states,

Since the era of the American and French revolutions, therefore, this “closure” of a collective political life has been conditioned by an egalitarian universalism, based on the intuition of inclusion of the other under equal rights. (PNC: 84)

This metaphor of balanced opening and closure of life worlds, Habermas insists, is applicable to challenges that states face in the postnational constellation.

Habermas notes that globalization forces the nation state to open itself up culturally and politically. Culturally, globalization forces the nation-state to open up itself internally to the multiplicity of new forms of cultural life which poses the challenge of multiculturalism and individualization. This demands the end of the relation between the constitutional state and the nation as a shared community of descent. This opening also provides the possibility for “a renewal of a more abstract form of civil solidarity in the name of a universalism sensitive to differences” (PNC; 84). Politically, globalization erodes the capacity of the Nation state to open up itself externally to supranational and transnational political associations. The successful closure of political life demands that politics must regulate economic globalization without, however, democratic deficit. Habermas clearly states:

If this renewed closure is to come about without sociopathological side-effects, then, politics has to catch up with globalized markets, and has to do so in institutional forms that do not regress below the legitimacy condition for democratic self-determination (Ibid)

Habermas once more warns that the uncritical acceptance or rejection of globalization as well as the political responses will lead to devastating consequences. For him, globalization must be viewed as a phase of European modernization process which requires a balanced opening and closure of political life. Habermas agrees with Karl Polyan’s view that fascism is the expression of a failed attempt toward political closure or “as a delayed reaction to the collapse of a free-trade regime that had served as the basis of a stable currency tied to the gold standard until the beginning of the twentieth century” (Ibid). Habermas notes that the de-regulation world trade in the 19thc was replaced by the re-regulation of international economy through Brettonwoods system after the Second World War. This results in a successful political closure in the form of welfare state.

Habermas calls the modernization process up to the end of WWII “first modernity” or organized modernity. He calls the modernization process after WWII “second modernity”. Pauline Johnson states that “First modernity was driven by rationalizing aspirations bent on mastery of the social and the natural world” (2006:108). In other words, first modernity looks for collective action as a

way to tame modernization processes. In this regard, “The ideal of popular sovereignty was embraced as the organizing ambition of the old nation states” (Ibid). Habermas also describes the problems of modernization processes and the political responses that describe ‘first modernity’ as follows:

In the view of the scale and the organizational form of human practices... one can speak of a relative closure of modernity... the achievement of organized modernity consisted in effecting a transition from the upheavals and uncertainties of the late nineteenth century to a new coherence of practices and institutions. Nation, class, and state were the most significant conceptual components of this construction, which served as the basis of collective identities.

Second modernity brought about by globalization erodes the political capacity of nation states as well as the basis of collective identity. Second modernity demands a new political culture to successfully deal with the dangers of technological and industrial development.

Habermas rejects the pessimism of postmodernism as well as the optimism of neo-liberalism. Post modernism declares that the opening of Nation-states by globalization can not have a closure. The capacity for collectively binding decisions, politics as such, vanishes with the collapse of the nation-state. Postmodernism posits that the collapse of the nation-state and the rise of an anarchically interconnected world society makes politics on a global scale impossible. According to Habermas, Neo-liberals view global politics as unnecessary proposal by preferring a de-regulated world economy. Habermas lucidly describes the views of post modernism and Neo-liberalism as follows:

For postmodernism, the new fluidity of societies after the end of the organizational form of the nation-state signals an “end of politics”- an end that neo-liberalism, which wants markets to take over as many steering functions as possible, is counting on (PNC:88)

Habermas affirms that these progressivist visions of opening and the regressive utopias of closure are unconvincing. we should look for a balanced opening and closure typical of the happier periods of European modernization.

To conclude, Habermas suggests that the post national constellation demands a construction of cosmopolitan order. This requires democratizing existing supranational political institutions. Furthermore, in line with the metaphor of balanced opening and closure of life worlds, the existing nation states will continue to serve as centers of politics under the limitations posed by globalization. This requires that the supranational political institutions should be an arena of

cooperation between nation-states in that nation-states can not be conceived as self interested actors in international anarchy. According to Pheng Chea, supra national institutions will change the relation between nation states “from an anarchic pursuit of self-interest analogues to a state of nature (Hobbes) or a pre political condition of private persons engaged in the atomistic pursuit of self interest in the market place (Hegel’s view of civil society) into a state of cooperative self-legislation” (2006:59). Habermas’ project also is not to build a world state but to apply democratic legitimation to supranational political institutions as well as international agreements between nation states.

Be it as it may, the problem of extending democracy to a cosmopolitan order is that democracy was historically achieved only within nation states. The achievement of the nation-state is that it provides nationalism as a basis of democratic citizenship, that is, nationalism forms the basis of citizens’ emotional attachment, commitment and self-sacrifice to republican values or the common good. Thus, the problem of the postnational condition is that multiculturalism erodes homogeneous national culture and economic globalization undermines the economic capacity of nation states.

Habermas’ analysis of globalization shows that there is a need both to retain nation states as regimes of governance and establish supranational political institutions embodying democratic ideals. Now, the question that we must pose is that if democracy requires political identity beyond mere democratic citizenship, what could be the identity basis in a multicultural society within a state as well as cosmopolitan identity required for democracy beyond the nation-state? Habermas presents the idea of constitutional patriotism to serve as the basis of national and cosmopolitan identity. In the next discussion, we will examine the notion of constitutional patriotism.

2.3.1. Constitutional Patriotism

Habermas develops constitutional patriotism as a basis of building specific political identities and solidarity for nation-states in the age of multiculturalism and globalization. Constitutional patriotism is also formulated as a universal basis of solidarity significant in the legitimation of cosmopolitan institutions and procedures. The association of constitutional patriotism and cosmopolitanism can be understood in relation to Habermas’ argument against nationalism both

as a dangerous and regressive response to the current modernization process or the postnational constellation. In the following discussion, I will expose and examine constitutional patriotism in light of Habermas' argument against nationalism.

It has been shown in the previous parts of the thesis that Habermas associated the success of the European nation-state due to its capacity to solve two problems; the problem of social integration and legitimacy. The problem of social integration was solved by the abstract notion of the "nation" while the problem of legitimacy was solved by democracy. However, Habermas uncovers a paradox inherent in the nation-state, that is, while the nation describes the idea of people having common history, language, and territory, democracy implies that the political order is a voluntary creation of people themselves or legitimated by their opinion and will formation.

Thus, for Habermas, the nation is Janus faced. On the one hand, the voluntary nations of citizens are sources of democratic legitimation. On the other hand, it is the inherited or ascribed ethnic or national identity which secures individuals membership in the democratic state. As such, democratic citizenship comes into conflict with national identity because the universal principles of democracy are traced back to particular ethnic or national identity. Furthermore, nationalism projects the nation as an organic entity beyond justification. Habermas notes that "The tension between the universalism of an egalitarian legal community and the particularism of a community united by historical destiny is built in to the very concept of the nation state" (IO: 115).

Despite the seemingly inherent relationship between national identity and democratic citizenship, Habermas argues, the model of the nation state based on a culturally homogenous population has become obsolete. In the post national constellation, different ethnic groups, religions, and cultural form life coexist in a state. As such, Habermas insists that democratic citizenship must be separated from national identity. Even though Habermas acknowledges the historical significance of nationalism in providing a form of social integration and political identity, he affirms that nationalism also had negative consequences .First, nationalism is a historically contingent construction open to political manipulation. Second, the paradox of the universality of

the rights of man and its particular national existence was manifested in the historical experiences of the nation state. Third, in as much as political membership depends on national identity, it excludes and oppresses others who do not belong to the Nation. let me clarify these arguments to understand Habermas argument against nationalism.

Habermas argues that nationalism was a historical construction of the bourgeois public during the French revolution. This argument is substantiated by uncovering the different meanings attached to the term “nation” before the French Revolution. Habermas holds that the term “Nation” is derived from the Roman word “Natio”-- the goddess of birth and origin. According to Habermas, from the Romans through the middle age, Nation refers to cultural identity or describes people who have the same language, custom, tradition and territory. Nation, however, does not refer to politically organized people in the form of the state. “Indeed, the Romans often used it to refer to “savage”, “barbaric” or “pagan” peoples” (BFN: 494). According to Habermas, Kant also used the term to describe societies organized on the basis of common descent.

Thus, it is only during the French Revolution that the term Nation comes to describe the political identity of citizens. During the French, Revolution, the nation becomes the bearer and source of sovereignty. As such, “the meaning of “Nation” was transformed from a pre- political quantity into a constitutive nature of the political identity of the citizens of democratic polity (BFN: 494). There is no doubt that the nation is the first modern form of collective identity transcending familial, Kinship and religious ties. It is also the case that ascribed national identity forms the ground for acquired democratic citizenship. However, despite nationalism as a form of inculcating passion, commitment and self-sacrifice for republican freedom, it has also negative and destructive aspects associated with its constructed feature. It is open to manipulation by politicians to wage war against foreign enemies as well as to stifle domestic opposition. Habermas explains this as follows:

Nationalism is a form of consciousness that presupposes an appropriation, filtered by historiography and reflection, of cultural tradition originating in an educated bourgeois public; it spreads through the channels of modern mass communication. Both elements, its literary mediation through public media lend to nationalism its artificial features; its some what constructed character makes it naturally susceptible to manipulative misuses by politicians (BFN:493-94).

There conceptual ambivalence between the Enlightenment ideals of democratic republicanism and national identity was also manifested in the experiences of the French revolution. The enlightenment tradition propounds the universal rights of man irrespective of particular affinities while the emergent nation-state recognizes the rights of man in as much as one belongs to the nation. The French revolution advocated the universal rights of man while at the same time recognized the nation as the bearer of popular sovereignty, “while the republican constitution granted the rights of man, it also designated that the nation grants those rights and in more radical form, it declared that no rights are valid which the nation has not granted” (Fine 2007:8).

Thus, the universality of the rights of man comes into conflict with its particular national existence. This was manifested by the inclusiveness and exclusiveness of the French experiences. In its early stage, the French revolution recognized the universality of the rights of man which was expressed by granting French citizenship to foreigners as well as honorary citizenship to distinguished personalities such as Tom Paine and Jeremy Bentham. Never the less,

This cosmopolitan moment soon evaporated as revolutionary wars were launched, foreigners were held accountable for military defeats, economic problems and political crisis, and terror was directed against foreigners. Foreign clubs and news papers were disbanded and even Tom Paine, “citizen of the world”, was imprisoned and then repelled. (Ibid: 28)

This explains the exclusionary aspect of nationalism which Habermas rejects. In as much as citizenship depends on pre-political ascriptive qualities, it excludes and oppresses those who do not belong to the nation. Thus, Habermas argues that Nationalism is both a dangerous and regressive response in the postnational condition. It is dangerous because it will lead to ethno-centric reactions against foreigners, faiths, marginalized groups, and difference. It is regressive in that it advocates pre-discursive, pre-political, identity. As such, it ignores moral discourse and legitimate law which are appropriate to create social solidarity in modern pluralistic societies.

Thus, Habermas argues that citizenship and cultural identity can be separated or as Pheng Chea notes “Habermas suggests that from an analytical stand point, the aporia of nationalism can be resolved by uncoupling political identity from cultural identity” (2006:53). In this fashion, Habermas argues that in postnational condition nationalism can be replaced by constitutional patriotism. As such, constitutional patriotism can be a ground for national as well as cosmopolitan political identity.

Habermas develops constitutional patriotism in a universal and particular fashion. As a universal principle, constitutional patriotism expresses adherence and commitment to the universal principles of human rights and popular sovereignty. In this respect, universal constitutional principles demands that individuals should be recognized as irreplaceable persons, as members of ethnic or cultural groups and as members of the political community.

Habermas underlines that a particular political identity can be developed when universal constitutional principles are situated in a particular political culture and community. In this context, the democratic processes of opinion and will formation can provide the ground for social integration previously achieved by nationalism. But how can the political process supply constitutional democracies a basis for social integration that it could not before?

Habermas argues that some preconditions must be specified so that a political sphere can serve this function. First, the domain of political must be separated from other social spheres in order to make it a domain in which all can participate as equals. In other words, political culture and identity should be uncoupled from subcultures and pre political identities so that “different cultural, ethnic, and religious forms of life “can” interact on equal terms within the same political community” (IO:118). Accordingly, democracy can serve the function of social integration if it can unite all citizens in a common allegiance to the country’s constitutional principles and structures which must be open to political participation for all.

This shows that in order to live under constitutional principles, citizens of a particular community need not have similar cultural or ethnic identity. As such, constitutional patriotism can take root in a multicultural social setting. Habermas supports this idea by taking the USA and Switzerland as historical examples of multicultural societies who live under constitutional principles. Hence, political identity or commitment can be shifted from the nation to the constitution.

Thus, constitutional patriotism expresses a universal commitment to rational principles as well as an emotional attachment to particular interpretation of universal principles that emerge from collective deliberation. The particularistic dimension of constitutional patriotism would replace nationalism as a basis of commitment, self-sacrifice for republican values in a given political community, Habermas states:

The political culture of a country crystallizes around its constitution. Each national culture develops a distinctive interpretation of those constitutional principles... such as popular sovereignty and human rights in the light of its national history. A 'constitutional patriotism based on these interpretations can take the place originally occupied by nationalism (cited in Finlayson, 2005:127).

Thus, constitutional patriotism involves loyalty to both universal constitutional principles and particular constitutional tradition. Habermas contends that the universalistic and particularistic dimensions of constitutional patriotism are complementary. Constitutional patriotism in its particular dimension reflects loyalty to a specific tradition of interpreting constitutional principles which will generate civil solidarity and motivate citizens to be committed to the common good. Constitutional patriotism in its universalistic dimension will serve to defend the strategic manipulation of particular political identity for anti-liberal or antidemocratic ends. Even though the democratic right to self-determination includes the right to preserve one's political culture as a specific context for citizenship, it does not reflect the preservation of a particular cultural identity or form of life. Habermas insists that:

"Within the constitutional framework of the democratic rule of law; diverse forms of life can coexist equally. These must, however, overlap in a common political culture that in turn is open to impulses from new forms of life (BFN: 514)".

2.3.2. Cosmopolitan Solidarity and Public Sphere

Constitutional patriotism as commitment to universal principles of human rights and popular sovereignty, Habermas holds, can serve as a normative ground of global public sphere. Indeed, democratic politics beyond the nation state depends on whether cosmopolitan institutions are supported by cosmopolitan consciousness and solidarity. Habermas insists that "the idea that the regulatory power of politics has to grow to catch up with globalized markets, in any event, refers to the complex relationship between the coordinative capacities of political regimes, on the one hand, and on the other a new mode of integration: cosmopolitan solidarity" (PNC:51).

Nevertheless the daunting challenge that any cosmopolitan project faces is whether global public sphere and solidarity can be realized in the midst of global economic disparity and cultural diversity. Thus, in the following discussion, we will look at Habermas' treatment of cosmopolitan public sphere as well as the challenges of economic inequality, cultural diversity

and terrorism. However, a clarification of cosmopolitan public sphere and the so called global civil society need to be made.

Gerard Delanty notes that “The distinction between the concept of the public sphere and civil society is frequently confused and most of the arguments for cosmopolitanism advocate some notion of global civil society” (2001:42). In this respect, for Habermas, the public sphere precedes civil society and refers to the communicatively created space where opinion and points of view are expressed. Civil society is simply a specific institutional manifestation of the political public sphere which is directed toward influencing decisions of government. A cosmopolitan public sphere can be conceived as the interaction of local, national and transnational public spheres. This, however, differs from the legal and institutional form of civil society geared toward transnational governance. This is so because the idea of cosmopolitan public sphere is primarily “a matter of cultural transformation in the values and norms of social and civic relations” (Delanty: 2001:42). The idea is that cosmopolitan public sphere is the necessary condition in the development of global civil society.

Thus, the development of cosmopolitan public sphere is central in building cosmopolitan consciousness and solidarity. However, the task of building cosmopolitan consciousness is not left to governments or states but citizens. Habermas argues that in as much as governments depend on the support of their population expressed in election, it would be citizens who should first develop cosmopolitan consciousness so that they can influence their governments to change international relations into global domestic policy. Habermas affirms that;

Only the transformed consciousness, of citizens, as it imposes itself in areas of domestic policy can pressure global actors to change their own self understanding sufficiently to begin to see themselves as members of an international community who are compelled to cooperate with one another, and hence to take one another's interests into account. (PNC: 55)

Habermas believed that the pacifist consciousness developed after the two world wars is an encouraging example of cosmopolitan consciousness. Habermas acknowledges that this pacifist consciousness did not prevent regional wars or civil wars in different parts of the world. “But it did bring about a change in the political and cultural parameters of interstate relation large enough for the UN Declaration of Human rights, with a prohibition against wars of aggression, and crimes against humanity, to gain that weak normative binding force of a publicly recognized

convention” (PNC:56). Even though pacifist consciousness is not enough for the regulation of economic globalization, Habermas believes that globally shared risks such as ecological and environmental damage can form a basis in building cosmopolitan consciousness and solidarity.

Habermas believes that the idea of cosmopolitan right or world citizenship is not a fantastical idea but is on the way to be realized. He attributes the realization of cosmopolitan right to the emergence of global public sphere through global communication. Hence, “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 every where” (IO: 176).

The first events that mark the emergence of a global public were the Vietnam War and the Gulf war. These wars were distinguished by polarized public debates and opinion on a global scale. We might also add the recent US invasion of Iraq as a significant event in the development of a global public sphere. Habermas also identifies a series of UN-organized conferences on global issues such as ecology (in Rio de Janeiro), population growth (in Cairo), poverty (Copenhagen), and global warming (in Berlin) as part of the development of global public sphere. Hence, “These global summits can be interpreted as so many attempts to bring at least some political pressure to bear on governments simply by thematizing problems important for human survival for the global public, that is, by an appeal to world opinion” (IO:177).

Despite this wish of Habermas, the problem is how a global public sphere can be sustained in stratified world society?. Other wise put: unless the public sphere is steered by communicative action, how can culturally and economically diverse societies understand each other? Habermas notes that since 1917 the world has divided into the so called First, Second and Third world. Countries of the Third world are characterized by social tension, internal disorder (due to lack of tolerant political culture), and civil wars. “These societies are threatened by process of national, ethnic, or religious disintegration” (IO: 184). Countries of the Second world are distinguished by authoritarian constitutions and reliance on military force in their foreign relation. For Habermas, states of the Second and Third world lack the political culture conducive to tolerance and resolution of conflicts through law and communicative action. As such, they are not in a position to adopt cosmopolitan perspectives.

States of the First world are characterized by liberal political culture, prevalence of rule of law and democracy. Even though the existence of discrimination and marginalization can not be denied, states of the first world are not plagued by civil war and political violence. The reason is that these societies develop the political culture where action coordination is realized through communicative action. Habermas affirms that:

The praxis of our daily living together rests on a solid base of common background convictions, self-evident cultural truths and reciprocal expectations. Here the coordination of action runs through the ordinary language games through mutually raised and at least implicitly recognized validity claims in the public space of more or less good reason. (2003:35).

As such, only states of the first world are in a position to adopt cosmopolitan aspiration for some other additional reasons. These include the irrelevance of territorial dispute and military forces, the prevalence of tolerance, pluralism, sensitivity to public sphere, and reliance on transparency and expectation to achieve security based on partnership. Hence, Habermas asserts that “The first world thus defines so to speak the meridian of a present by which the political simultaneity of economic and cultural simultaneity is measured” (IO: 184).

Despite the stratification of world society, Habermas maintains, world peace is dependent on the overcoming of social tensions and economic inequalities. Specifically speaking, global violence and terrorism can be overcome only by regulating economic globalization. Habermas attributes terrorism to communicative pathology caused by economic globalization. In this regard, Habermas rejects Samuel Huntington’s thesis of “clash of civilizations” which counts culture as the cause of contemporary global conflicts. The reason is because” the so-called “clash of civilizations” is often the veil masking the vital material interests of the West (accessible oilfields and a secured energy supply, for example) (2003:36).

According to Habermas, overcoming existing social tensions and economic inequalities demands the reconstruction of the pre-conditions for communication as well as a shared consensus of world society on three areas. First, a shared historical consciousness of the non-simultaneity of societies which are, however, simultaneously dependent on peaceful co-existence second, consensus on human rights which are currently a matter of dispute between the west and non-western cultures such as Asians and Africans. Third, a shared consensus on desirable state of peace (IO: 184-5)

Chapter Three: The cosmopolitan condition as the Constitutionalization of International Law

In light of the catastrophe of world War II, the end of the bipolar world order, the increasing process of economic globalization, the post national constellation, the invasion of Iraq by the USA and the support of the UN, thus undermining against existing international law, Habermas argues that a cosmopolitan legal order is necessary for the realization of the cosmopolitan condition or the global realization of peace, human rights, and the regulation of economic globalization. Habermas envisions the cosmopolitan condition as a transformation of international law based on the right of states to cosmopolitan law based on the right of individuals and states. To this end, Habermas takes the constitution of the state not the state itself as the appropriate model for the transition from international law as a law of states to cosmopolitan law as a law of both states and individuals.

We should note here that the constitution of the nation-state provides a comprehensive legal order including the administrative state, the economy, and civil society. The constitution also express the normative ideals of a political community in accordance with which the state maintain law and order, the economy produces wealth, and civil society will produce solidarity among citizens. As such, “in light of a supposed common good the design of the constitution is intended to prevent system-specific pathologies” (Habermas, 2005:19). Can we extend this function of the constitution at the level of the state to construct a constitutionally structured global system?

We should recognize here that the idea of establishing a cosmopolitan legal order by extending constitutional order at the level of a state to the interstate level was first developed by Immanuel Kant. However, Kant himself rejected this project because it demanded the establishment of a world state. Habermas argues that a constitutionally structured cosmopolitan order without a world state is conceivable. In this regard, Habermas takes in to account the improvements and changes in the theory and practice of international law as providing a favorable ground to realize the cosmopolitan condition or the transition from international law as a law of states into cosmopolitan law as a law of world citizens and states. In order to clarify Habermas’s project, I will provide a brief over view of the development of international law.

The state centered conception of international law emerged in the seventeenth century in Europe by effecting a break with the Roman Natural law tradition. “What was new in the seventeenth century was a formal recognition to state practice as a true source of law rather than regarding it as merely illustrative of natural law principles” (Neff , 2006:36-37). Hugo Grotius, Francisco Suarez, and Samuel Pufendorf are, among others, principal figures in the development of modern international law. This line of thinking was manifested in the Westphalia treaty in 1648. This treaty for the first time recognized the state as an entity and regime of governance with the defining characteristics of a delimited territory, population, government and sovereignty. The Westphalia treaty established the modern European state system commonly known as the Westphalian state system that more or less prevailed until 1914.

Classical international law granted states sovereign equality and nonintervention in the internal affairs of states. International law also recognized the right of states to use force and to go to war to achieve their interest generally conceived as power. However, Classical International law provides no limitation on the right of states to go to war except the rules for the conduct of war. Robert Kolb and Richard Hyde describes the right of states to go to war as the central principle of classical international law as follows;

In the period of classical international law, spanning from the 18th to the turn of the twentieth century, international law allowed each state to use force against another state as an unfettered exercise of its discretion. The decision to go to war was thus left to a free choice of every state. There were no limitations on that right except for the formal procedural rule that war had to be declared. This declaration of war was important for the third states: it signaled to them that a formal war was being fought and put them on notice that they must act to claim their rights of neutrality. Hence, during this period international law granted an unlimited right to resort to war, an unlimited jus ad bellum. (2008:9-10)

The Kantian cosmopolitan project was developed against the state centered conception of international law and the Westphalian state system. Kant criticized absolute statism and the Westphalia state system in recognizing the primacy of power over law in interstate relations. Specifically speaking, Kant criticized the right of states to go to war and considered states as existing in a lawless condition or the state of nature. Thus, Kant developed the idea of cosmopolitan law with the goal of abolishing war or securing perpetual peace. In this regard Kant sought to achieve perpetual peace by extending democratic republicanism at the level of the state to the international level. Kant rejected the idea of establishing a constitutionally structured

world order precisely because it presupposed a world state which he considered impractical. Thus, in his *'Perpetual peace: A philosophical sketch'*, Kant presented the idea of the league of states as a compromise between the lawless condition of the Westphalian state system and the idea of world republic as the best way of securing perpetual peace.

The Kantian cosmopolitan project involves international law, a league of states and cosmopolitan right. Kant's project to abolish war between states through law assumed the political agenda in international relations only after the end of the First World War. The League of Nations founded after WWI and the existing United Nations can be considered practical attempts with the aim of realizing world peace. However, the transformation of international law as a law of states to cosmopolitan law as a law of world citizens first conceived by Kant has remained unrealized philosophical idea because the idea of a world constitution apparently presuppose a world state.

Thus, Habermas presents the thesis of the constitutionalization of international law without a world state as a critical reconstruction of the Kantian cosmopolitan project. In this chapter, an attempt will be made to present Habermas's thesis of the constitutionalization of international law in light of the Kantian project, and the development of international law in the model of the League of Nations and the existing United Nations. On this ground, alternative visions of global order will be examined which will open the way to look at Habermas's vision of the cosmopolitan condition as the constitutionalization of international law.

3.1. Kant and the Cosmopolitan Condition

Kant envisioned the cosmopolitan condition as a condition of human existence in which perpetual peace will be secured through a cosmopolitan law which will consider not only states but also individuals as subjects. The historical context of Kant's cosmopolitan project was the inter-state system of anarchy that was established in the Westphalia treaty. Interstate anarchy describes two conditions: First, the absence of world sovereign authority to which states would be subject; Second, the absence of normative principles that guide relations of states. This interstate anarchy, according to Kant, was supported by classical international law which accepts only states as members, the primary of power over law and the right of states to go to war to defend and pursue their self-interest. Kant saw classical international law "as one in which either there was no international law or international law was interpreted merely as a right to go

to war, which was in effect no law at all” (Fine, 2007:23). Kant sought to overcome interstate anarchy and war by developing the idea of cosmopolitan law. Kant conceived this as an extension of democratic republicanism at the level of a state to the international level. In the following discussion; we will expose and critically examine Kant’s idea of the cosmopolitan condition in light of his moral and legal theory.

Kant’s normative account of morality and law is grounded on pure practical reason which is related to the freedom of the individual as a private subject. Morality is the expression of human freedom because “to be moral an act must be based upon the will of the person”. (Badilo, 191:107). The categorical imperative commands, “[a]ct only according to that maxim where by you can at the same time will that it should become a universal law” (Kant, 1981:36). Practical reason also commands that humanity should be treated as an end in itself because in a rational nature exist as an end in itself” (ibid: 36). According to Kant, when each individual acts in accordance with a universal law, there would be a kingdom of ends or a moral community of free and equal individuals.” In such a community each member freely disciplines himself under the very same rules that would be prescribed by him for others; the result would be that each member would act as a law unto himself (and hence autonomously) but yet would cooperate harmoniously with every other member” (Ellington, 1981: VI).

According to Kant, morality governs internal freedom while law governs external freedom. In other words, Law is related with the external relation of one person with another as well as the power that an individual can exercise to defend his freedom. Kant generally divides laws into natural and positive law. Natural law refers to laws whose obligation is “recognized by reason a priori even without external legislation” (Kant, 1974:33). Positive laws are laws “which are not obligatory without actual external legislation” (Ibid). On Kant’s account, Natural law grants each individual with inalienable Natural rights (private rights) which include among others the right to property, life, and the power one person can exercise if there is a violation of his freedom of action. Thus, for Kant, the protection and promotion of Natural rights forms the foundation for the emergence of a state conceived to be established by a voluntary union of members.

In this regard, Kant adopts and reformulates the social contract theory to explain the emergence and legitimacy of a state. Kant accepts the Hobbesian description of the state of nature as a condition of perpetual warfare among individuals. However, to the Hobbesian description of man as naturally selfish; Kant adds the natural social tendency of man, that is, man is by nature moral and rational. As such, for Kant, Men leave the state of nature not only to secure peace but also to fulfill the command of practical reason: “In the relation of unavoidable co-existence, thou shalt pass from the state of nature into a juridical union constituted under the condition of a distributive justice” (1974:157). Hence, the outcome of the Kantian social contract is not the Hobbesian Leviathan but a Republican constitution;

The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican. This constitution is established, firstly, by principle of the freedom of the members of a society (as men); by principle of dependence of all up on a single common legislation (as subjects); and thirdly, by the law of their equality (as citizens). (4)

It is this idea of social contract and republicanism that Kant adopts to overcome interstate anarchy. Kant equates the international anarchy among nations to the state of nature among individuals. Thus, by extending his idea of the social contract and republicanism to inter-state relation, Kant insists that perpetual peace can be secured if states enter into a contract to be governed by a cosmopolitan constitution;

Each [states] of them, may and should for the sake of their own security demand that the others enter with it into a constitution similar to the civil constitution, for under such a constitution each can be secure in his rights (5)

As such, Kant’s cosmopolitan vision seeks to replace international law, which recognizes only states as members, by a cosmopolitan law which recognizes not only states but also individuals as subjects of world constitution. Habermas eloquently describes the Kantian vision as follows:

The core innovation of this idea consists in the transformation of international law as a law of states into cosmopolitan law as a law of individuals. The latter are no longer legal subjects merely as citizens of their respective states, but also as members of a “cosmopolitan commonwealth under a single head”. (DW: 124)

Be it as it may, Kant rejects his own idea of a cosmopolitan constitution and world republic as an “impracticable idea”. The reason for Kant is that “Any government of it, and consequently the protection of its individual members, must at last become impossible” (Kant, Ibid). Hence, Kant

introduced league of nation as a compromise between a world republic and international anarchy. The league is a voluntary association of states which will condemn war of aggression and impose moral obligation on states to resolve conflicts through international court. Kant clarifies his idea of congress of nations as follows;

By such a congress is here meant only a voluntary combination of different states that would be dissolvable at any time, and not such a union as is embodied in the United states of America, founded upon a political constitution, and therefore in dissolvable.(1981:225)

Accordingly, in his “*Perpetual peace: a philosophical sketch*”, Kant stipulates six preliminary Articles (negative conditions) and three definitive articles (positive conditions) for perpetual peace. The preliminary articles include:

- 1. No Treaty of peace shall be held valid in which there is tacitly reserved matter for a future war*
- 2. No independent states, large or small, shall come under the domination of another state by inheritance, exchange purchase, or dominion.*
- 3. Standing Armies (miles perpetual) shall in time be totally abolished.*
- 4. National Debts shall not be contracted with a view to the external friction of states.*
- 5. No state shall by force interfere with the constitution or government of another state.*
- 6. No state shall, during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible such are the employment of assassins (percussores), prisoners (venefici), Breach of Capitulation, and Incitement to Treason (Perduellio) in the opposing state (2009:1-3).*

These preconditions of peace constitute the rights and duties of states. For Kant, the compliance of states with these principles will create a favorable condition for the prevalence of peace. These are not, however, sufficient conditions for perpetual peace. In addition to negative duties, Kant provides three positive obligations that states should fulfill. These are;

- 1. The civil constitution of every state should be republican*
- 2. The law of national shall be founded on a federation of Free states*
- 3. The law of world citizenship shall be limited to conditions of universal hospitality (Ibid: 7).*

Thus, the constitutive elements of the Kantian cosmopolitan condition include international law, (based on sovereignty of states), the League of Nations and cosmopolitan right. For Kant, cosmopolitan right is simply the “right of hospitality”, that is, “the right of a stranger not to be treated as an enemy when he arrives in the land of another” (Ibid). Kant justifies the idea of cosmopolitan right based on the argument that we are all members of the world or “originally no one had more right than another to a particular part of the earth” (Ibid). Though Kant rejected the idea of cosmopolitan constitution and world sovereign, he did not abandon the idea of cosmopolitan law which accords individuals the right of hospitality. For Kant, the idea of cosmopolitan law is not an exaggerated notion but “a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of human rights and hence also of perpetual peace”. (Ibid)

At this point, it could be possible to argue that Kant completely rejects the idea of the “cosmopolitan condition” which he conceived in terms of establishing cosmopolitan order in accordance with a cosmopolitan constitution. In this respect, one might also argue that Kant changed his view of cosmopolitanism as a legally governed political order to a moral cosmopolitan condition subordinate to the will of sovereign states. In support of this idea, Kumar states that for Kant “cosmopolitanism was not a specific political proposal but a regulative ideal of peace and justice” (2009:4). Nevertheless some other scholars also argue that Kant’s falling back to the League of Nations may not be sufficient reason to conclude that he completely abandons the idea of the “cosmopolitan condition”. In support of this idea, Habermas argues as follows:

Kant by no means repudiates the idea of a cosmopolitan condition as such. As always, he relies on the course of history, which beginning with the taming of military violence by international law, and proceeding through the prohibition of war of aggression, would finally approach the goal of constructing a cosmopolitan constitution (DW:125).

In fact, Habermas’ assertion is quite acceptable in light of Kant’s own reliance on history which, he believed, would provide favorable circumstance to realize the cosmopolitan idea. In this respect, Kant argues that the cosmopolitan idea and perpetual peace would be realized with the expansion of commerce, the maturity of states to recognize the political utility of peace, and the worldwide expansion of democratic republicanism(that is, when rulers can not declare war

without consulting their citizens). Taken together, the three lines of Kant's arguments express his confidence on progressive enlightenment which "works toward a universal end, the perfect civil union of humankind, and that the genuine principle of right points toward a universal law of humanity" (Fine, 2007:27).

Despite the fact that Kant gives the first systematic account of the cosmopolitan condition and is the source of inspiration for the normative account of contemporary global order, history challenges the realization of perpetual peace as well as the idealism inherent in his project. First, the then emergent nation-states and nationalism proved that republicanism could not be a perfect solution to war. Second, the League of Nations that Kant formulates could not secure perpetual peace precisely because it recognized the sovereignty of states. Though Kant inspired the formation of the League of Nations and the existing United Nations, history proved that perpetual peace is an ideal goal that remains to be realized. Thirdly, with the absence of an authoritative institution, Kant's idea of cosmopolitan right remained a moral idea left to the mercy of the nation-states.

Finally, Kant's over confidence in reason as a vehicle of progress, and his systematic formulation of scientific racism are unacceptable. The priority that Kant accords to reason in his project of cosmopolitanism as constitutive of individual identity led him to ignore other factors significant for the formation of identity such as ethnicity and nationality. In fact, "Kant was so deeply influenced by an abstract notion of enlightenment that he was blind to the explosive force of nationalism (Habermas, DW: 146). Furthermore, Kant's formulation of scientific racism in his Lectures on Anthropology and Physical Geography made his cosmopolitan project Eurocentric. Habermas also acknowledges Kant's racism and says "Kant shared with his contemporaries the "humanist" conviction of the superiority of European civilization and the white race" (DW: 146). Furthermore, Kant did not recognize that international law excludes other states or International law recognized only European states and "only these nations recognized each other as possessing equal rights and they divided up the rest of the world among themselves into spheres of influence for colonial and missionary purposes" (Ibid)

3.1.1. International Law after Kant: the League Covenant and the UN Charter

The Kantian project of perpetual peace did not remain a philosophical ideal but significantly influenced the development of international law and realization of peace. In this respect, the American president Woodrow Wilson can be considered the first person in taking the initiative to put a philosophical idea into practice. This resulted in the foundation of the League of Nations after the First World War. The establishment of the existing United Nations organization can also be taken as a step forward in the realization of peace and justice in international relations. Taking the covenant of the League of Nations and the UN charter, in the following discussion, an attempt will be made to examine Kant's impact and the improvements beyond Kant in the evolution of international law.

As it has been mentioned elsewhere in the paper, the Kantian cosmopolitan condition aims at the abolition of war by subjecting interstate relations to law. In this regard, the League of Nations established after WWI resembles the Kantian plan of League of Nations developed in his "perpetual peace". Habermas notes that even though Woodrow Wilson, the mastermind of the League Covenant, does not directly express his credit to Kant, the goals and organization of the League of Nations resembles the Kantian project. According to Habermas, in line with Kant, the prohibition of war by the League of Nations marked a change in classical international law;;

The first clause of Article 11 of the charter of the League of Nations... stipulates that "any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league." No member of the league could remain neutral. This solemn commitment of the members was followed in 1928 by the absolute prohibition of war in Article 1 of the Kellogg-Briand Pact. (DW: 157)

Analogous to Kant, Woodrow Wilson also puts his faith on liberal democratic ideals as a way to avoid war. Wilson adopted the nation-state form as the best mechanism to realize the right of self-determination, the right of a people to have its own state free of foreign domination. Thus, Wilson accepted state sovereignty which is the central principle of classical international law. However, similar to Kant, Wilson seeks cooperation among sovereign states internally organized under rule of law and democracy. According to Habermas, Wilson preferred Great Britain, Italy, Japan, France and USA (which never ratified the treaty), to be permanent members of the

Assembly of the League because “Wilson saw them as the vanguard of a new world order based on the rule of law and democratic self-determination. (Ibid)

In order to prevent war, the League of Nations established a system of collective security- the commitment to support members in time of war. In addition; the League Covenant (Art 8-17) codified the restriction on armament, economic sanction and peaceful settlement of disputes by Arbitration. There was, however, no provision for military action in case a state or states violates the law. The League also had no strong international court and supranational authority to make sanctions effective. These can account for the subsequent undermining and ultimate failure of the League. Habermas clearly explains the factors that account for the failure of the League of Nations as follows:

The league had no means of effectively countering the aggression of the later “Axis powers, Japan, Italy, and Germany (which had withdrawn from the League). It had long since succumbed to paralysis by the time fascist Germany began a world war that wreak out not just physical and material havoc on Europe. A breakdown in civilization far beyond the devastation of war rocked German culture and society to its moral core and posed a challenge to the rest of humanity (DW: 158).

After WWII, the UN was established marking a new phase in the evolution of international law. The UN institutes a new world court, the international court of justice (ICJ). The ICJ, however, has no compulsory jurisdiction over states. The central organ of the UN is the Security Council. The victorious states of WWII assumed permanent membership and veto power, and the Security Council was established to prevent future war of aggression.

The UN charter goes far beyond the League’s Covenant in that it prohibits not only war of aggression but also the “use of force” in general. It also provides not only the mechanism of economic sanction but also a military action against aggressors. Habermas argues that unlike the League and the Kantian plan, the UN aimed not only on the prevention of war but also violation of human rights, genocide, and crimes against humanity. In this regard, the central premise of international law that is, non-intervention in the internal affairs of states and the immunity sovereign actors enjoyed, was undermined by the mass crimes of the Nazi regime on European Jews, and state crimes committed by totalitarian regimes against their own citizens. As such, the Nuremberg and Tokyo military tribunals convicted the representatives, officials, and functionaries of the defeated regimes of war crimes, war of aggression and crimes against humanity. This marked the end of international law as a law of states

Thus, UN charter goes beyond the League of Covenant and the Kantian project to abolish war. In Kant and the covenant of the league, Habermas holds, the development of international law remains a means to the end of averting war;

All this changes with the UN charter, which, in the second clause of the preamble, reaffirm "faith in fundamental human rights, in the dignity and worth of the human person," and in Article 1, paras 1 and 2, links the political goals of global peace and international security with the promotion of "respect for all without distinction as to race, sex, language, or religion throughout the world. (DW: 162).

Furthermore, as a complement to the UN charter, a large number of member states signed the Universal Declaration of Human Rights (UDHR) on Dec.10, 1948. "With this, the international community commits itself to the global implementation of constitutional principles that had previously been realized only within nation-states" (DW: Ibid). According to Habermas, the UN's concern with interstate conflict and aggression was later extended to domestic conflicts, including civil war, and human right violation. As a complement to the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were signed by member states. This is not, however, without controversy and disagreement among member states. As such, not all states sign both ICCPR and ICESCR.

Unlike the organizational composition of the League in which liberal states were considered vanguards of peace, the UN charter was inclusive. The inclusion of the decolonized states marked the transformation of Eurocentric international law. Despite the fact that non-European countries such as Japan, USA and the Ottoman Empire were accepted as subjects of international law, it was only within the UN framework that the religious and cultural diversity of world society transformed the conception of international law. This marked the development of international law beyond Kant and Wilson. Habermas notes that:

As a result of increased sensitivity to racial, ethnic, and religious differences, the members of the general Assembly have extended mutual perspective taking into domains that remained beyond Kant's purview (and also that of Woodrow Wilson, who was anything but progressive in dealing with the race problem in the United States). The catalogues of human rights and the Declaration on the Elimination of all forms of racial discrimination demonstrate this. (DW: 155)

The visions of the UN and the evolution of international law were, however, hampered by the so called Cold war, and the new bipolar system of international order. I said the so called Cold war because many scholars such as my advisor Daniel Smith note that a large number of people including women and children died in this period. The cold war undermined the human right aspirations of the UN. Besides, political realism advanced by Hans Morgenthau, Kenneth N. Waltz and others undermined the notion of justice and human rights in international relations. Those realist scholars in international relations accept war and conflict in interstate relations by viewing the international system as essentially anarchic.

In his famous work '*Politics among Nations*'(1978), Hans Morgenthau argues that war and conflict characterizing interstate relations is simply a reflection of human nature, that is, the tendency to dominate one another. This basic human nature, Morgenthau insists, characterizes all human associations from family to the state. As such, the nation state will be in a perpetual struggle for power so that it will avoid domination by other states. Political realism underlined that in the unavoidable struggle for domination and power, there is no normative standard to judge the actions of states. furthermore, some scholars notably Carl Schmitt, who taught Morgenthau, argues that moral arguments including human rights lack objective foundation and simply serve to pursue one's interest and power.

Thus, one can conclude that the bipolar international system underlying the cold war and the influence of political realism reflected in the foreign policy of the superpowers that is, the USA and USSR, have undermined the human rights regime and aspirations of the UN. In this respect Habermas argues that during the Cold war "[t]he discourse of human rights degenerated in to mere rhetoric, while the "realist school" in international relations theory increasingly influenced policy both in Washington and in Moscow" (DW: 167).

The Cold war, characterized by power competition and constellation around USA and USSR, weakened the normative force of the world organization. The charters' faith in fundamental human rights simply served as an instrument of propaganda and reciprocal blame of the super powers while at the same time they committed gross violation of human rights.

It was only with the beginning of the end and actual end of the Cold war that the UN came to be significant and authoritative not only in international conflicts but also in conflicts within states. In the year's between 1990-1994, the UN Security Council authorized economic sanctions and peace keeping operations in 8 cases, and military intervention in 5 other cases. It also refused to authorize the NATO intervention in Kosovo. According to Habermas, the security council intervenes within states in response to (1) civil wars; former Yugoslavia, Libya, Angola, Burundi, Albania, central African republic, and East Timor (2) gross violation of human right and ethnic cleansing; in Rhodesia and South Africa, Northern Iraq, Somalia, Rwanda, and Zaire (3) for the promotion of democracy; in Haiti and Sierra Leone. The UN also establishes international criminal tribunal for war crimes and genocide in former Yugoslavia and Rwanda. The UN also attempted to mitigate human right violations through the High commissioner for Refugees (UNHCR).

Never the less the success of the UN was also counter balanced by some instances of failure which exposed its inherent weakness. Among others, the failure of the UN intervention in Somalia and its reluctance to intervene in the civil war in Yugoslavia resulted in gross human right violations. Worse than these, the reluctance of the world organization to respond to the Rwandan genocide, despite early awareness and report of the commander of UN Troops in Rwanda, remained a black spot in the history of the organization.

The failure of the world organization manifested in these instances can explain the internal and inherent weakness of the UN; its weak financial base, its dependence on the willingness of states especially on permanent members of the Security Council. According to Habermas, "The intervention in the civil war in Somalia was a failure in part because the American government withdrew its troops in response to the negative mood of its own population" (DW: 170). According to Michael Freeman, The opposition of Russia and China, permanent members of the Security Council, made the UN unable to intervene in Yugoslavia. Later on the NATO intervened in Yugoslavia. However, the NATO intervention resulted in further human right violations. Freeman states

In 1999 NATO intervened militarily in Yugoslavia, when the UN could not because of Russian and Chinese opposition in the Security Council, in order to prevent violations of the human right of ethnic Albanians in Kosovo. The immediate effects were worse violations against Albanians, considerable war casualties among Yugoslavian (Serb) civilians, and, after the NATO military victory, reprisals by Albanians against Serbs. (2002:50)

The Rwandan genocide which claimed more than 800,000 lives, mainly of Tutsi minority, within three months affirmed that the African continent suffers from discrimination by major powers. “Such shameful selectivity on the part of the security council in acknowledging and addressing specific cases reveals the primacy still enjoyed by national interest over the global obligation of the international community” (Habermas, DW:171)

The recent invasion of Iraq by the USA and the support the UN granted also raises a serious doubt whether international law serves power or not. The UN human rights agenda is also being challenged by state terrorism, terrorism and globalization. Specifically speaking, the process of economic globalization raises the question with regard to the human rights obligations of non-state actors such as Multi-National Corporations (MNCs).

To summarize, we can state that the League of Nations and the United Nations reflect the evolution of international law toward the cosmopolitan vision of Kant. However, the UN and the challenges facing it clearly show that there are issues that go beyond Kant. currently, the internal weakness of the UN to respond to human right violations, terrorism and globalization points toward the need for reforming the world organization or searching for a new form of global order. However, the ambiguities and complexities of the current condition make it difficult to be conclusive as to whether the world is moving in a Kantian direction or not.

3.2. Alternative Visions of Global Order

The end of the bipolar world order, the increasing globalization process that undermines nation-states as centers of politics, religious fundamentalism, cultural conflicts and terrorism provoke a new vision of global order different from the Kantian cosmopolitan project. Habermas’ cosmopolitan project developed in the footsteps of Kant can be defended only if it is examined in light of alternative visions of global order. These alternative visions of global order are

developed to be appropriate for the age of globalization and the so called postmodern world. Thus, in the following discussion, we will look at Habermas's defense of the Kantian project against the proposal of Hegemonic Liberalism and the Anti-Kantian Realist system of Hemispheres.

Hegemonic Liberalism emerges with the failure of the Neo-liberal global Market society. The Neo-liberal model puts faith in the integrative capacity of global market to formulate a new global order. It relegates the state to the function of security and assumes that global market is able to achieve a pre-political integration of world society. It also seeks to replace international law by private law to institutionalize trade and commerce at the global level. However, this model of a political global market society was undermined by the explosion of religious fundamentalism and terrorism. This is not, however, the only reason that lead to the rejection of this model. It also conflicts with individual freedom. Habermas explains this as follows

The brave new world of neo-liberalism has not only been rendered empirically null and void; normatively speaking it was a non-starter, for it robs individuals of their status as citizens and abandons them to the contingencies of an unmanageably complex society. The individual liberties of private legal subjects are merely threads on which autonomous citizens dangle like puppets. (DW: 186)

Thus, Hegemonic liberalism is formulated as means of taming globalization by constructing a global political order under the Hegemony of USA. It asserts that "the processes of globalization are not, as many globalists assert, out of control but are the products of a US-Inspired liberal world order" (McGrew, 2004:153). This Hegemony is also ethically charged with the responsibility for the global expansion of democracy and human rights. According to Habermas, the emphasis Hegemonic liberalism accords to human rights may apparently make it similar to the Kantian vision. However, contrary to Kant's idea of cosmopolitan law, the US led world order is "the attempt to replace international law with national law" (DW: 181). Unlike Kant, Hegemonic liberalism does not aim to secure peace through law but by Imperial power. Habermas states this as follows:

Hegemonic liberalism does not aim at a law-governed, politically constituted world society, but an international order of formally independent liberal states. The latter would operate under the protection of a peace-securing super power and obey the imperatives of a completely liberalized global Market (DW: 183).

Thus, Habermas rejects Hegemonic liberalism for two obvious reasons mentioned above. First, world peace can not be left to imperial power. Second, the integration of world society can not be accomplished by systemic functional market relations. According to Habermas, religious, cultural conflicts and terrorism cannot be overcome by military force assumed by a super power. Rather, terrorism can be overcome by effective coordination of intelligent services, police forces, criminal justice procedures, and by a self-critical dialogue between cultures. For Habermas, “Those means are more readily available to a horizontally juridified international community that is legally obligated to cooperate than to the unilateralism of a major power that disregards international law” (DW:184).

In addition, the normative reasons, that is, the ethical responsibility accorded to the Hegemon for the expansion of democracy as well as human rights is unacceptable from a discursive view point of justifications of norms. Even if the world Hegemon can be trusted to act with good intentions and policies, self-interest and cultural bias is unavoidable. As such, “in the unavoidable process of weighing goods it can never be sure whether it is really distinguishing its own national interests from the universalizable interests that all the other nations could share” (Ibid). It is only the discursive process of decision making, not bad or good will, which will make the outcome rationally acceptable. As such, Habermas rejects Hegemonic liberalism because a discursive justification of norms demands the inclusion of all affected parties as well as mutual perspective taking.

As an alternative to the Hegemonic liberalism of the USA, a vision of global order under system of Hemispheres currently assumes the agenda. This is rooted in the post-Marxist critics of globalization which share the neo-liberal rejection of state-centered politics. However, unlike Hegemonic liberalism, the thesis of the realist system of Hemispheres envisions a global order with a dispersed power centers. This position views law merely as a reflection of power. As such, the realist vision of a system of Hemispheres stands as the polar opposite to the Kantian vision of cosmopolitan order. In this regard, Carl Schmitt stands out as the most influential advocate of the anti Kantian vision of a realist system of Hemispheres. I will elaborately discuss Carl Schmitt’s political and legal theory and his proposal of global order.

The political and legal theory of Carl Schmitt, who was constitutional advisor to the Weimar Republic of Germany and the then member of the Nazi party, is built on a metaphysical assumption of human nature. He argues that talking about what is political demands a thorough analysis of human nature. In this regard, Schmitt shared the Hobbesian account of Human nature as selfish, egoistic, and dangerous and argues that “the specific political distinction to which political actions and motives can be reduced is that between friend and enemy” (2007:3). However, for Schmitt, the concept of the enemy simply represents the fear, distrust, greediness and jealousy existing among men. Hence, the political enemy does not have to be a monster, or moral opposite but something that threatens a group’s way of life. Analogous to the Hobbesian state of nature, for Schmitt, the existence of the state solely depends on the political or “if Hobbes predicated the modern state on the “state of nature”, Schmitt declares that the state presupposes the concept of the political” (McCormick, 1997:251).

For Schmitt, the state is conceived to exist only if it assumes the monopoly on the use of force and hence politics, that is, the capability to distinguish between friend and enemy. As such, “[t]he state is the only entity able to distinguish friend and enemy and there by demand of its citizens the readiness to die” (Schwab, 1988: xxiv). Hence, state sovereignty describes its capacity to make decisions with regard to the political. This explains Schmitt’s controversial statement that “a sovereign is he who decides on the exception” (1988:1). The exception simply points to a condition of crisis, disorder, or anarchy. Hence, the decision of the state on the exception can not be judged either by morality or law.

By extending the friend/enemy distinction to interstate relations, Schmitt defends the primacy of power and the legitimacy of war in international relations. He reaffirms the central principle of classical international law, that is, the actions of states can not be judged by a moral standard. As such, Schmitt affirms that there can not be justice between states. According to Habermas, this reasoning is based on the idea that “[n]ormative arguments in international relation are nothing more than a pretext for masking one’s own interests” (DW: 189). However, Schmitt does not abandon the distinction between offensive and defensive war. Rather, he prefers a morally neutral concept of war which will be significant in civilizing rather than abolishing war.

Schmitt severely criticizes the moral condemnation of war and the Kantian pacifist move to abolish war in the name of humanity. According to Schmitt, the moralization of the friendly/enemy distinction will lead to the intensification of war. In other words, pacifist hostility to war, Schmitt holds, will drive the pacifist into a war against the non-pacifist which will result in a total war. Foreshadowing the Second World War, Schmitt argues that:

Such a war(total war) is necessarily unusually intense and inhuman because, by transcending the limits of the political frame work, it simultaneously degrades the enemy into moral and other categories and is forced to make of him a monster that must not only be defeated but also utterly destroyed (2007:6).

Thus, Schmitt rejects any human organization (directed at the time against the League Nations) to abolish war in the name of humanity.

As such, the discriminatory concept of war that Schmitt rejects rests squarely on a critique of moral universalism and moral humanism. For Schmitt, the moral humanism and universalism of human rights will ultimately determine the enemy as an inhuman monster. According to Habermas' reading of Schmitt, "it is ultimately the infection of international law by morality that explains the inhumanity of modern wars and civil wars perpetrated in the name of humanity". (IO: 198)

Habermas rejects Schmitt's critique of morality and the moralization of war based on the idea that war is legally prohibited after WWII. The consequence is that it abolishes the moralizations of war or replaces the distinction between just and unjust war by the procedural distinction between legal and illegal wars.

Legal wars thereby take on the significance of global Police operations. With the establishment of an international criminal court and the codification of the relevant crimes, positive law would be extended to the international level and, under the procedure of legal due process, also safeguards the accused from moral prejudgments. (DW: 189).

Later on, by appreciating the 1823 Monroe doctrine, Schmitt attempts to dissociate the concept of the political and sovereignty from the state and envisioned an international order by replacing states with territorial hemispheres. The Monroe doctrine describes the foreign policy of USA adopted under its fifth President, James Monroe (1817-1825) .It explained that the American continent remain under the influence of the US and European colonial powers have no right to

intervene. It also affirmed that the US will not intervene in the affairs of others. The Monroe Doctrine remained the official position of the USA until WWII.

Carl Schmitt defends this doctrine precisely because it extends the concept of state sovereignty to territorial hemispheres. Similarly, in Schmitt's project of global order, International law will grant "sovereignty" to territorial hemispheres conceived not as state territories but as "spheres of influence". Those spheres will be dominated by imperial powers. Habermas concisely describes Schmitt's project as follows

The international system of hemispheres transfers the principle of non-intervention to the sphere of influence of major powers who assert their cultures and forms of life against one another in a sovereign manner and, if necessary, with military force. The concept of "the political" is sublimated into the self-assertion and radiating influence of imperial powers who impose the stamp of their ideas, values, and national form of life on the identity of the hemisphere as whole. (DW: 192)

Be it as it may, this global order avoids questions of justice which makes it similar to classical international law. Global order ultimately rests on the balance of power among global hemispheres. According to Habermas, Schmitt originally designed this model of an international legal system of hemispheres for the "third Reich" of Nazi Germany.

Schmitt's project has now been revived as a realistic approach to global order. According to Habermas, the current thesis of "clash of cultures" lends support to Schmitt's model as an alternative to hegemonic unilateralism. The thesis of the conflict of cultures operates in postmodern description of power and the impossibility of intercultural dialogue to make human right and democracy universally acceptable. Habermas criticizes Schmitt and the current thesis of "conflict cultures" as inherently skeptical of modernity;

In Schmitt's case, it was already nourished by resentment against western modernity, and its updated version remain completely blind to the productive ideas of self-consciousness, self-determination, and self-realization that continue to shape the normative self-understanding of modernity. (DW: 193)

Based on a thorough analysis and criticism of the above discussed alternative visions of global order, Habermas argues that the only alternative to the Kantian vision is either a weak world organization or a world hegemon (USA). However, for Habermas, the invasion of Iraq by the USA and the support the UN grants poses a major challenge to existing laws. As such, Habermas

presents his proposal of the ‘constitutionalization of International law’ as a critical reconstruction of the Kantian cosmopolitan condition.

Nevertheless it is of paramount importance here to distinguish the argument of Habermas and Kant with regard to the necessity of cosmopolitanism. Kant’s vision of a cosmopolitan condition has a metaphysical ground. Kant deduced the idea of cosmopolitan law from the postulates of practical reason. As such, for Kant, cosmopolitan justice is the law of nature. In other words, Kant conceives cosmopolitan law, not only as a response to political conditions but also as a necessity imposed by reason. For Kant, “practical reason appeared to demonstrate the rational necessity not only of civil society but also cosmopolitan right” (Fine and Smith, 2003:480). Habermas, on the contrary views cosmopolitanism as a pragmatic response to political and social conflict. While Kant derives his cosmopolitan project from transcendental deduction, Habermas “sees it as a response to the inability of the nation state to realize the freedom of its citizens, due on the one hand to the flexibility of global capital, and on the other in irrational manifestations of national sovereignty (Ibid:482).

3.3. Habermas’ Thesis of a world constitution without a world state

Habermas presents the thesis of a world constitution without a world state as a continuation of the Kantian cosmopolitan project. Kant does not fully adopt the idea of a world constitution for the obvious reason that he conceives it in terms of establishing a world state which he feared might become despotic or degenerate into monarchy. As such, “Kant is unable to imagine the constitutionalization of international law in terms other than a transformation of international relations into intra-state relations” (Habermas, 2005:3). Habermas acknowledges that the conception of a cosmopolitan order in terms of a world republic is the wrong model. However, he argues that the Kantian idea of a world constitution can be conceived without the presupposition of a world state. According to Habermas, this is possible if we recognize the simple distinction between “state” and “constitution”;

A “state” is a complex of hierarchically organized capacities available for the exercise of political power or the implementation of political programs; “constitution”, by contrast, defines a horizontal association of citizens by laying down the fundamental rights that free and equal founders mutually grant each other (DW:131).

Habermas claims that this distinction will effect a break from the view of the constiitutionalization of international law as the extension of the constitutional state to the global level. The distinction between state and constitution will enable us, Habermas argues, to overcome the immanent failings of the Kantian cosmopolitan vision. Kant failed to distinguish “state” and” constitution” due to the misleading analogy of the state of nature he adopted. In other words, in as much as the state was the solution to the state of nature among individuals, Kant assumed that a world state must be a solution to the state of nature among states. For Habermas, the analogy is misleading even from the perspective of Kant’s own social contract theory because unlike individuals in the state of nature, individuals within states enjoy certain rights. According to Habermas, “the disanalogy is rooted in the fact that citizens within a state have already undergone a long process of political formation and socialization.” (DW: 129). As such, the transition from international law to cosmopolitan law is complementary but not analogous to the development of the constitutional state. Habermas argues that

The transition from the law of nation to cosmopolitan law can indeed be understood as a constitutionalization of international relations but not as a logical continuation of the evolution of the constitutional state leading from the national to global state (DW:132).

Thus, for Habermas, the distinction between state and constitution will open the possibility to understand how international law is indeed undergoing a process of constiitutionalization. If constitution is understood as a legal code within which equal members mutually grant rights, then even classical international law can be understood as a form of constitution in as much as it creates a legal community with equal right. It differs from the republican constitution in that “it is composed of collective actors rather than individual persons, and it shapes and coordinates powers rather than founding new governmental authorities” (DW: 133). Hence, the constitutionalization of international law or its evolution proceed from the non-hierarchal association of collective actors to a supra and transnational organization of cosmopolitan order.

In this reading of the constitutionalization of international law, the charters, treaties, or agreements that constitute the UN, WTO, EU and other multilateral and regional organizations represent its development towards a cosmopolitan order. According to Habermas, we can realize the cosmopolitan condition by democratizing and reforming those institutions of governance without transforming them into a world state. Hence, “one can construe the political constitution

of a decentered world society as a multi-level system that for good reasons lacks the character of a state as whole” (DW: 135-36).

The simple distinction between “state” and “constitution”, which was not recognized by Kant or others, makes the vision of a world constitution without a world state possible. According to Habermas, this constitution will provide;

[a] politically constituted global society that reserves institutions and procedures of global governance for states at both the supra and transnational levels. Within this framework, members of the community of states are indeed obliged to act in concert but they are not relegated to mere parts of an overarching hierarchical super-state. (DW: 135).

In this respect, unlike international law as a law of states which recognize one type player (nation states) and two playing fields(domestic and foreign policy), the cosmopolitan law that Habermas develops involves three avenues or playing fields -Supranational, transnational, national, and three types of collective actors -a world organization, transnational organizations and states.

The supra-national level involves a single actor, that is, a world organization concerned with the function of securing peace and human rights at the global level. Habermas prefers a reformed UN along with an enhanced capacity to secure human rights and preserve peace effectively and in a non-selective manner. The transitional level will be an arena of global domestic politics where transnational organizations negotiate, deliberate and take binding decision with regard to the world economy and environment. Habermas clarifies the goals and functions of the two levels of global governance as follows.

On this conception, a suitably reformed world organization could perform the vital but clearly circumscribed function of securing peace and promoting human rights at the supranational level in an effective and non-selective fashion without having to assume the state-like character of a world republic. At the intermediate, transnational level, the major powers would address the difficult problems of a global domestic politics which are no longer restricted to mere coordination but extend to promoting actively a rebalanced world order. They would have to cope with global economic and ecological problems within the frame work of permanent conferences and negotiating forums. (WD: 136)

Thus, the reformed UN would specialize on human rights protection and the promotion of peace and will assume the playing field at the supranational level. Habermas's reform proposal includes the strengthening of the UN Security Council, the improvement of its composition, organization, and voting procedures. Furthermore, special agencies of the UN including IMF, World Bank, and the WTO should be detached from the world organization. These organizations would be relocated to the transnational level because "the mandates of organizations such as the World Bank, the International Monetary Fund, and above all the World Trade Organization extend to political decisions with an immediate impact on the global economy" (DW:175).

Habermas admits that there are no strong organizations, except the USA, to fill the transnational field--the locus of global domestic politics in regards to global economic and environmental problems. However, existing multilateral organizations and democratized regional blocs such as EU, NAFTA, ASEAN, AU, etc can take this role. These transnational organizations will negotiate, bargain and cooperate on issues of global domestic policy geared toward overcoming wealth disparities, reverse economical imbalances, avert collective threats, and promote intercultural dialogue. These issues can not be solved by either through power or coercion but rather dialogue. Habermas affirms that:

International relations as we know them would continue to exist in the transnational arena in a modified form_ modified for the simple reason that under an effective UN security regime even the most powerful global players would be denied recourse to war as a legitimate means of resolving conflicts(BNR:325)

The national level of the multilevel global system would consist of the existing member states of the UN. According to Habermas, these states will retain the formal power of the legitimate monopoly of violence. State sovereignty, however, has to be conceived to include not only the right of states but also their obligation to protect welfare of its citizens and the international community .The power of the world organization to secure world peace and protect human rights violation (even against violations of rights of citizens by their own government) does not mean to undermine the sovereignty of states. According to Habermas;

What this means is that the sovereign state still enjoys the privilege of guaranteeing human rights within national borders; the constitutional state fulfils this function on behalf its democratic citizens. In their role as subjects of international law--as cosmopolitan citizens--these citizens have simultaneously, however, equipped the world organization with the competence to act on their behalf as a stand-in case of emergency, when the primary agent, their own government, is no longer able or willing to grant their rights. (2005:31).

In light of reforming the UN charter, Habermas provides an ideal model of a possible world constitution. This proposal takes individuals and states as the two categories of the founding subjects of a cosmopolitan order. Unlike the constitutional state conceived by the social contract tradition as founded by individuals, for Habermas, a constitutionally structured cosmopolitan order would be established both by individuals and states. Habermas explicates why states should be subjects of world constitution as follows.

In addition to the potential world citizens, the states represent possible sources of legitimation because patriotic citizens... have an interest in reserving and improving the respective national forms of life with which they identify and for which they feel themselves responsible-in a self-critical way that also extends in their own national history.(2008:449)

In a constitutionally structured multi-level cosmopolitan order, the supranational level will be represented by a world organization. The world organization will have both the special function of securing peace and human rights, and represents the unity of the global legal system (that is because it embodies the international community of states and individuals). As such, “the charter can play the role of a cosmopolitan constitution because it is supposed to rest on both international treaties and domestic referenda and hence would be enacted “in the name of the citizens of the states of the world (Ibid). Representatives of cosmopolitan citizens and states can constitute the world parliament whose legislative function would be limited to the interpretation and elaboration of the charter.

According to Habermas, the General Assembly will be the centre of opinion and will formation with regard to principles of transnational justice. This will be the normative ground of global domestic politics, the negotiations, bargains and agreements that is to be played by transitional organizational.

In as much as states retain the legitimate monopoly of violence, the international courts and the Security Council will consist of states only. However, states are not allowed to engage in war. Be that as it may, states, for Habermas, remain the most important actors and final arbiters on the global stage because supranational and transnational governance or their decisions depends on the military power and agreement among states.

3.3.1. Global Justice in a Multi-Level Cosmopolitan Order

Habermas's model of a constitutionally structured cosmopolitan order is geared toward achieving the universal principles of justice; human rights, wealth distribution and democratic participation. It has been shown that at the level of a state, those normative principles can be realized by constitutionally regulated power, the constitutional guarantee of basic rights, a production of law by representative bodies, and legitimation through civil society or a political public sphere. Can a multi-level global system lacking the character of a state achieve global justice? In the following discussion, we will explicate how justice is conceived and can be realized within Habermas' multi-level cosmopolitan project.

As it has been shown in the preceding discussion, Habermas's multi-level model of global order consists of supranational, transnational and national arenas and respective actors. The supranational level is to be represented by a world organization. The world organization will have both the special function of securing peace and human rights, and the representative role of the unity of the global legal system (as it represents the international community of states and individuals). From this, two interpretations of global justice are attached to the world organization. First, the notion of justice is conceived only in terms of securing peace and protection of human rights. In other words, the world organization will fulfill the duty to prevent wars and protect human rights violations at the global level. In addition, democratic participation for the legitimation of the decisions of the organization can be achieved through a well-functioning global public sphere. However, the consensus among citizens is limited to moral condemnations of human right violations and aggression. The reason, for Habermas, is that

The clear negative duties of a universalistic morality of Justice- the duty not to engage in wars of aggression and not to commit crimes against humanity ultimately constitute the standards for the verdicts of international courts and the political decisions of the world organization.(DW;143)

This implies that unlike solidarity at the national level which is geared toward achieving justice in its fuller sense including human right protection, democratic participation, and the distribution of wealth, solidarity among world citizens is limited to producing the moral commitment to stand against human right violations and war.

The second, notion of justice associated with the world organization is providing the normative framework for global domestic politics at the transitional. This emanates from its representative role of the global legal system. The transnational level is the field where multilateral organizations and regional blocs negotiate, bargain and pass binding decision with regard to distributive justice. In this regard, the cosmopolitan constitution prohibits war as a means of conflict resolution. Further more; the world organization (General Assembly) will lay down the parameters of transnational justice to guide transnational negotiation systems. Hence, the traditional notion of power politics will have no place in global domestic politics. Even if there would be unequal partners and balance power may shape global domestic politics, Habermas clearly states that.

Power politics would no longer have the last word within the international community. The balancing of interests would take place in the transitional negotiation system under the privies of at compliance with the parameters of justices subject to continual adjustment in the general assembly. From a normative point of view, the power-driven process of compromise formation can also be understood as an application of the principles of transitional justice negotiated at the supranational level. However, "application" should not be understood in the judicial sense of an interpretation of law. For the principles of justice are formulated at such a high level of abstraction that the scope for discretion they leave open would have to be made good at the political level. (2008:452).

From the above mentioned reading, we can affirm that even if the world organization can provide a broad normative principle of transnational justice, distributive justice (global wealth distribution and environmental hazards) will be actualized at the level of global domestic politics performed by transnational organizations. In as much as the transnational principles of justice laid out by the world organization for global domestic politics is not akin to interpretation law and at the discretion of transitional players, the discussion and negotiations at transnational level demands different mode of legislation and democratic participation on the party citizens and different states.

On the one hand, representatives of multilateral organizations and regional blocs must have democratic origin on the other hand; national public spheres should cooperate so that openness and transparency can be realized in transnational politics. Habermas describes this as follows.

The delegates, chief negotiators would be equipped with a democratic mandate at the transnational level only if so far as a process of political opinion and will-formation concerning the parameters of global domestic politics created among citizens who are in a position to influence the delegating authorities.(2008:452)

To summarize, we can state that Habermas provides a differentiated conception of justice in a constitutionally structured multilevel global system. Corresponding to the special function of the world organization, to secure peace and human rights, a universalistic morality of justice describing negative duties is presented. Though the world organization lays down the normative principles of transnational justice, the actualization of distributive justice is not the concern of the world organization. Rather, global distributive justice is the outcome of negotiations and decisions at the transitional level. Habermas also emphasize the other side of justice, that is, democratic participation. However, unlike solidarity and public sphere at the state level, Habermas envisages a weak form of legitimation and solidarity at the global level that is limited to commitment to peace and human rights. With regard to global domestic politics where the question of distributive justice arises, democratic legitimacy depends on the normative force of the world constitution (or decisions of the world organization), the democratic character of transitional organizations, the strength of national and transnational public spheres and their cooperation.

Chapter Four: Critique of Habermas' Cosmopolitan Project

In the preceding three chapters, I have demonstrated Habermas' post metaphysical theory of reason, the theory of communicative action, the discourse justification of the constitutional state and the post national constellation. On this basis, I have exposed that Habermas envisions the cosmopolitan condition as a constitutionally structured multi level world order without a world state or government. This is an ambitious project designed for securing world peace and human rights protection at the supranational level, and regulating economic globalization through a world domestic politics among major powers at the transnational level. At the third level of the cosmopolitan order, states will secure the rights and freedoms of citizens and retain a formal power of the monopoly of legitimate use of force. Is this project realistic, coherent or feasible? How can a reformed UN consistently secure world peace and protect human rights if it lacks the character of statehood? Or otherwise put; how can the distinction between state and constitution be maintained if the consistent and selective application of cosmopolitan law especially against major global powers requires at least political and military power on the part of the world organization? How can global domestic politics realize global distributive justice in an economically stratified world society? I will criticize Habermas' cosmopolitan project in light of these questions. My critique will focus on the discourse justification of norms in general and human rights in particular, Habermas' proposal of multilevel global governance without world government, and the model of global domestic politics. I will lay the groundwork for my critique by briefly over viewing these core thematic areas below.

Habermas' cosmopolitan project is grounded on the normative force of human rights which determines the regulation of economic globalization and irrational manifestations of state sovereignty. This is certainly an affirmation of the supreme value of human dignity and freedom transcending all material interests, and particular social and political values. Habermas justifies the co-genesis of human rights and popular sovereignty on the basis of communicative freedom that is conceived to exist in communicative action geared towards reaching understanding. As such, the normativity of human rights can be said to be derived from the autonomous status of the public sphere from material, political and particular interests to justify moral norms through deliberation and discourse. Habermas then prescribes a holistic system of rights that should be realized by a constitutional state or a cosmopolitan legal order.

At the domestic level, the constitution is conceived as an ongoing project with the goal of realizing a system of rights in changing circumstances. This goal is to be achieved through the control of the political and economic system by the will of the people developed in deliberation and discourse. This is the foundation of what Habermas calls constitutional patriotism – the commitment to maintain the constitutional project as an association of a free and equal citizens under laws they have themselves created.

Habermas' multi-level cosmopolitan legal order, though lacking the character of statehood, is geared towards realizing the same system of rights. This also requires the institutionalization of transnational opinion and will-formation so that norms can be justified independently of economic globalization, supranational and transnational legal orders, and particular national interests. This is considered significant to develop cosmopolitan consciousness and solidarity in individual citizens so that they can influence their respective states and transnational organizations to consider themselves as part of a cosmopolitan legal order.

Even if Habermas provides human rights as central defining elements of constitutional order both at the domestic and global level, the justification, content, and cross-cultural validity of human rights as universal individual rights is not beyond controversy and criticism. While Realist scholars criticize the application of the concept of human rights in international relations as the moralization of politics masking one's interest; non-Western governments consider them parts of cultural imperialism. Specifically speaking, non-Western governments opposed the universalism of human rights on the ground that it is justified with a reference to western culture of possessive individualism. How can then the discourse justifying of human rights developed in a particular western culture be cross-culturally valid?

This controversy over the philosophical justification of human rights is important in order to examine the universality of the discourse of justification of moral and legal norms. I would like to mention here that the universal claim of norms justified in discourse is grounded on the universal pragmatic presuppositions of communication or the fulfillment of the procedures of discourse. Thus, I would like to criticize Habermas' justification of human rights in light of the problems facing the justification of norms in general. That is, economic, political, cultural and private interests will affect the procedures and autonomy of the public sphere in the justification of norms that would claim universal validity. When we extend the procedural account of norms

to the global level, it is necessary to examine the autonomous status of national and transnational public spheres from economic globalization, particular political and cultural values. This will be important to assess as to whether the discourse of justification of norms in general and human rights in particular mask particular economic, political and cultural interests that it claims to transcend.

I think, the global controversy over the content, and cross cultural validity of human rights will pose challenges to Habermas' cosmopolitan project. First, an ultra minimalist conception of human rights protection at the global level limited to civil and political rights will lack cross-cultural validity. Second, even if a universal consensus on human rights at the global level can be assumed, securing world peace and human rights consistently and non-selectively will become questionable in as much as the new world organization lacks the character of statehood.

The regulation of economic globalization and the realization of economic and social justice through global domestic politics at the transnational level will also be challenged by the economic stratification of world society. We can understand this in view of Habermas' argument that the legitimacy of transnational negotiations depends on the influence of transnational public spheres. In this respect, I will argue that transnational deliberations will not be inclusive for the obvious reason that the majority of the world populations lack the minimum social and material conditions for such discourse. Thus, the goal of overcoming global wealth disparities will ultimately become dependent on the transcendence of private interests on the part of the few participants in discourse to produce norms for the sake of humanity. However, this will be difficult to assume because the autonomy transnational public spheres is compromised by economic globalization. As such, we are required to question as to whether the public sphere itself structurally depends on the economic stratification of world society and can be used to pursue one's economic interest.

Thus, I have divided my criticism into three related parts. In the first part, I will examine the normativity of human rights, that is, whether the discourse of human rights or the autonomous status of the public sphere is contaminated by economic globalization. To achieve this, I will clarify justification of norms in general, and I will show the problems that challenge the normative status of the domestic public sphere. I will then situate Habermas in the global controversy over human rights. In the second part, I will examine Habermas' model of multi-

level global governance without global government. In this part, I will examine the tenability of Habermas' distinction between "state" and "constitution" especially at the supranational level of governance and the hierarchy of human rights that Habermas adopts. In the third part, I will examine Habermas' model of global domestic politics. In this part, I will examine the feasibility of Habermas' project especially to overcome global social and economic inequalities. I will argue that this project is constructed based on a Eurocentric analysis of the effects of economic globalization, especially, the development of cosmopolitan consciousness due to transnational migration. This overlooks both the plight of people in the postcolonial South and the possibility of developing popular based nationalism to overcome the devastating effects of economic globalization.

4.1. The Normativity of Human Rights in the Age of Globalization

Habermas' justification of human rights reflects a dual conception of human rights both as moral and legal norms. Habermas affirms that "Human rights are Janus-faced, looking simultaneously toward morality and law" (PNC: 118). What this means is that human rights share the features of both moral and legal norms. Human rights are legal norms because they are basic individual rights within constitutional democracy. They are also moral norms in that they refer to all human beings. This, however, does not mean that human rights are derived from the pre-political, pre-social moral rights of individuals. This is so because the discourse justification of a system of rights does not presuppose pre-given natural rights of individuals prior to citizens' practice of self-determination or opinion-and-will formation. Thus, Habermas justifies the co-originality of human rights and popular sovereignty only with the presupposition of the discourse principle "D" and the legal medium (basic rights of individuals)(see chapter 1sec.3). Hence, "human rights are not pre-given moral truths to be discovered but rather are constructions" (PNC: 122)

Nevertheless human rights are not merely legal rights but share the features of moral norms in two ways. First, human rights like moral norms are universal in that they not only refer to citizens of a given state but to all human beings. Second, like moral norms, the justifications of human rights require moral argumentation. In other words, unlike other legal norms within a state, human rights are justified without a consideration of what Habermas calls ethical-political and pragmatic interest. As such, the justification of moral norms in general and human rights in particular requires not only the autonomy of political deliberation from political and material

forces but also the transcendence of ethical values and private interest on the part of participants in the deliberation. It is this conception of autonomy and transcendence that constitutes the universality of moral norms in general and human rights in particular.

I think, Habermas' justification of human rights can be criticized on the ground that the autonomy of the public sphere and participant's transcendence of private interests do not reflect the realities of pluralistic societies or capitalist liberal democracies. I will not discuss in detail the criticism raised against Habermas' idealization of the bourgeois public sphere and its decline. It suffices here to state that the bourgeois public sphere was dominated by white, property owning males and excluded the working class, women and others from participation. In fact Habermas continuously refines the original thesis of the concept of the public sphere in response to his critiques. However, the public sphere still forms the ground of Habermas' democratic theory. He affirms the importance of markets and the administrative state but argues that they can not be expected to bring democratic transformation by themselves. As such, "the democratic ideal should be to bring those [the market and the administrative state] under the control of the will of the people as formed in open and public debate" (McCarthy, 1996:63). The public sphere is now conceived as an arena of deliberation and debate among informal organizations and voluntary associations on issues of public interest. This is taken to be significant for the legitimation of formal decision making processes.

Nevertheless the presupposition of the autonomy of the public sphere from political and material forces is still unrealistic in pluralistic societies where economy and state are systematically integrated. This implies that the public sphere is subverted by organized interests and power. Even if Habermas himself admits this fact and insists on the revitalization of the public sphere, the reality of capitalist democracies could not fulfill the presuppositions of ideal discourse. Uwe Steinhoff notes that;

Habermas mentions the public sphere as an ultimately decisive bastion of legitimacy. However, it is not at all clear how the public sphere should be able to so stem the tide of the invasive illegitimate power that a discursive decision can be made that is at least sufficiently competent. After all, as Habermas correctly notes: "No doubt... [the] assumption of an unsubverted... political public sphere is unrealistic". Yet according to Habermas's own model the mere fact of a subversion of the communicative situation already violates the requirements of a competent discourse. Moreover, public spheres are not infrequently taken over by precisely the illegitimate power that they are supposed to repel (2009:233).

Thus, democratic politics is not predominantly determined by rational debate and consensus. Rather it is subject to ongoing interplay of power and interests. We can understand this in two ways: First, the laws and decisions of the state do not reflect public interest developed in discourse. Rather, the laws and decisions of the state serve to pursue illegitimate political and economic interest; second, the very procedural requirement of openness and inclusiveness of deliberation is affected by political power, economic interest and social values. As such even if the concept of the public sphere is significant for democratic theory, Habermas's idea of one inclusive democratic public sphere and the presupposition of consensus cannot fit the realities of capitalist democracies.

Habermas' conception of one inclusive democratic public sphere and the ideal of consensus is also challenged by different scholars. In the first case, Nancy Frazer argues that participation in the public sphere is not universal because it is determined by the values of dominant culture and power. She suggests the possibility of conceiving multiple public spheres which can overlap, or compete or conflict. She affirms that "an adequate conception of the public sphere requires not merely the bracketing, but rather the elimination of social inequality... a multiplicity of publics is preferable to a single public sphere both in stratified societies and egalitarian societies" (1996:136-137).

Thomas McCarthy also challenges Habermas's assumption of rational consensus especially with regard to moral norms which are to be binding on all human beings. McCarthy argues that in as much as participants in discourse have different world views, they may disagree as to whether an issue is moral, ethical and pragmatic. As such, he argues that rational consensus shall not be presupposed. Rather, difference or disagreement must be part of discourse. McCarthy states that:

If not even moral philosophers have been able to agree on the nature and cope of morality, any realistic conceptualization of the democratic public sphere will have to allow for disagreement in this regard too. Furthermore, since political discourse always takes place under less than ideal conditions, it will always be open to dissenters to view any given collective decision as tainted by de facto limitations and thus as not acceptable under ideal conditions. Disagreements of these sorts are likely to be a permanent feature of democratic public life. They are in general resolvable by strategic compromise, rational consensus, or ethical self-clarification in Habermas's sense of these terms. All that remains in his scheme are more or less subtle forms of, e.g., majority rule and the threat of legal sanctions. (1996:67-68).

Thus, the universality of human rights both as legal and moral norms appears to be problematic for the obvious reason that the autonomous status of the political public sphere is shown to be challenged by material and political forces. Furthermore, the universality of moral norms produced through consensus is questionable because participants in discourse can not transcend or be expected to transcend their particular ethical values and private interests to reach consensus on moral norms that are universally applicable to all human beings. I think, it is important to examine Habermas' justification of human rights as universal individual rights within the context of the global controversies over the content, hierarchy and cross cultural validity of human rights. To this end, I will clarify the historic material context that contributed to the internationalization of the concept of human rights; the global controversies associated with it, and situate Habermas in this debate.

The concept of human rights assumes central place in international relations after WWII. It is associated with the establishment of the UN in 1945 and the proclamation of the Universal Declaration of Human rights (UDHR) by the General Assembly in 1948. The historical background that contributed to the global discourse on human rights was the gross violation of human rights or genocide by the Nazi regime. Pheng Chea states that:

The need to institutionalize human rights discourse at the level of international relations become more urgent after the second world war, during which human rights violations by the totalitarian Nazi regime were so extreme that they were regarded not simply as crimes against individuals but as crimes against humanity as a whole (2006:145).

The UN charter expresses a reaffirmation of faith in fundamental human rights as one of the central objectives of the world organization. The UDHR also proclaim human rights as goals to be achieved by every state. The founding members of the UN and signatories of the UDHR agreed on the prevention of gross violation of human rights, though shocked by the atrocities committed by the Nazi regime, the philosophical foundation, content, hierarchy and cross-cultural validity of human rights has remained controversial. The application of the concept of human rights has been criticized as the moralization of politics by realist scholars like Carl Schmitt. Non-Western governments' especially East Asian governments consider the globalization of human rights ideological instruments of cultural imperialism. The controversy is related with the universality of human rights claimed by the UN and UDHR while their justification is rooted in the specific western culture of individualism and the much discredited

natural theory of rights. Even though the UDHR avoids the western concepts of 'natural rights' and use the 'concept of human rights, Michael Freeman notes that;

The concept of human rights is however, sufficiently similar to the Lockean concept of natural rights that it is located in the western liberal tradition. This makes it doubly controversial; because it is western, and because it is liberal. However influential the concept of human rights may be, and however appealing it may to many people, it is philosophically ungrounded (2002:35-36).

It is precisely the application of this subjective and moral ideal of human rights that realist scholars opposed in international relations. Specifically speaking, Carl Schmitt convincingly argues that the internationalization of human rights is simply the moralization of politics masking one's interests. In addition, the moralization of politics, that is, the judgment of political enemy in terms of good and evil can be used to dehumanize and annihilate the enemy. Schmitt affirms that "when a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but rather a war wherein a particular state usurps a universal concept in its struggle against its enemy" (cited in Habermas, IO:54).

Habermas agrees with Carl Schmitt with regard to the dangers inherent in the moral interpretation of human rights. However, Habermas argues that the implementation of the concept of human rights in international relations is not tantamount to the moralization of politics because human rights are legal rights. Habermas states that "The concept of human rights does not have its origins in morality, but rather bears the imprint of the modern concept of individual liberties, hence of a specifically juridical concept" (IO: 190). For Habermas, the origin of the modern idea of human rights can be traced back to the American Declaration of Independence (1776) and the French Declaration of the rights of man and citizens (1791)

However, by accepting the legitimacy of those legal documents, Habermas falls back to legal positivistic stance that he criticizes. Indeed, Habermas contradict himself when he assumes the legitimacy of at least the American and German constitutional principles. Uwe Steinhoff states that "Although the legitimacy of our [German] constitutional principles has never been demonstrated in an ideal discourse (since there has never been such a discourse), Habermas simply assumes the legitimacy of our constitution and of the laws generated according to the procedures it prescribes" (2009:235).

Be that as it may, by avoiding a moral reading of human rights, Habermas rejects the realist objection to the global politics of human rights as moralization of politics and defends the construction of a cosmopolitan legal order. He affirms that:

Human rights fundamentalism is avoided not by renouncing the politics of human rights, but only through a cosmopolitan transformation of the state of nature among states into a legal order. (IO: 200-201)

Thus, Habermas's argues that the internationalization of human rights does not amount to the moralization of politics but the juridification of international relations. Due to juridical nature of human rights, the global realization of it simply requires the establishment of an impartial judiciary and fair enforcement mechanism.

Nevertheless Habermas' legal reading of human rights and his argument for global realization still face the challenge of cross-cultural validity. How can Habermas' legal individualist account of human rights be valid in non-western Asian and African communal societies? These societies prioritize the community over the individual, duties over rights or ethics over law. As such, the legal individualist interpretation of human rights seems to be incompatible with communally structured societies integrated more by duty than right. Thus, the call for the global juridification of human right amounts to imposition of western culture of individualism or what is commonly called western cultural imperialism.

The critique of the universality of human rights as the expression of cultural imperialism is often advocated by Asian governments in international human right conferences .specifically, Asian governments opposed the universalism of human rights in the Vienna world conference on human rights in 1993. They argued that the universality of individualistic human rights undermined shared cultural values which really give shape to rights at all. The foreign minister of Singapore claims that "the extent and exercise of rights... varies greatly from one culture or political community to another... because [rights] are the products of the historical experiences of particular peoples" (cited in Pheng Chea, 2006:147). Thus, Asian governments view the global juridification of human rights as western cultural imperialism. This is implicit in the Bangkok Declaration Signed by Singapore, Taiwan, Malaysia, and China in 1993. Thomas Pogge (cited in Flynn, 2003:430) explains the arguments and reason against the global juridification of human rights as follows.

Insistence on the juridification of human rights... provokes the communitarian and East Asian criticism that human rights lead persons to view themselves as westerners: atomized, autonomous, secular and self-interested. Individuals ready to insist on their right no matter what the cost may be to others or the society at large.

Even if Habermas's individualistic legal conception of human rights is still within the western legal tradition, I think, the above quoted criticism can not be leveled against Habermas at the theoretical level because his theoretical justification of the system rights and the constitutional state has an intersubjective foundation. In other words, Habermas's individualistic interpretation of human rights is not equivalent to the western culture of possessive individualism which justifies individual rights on a pre-social, pre-legal moral ground. For Habermas, individuals acquire rights only in the context of a legal community presupposed on inter subjective recognition. Habermas asserts that:

At a conceptual level, rights do not immediately refer to atomistic and estranged individuals who are possessively set against one another. On the contrary, as elements of the legal order they presuppose collaboration among subjects who recognize one another, in their reciprocally related rights and duties, as free and equal citizens. This mutual recognition is constitutive for a legal order from which actionable rights are derived. In this sense "subjective" rights emerge co-originally with "objective" law, to use the terminology of German jurisprudence. (BFN: 88).

Thus, Habermas' justification of human rights as individual rights can be defended against the non-western criticism of possessive individual rights. However, Habermas' thesis of the global juridification of human rights still faces the challenge: why should non-western societies adopt the individualistic form of law developed in western societies? Is the Western legal tradition normatively superior to non western values?

Habermas does not justify the universality of human rights by affirming the normative superiority of Western culture of individualism. Rather, he turns to the functional argument that the individualistic form of law is functionally necessary in capitalist socio-economic modernization. Modern economic societies demand individualistic legal order because they rely on the decentralized decisions of independent actors. As such, non-western societies should adopt the individualistic legal tradition because it helps them function in a globalized system of market relations. The question is not whether human rights as part of an individualistic legal order are compatible with non-western cultures but whether these cultures can successfully be integrated in global socio-economic modernization. Habermas explains this as follows

From the perspective of Asian countries, the question is not whether human rights, as part of an individualistic legal order, are compatible with the transmission of one's culture. Rather, the question is whether the traditional forms of political and societal integration can be reasserted against-or must instead be adapted to- the hard-to-resist imperatives of an economic modernization that has won approval on the whole. (PNC: 124)

Is Habermas's call for the global juridification of human rights simply an attempt to give a human face to economic globalization? How can Habermas justify the normativity of human rights if he views them as functional requirements of economic globalization? In this regard, I agree with Pheng Chea's argument that "the normativity of human rights is necessarily contaminated because they are repeatedly rewoven back to the working of global capitalism" (2006:13).

Habermas argues that the global controversy over the content and validity of human rights can be resolved through discourse and deliberation. He views the emergence of a global public sphere due to globalization process as an arena of discourse oriented toward consensus on the precise nature and realization of human rights at the global level. In light of our discussion with regard to the questionable status of the autonomy of domestic public sphere, how can we assume the emergences of global public sphere that could justify the normativity of human rights independently of global capitalism and power? Let us look closely at Pheng Chea's argument that the global discourse on human rights and the controversy between Western and Asian government is linked to economic globalization and examine Habermas' trust in the questionable status of a global public sphere.

According to Pheng Chea, the disagreement of Northern hegemonic states and Asian governments over human rights should not be interpreted as the conflict between universalism and cultural relativism in as much as both function in the framework of economic globalization. Northern governments especially the USA advocate the universality of individualistic human rights because there is a close link between human rights and commercial industrial growth. Chea argues that the globalization of human rights and the market economy, in other words, serve Northern economic hegemony;

It can cover up the scandalous open secret that the resource-intensive and inherently wasteful macro-policies of economic development and market economy-led linear models espoused by international development agencies and financial institutions such as the World Bank and International Monetary Fund force some countries of the south deeper and deeper into debt, thereby maintaining an unjust global economic order controlled by a handful of elites, transnational corporations (TNCs) and Northern states. (2006:61-62)

Furthermore, Pheng Chea argues that the close connection between human rights, trade and Northern economic hegemony is evident if one takes the case of the global institutionalization of intellectual property rights. The best manifestation of this is the WTO agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). According to Chea, the TRIPS are a “policy of technological protectionism” aimed at the consolidation of international division of labor whereby Northern countries generate innovation and southern countries become markets for resulting products and services. It is an arrangement of global division between knowledge rich and poor countries there by recolonizing the latter by permanently blocking them acquiring the knowledge and capacity of accumulate wealth. Chea argues that:

Indeed, the global expansion of intellectual property protection can also be a legalized form of late capitalist theft. As Vandana Shiva points out, international patent and licensing agreements facilitate a new era of bio-imperialism since they are used by Northern-based transnational pharmaceutical and agribusiness corporations to monopolize the biological resources of the Third World, which can be developed into drugs, food, and energy resources. (Ibid: 162-163)

Thus, the universalism of human rights advocated by the western world serves to justify encroachment upon the national sovereignty of the developing world “political freedom and the liberalization/freeing of trade go hand in hand. The former secures assent for the globalizing of market mechanism and the continuing fiscalization of the globe” (Ibid: 163)

It is precisely the priority of political and civil rights in the west that Asian governments reject. The argument of Asian governments against the individualism of human rights is not as such a complete rejection of the global discourse on human rights. Rather, they would like to make civil and political rights subordinate to socio-economic rights expressed as the right to development. According to Chea, Asian governments accuse western world of applying a limited vision of human rights “as a power play to sabotage the economic success East Asia” (Ibid: 156). As such, these governments reaffirm national sovereignty and resist intervention by Northern governments over human right issues. Hence, “Asian governments therefore argue that communitarian values and national-territorial integrity are necessary conditions far the concrete maximization of human dignity” (Ibid: 157).

Habermas criticizes Asian governments in using cultural rights to justify authoritarianism and violation of civil and political rights. To my mind, however, Pheng Chea correctly recognizes the internal contradiction of the claim of Asian governments for cultural rights on the ground that they themselves do not respect cultural difference and most importantly make cultural rights instrumental to their model of state capitalism. Chea notes that;

[t]he claim to cultural difference by Asian states is itself questionable since the figured face of statist cultural difference is not identical to the cultural diversity of its peoples. The very governments that claim to be the custodians of Southeast Asian cultures are responsible for the destruction of the cultures of indigenous peoples who stand in the way of the deforestation and mining project of state supported capitalist development (2006:147-148).

Habermas' theoretical justification of human rights provides a holistic system of rights including civil, political, and socio-economic rights. He criticizes the one side interpretation or implementation of socio-economic rights by Asian governments. Habermas argues that normative priority can not be accorded to social and economic rights over civil and political rights because the former simply serves the exercise of individual rights.

From a normative stand point, according "priority" to social and cultural basic rights does not make sense for the simple reason that such rights only serves to secure the "fair-value" (Rawls) of liberal and political basic rights, lie the factual presuppositions for the equal opportunity to exercise individual rights (PNC:125)

From the above quoted reading, it is possible to argue that Habermas accords priority to basic civil and political rights or view socio-economic and cultural rights to be instrumental to individual rights. This does not differ from the position of western government. However, Habermas simply argues that the creation of a global legal order which demands the global recognition to basic civil and political rights is significant in order to facilitate cross-cultural dialogue so that western interpretations of human rights will be evaluated in non-western contexts and a global human rights regime can be legitimated. In addition, cross-cultural dialogue shall not be the sole role of government or religious leaders. Rather interpreting tradition should be the task of global civil society which requires the establishment of transnational democratic institutions and transitional public spheres. Jeffrey Flynn (200:456) explains Habermas intention as follows:

Meaningful cross-cultural dialogue must involve more than taking government leaders as sole spokespersons for their cultures. It means that democratic institution must take root sufficiently to allow those affected the chance to participate in an inter-cultural dialogue in order to develop their own interpretations of what their tradition can or can not support. In order for inter-cultural dialogue to bring legitimacy to a consensus on a broad range of human rights, a variety of intra-cultural dialogues need to be undertaken and sustained in a way that protects those who undertake them.

Be that as it may, like the western and Asian countries, Habermas' argument questionable is due to the fact that the autonomous status of transnational public spheres from economic globalization is uncertain.

Habermas assumes that the postnational constellation favors the creation of a global legal order and development of cosmopolitan consciousness. In this regard, the global and transitional public sphere is conceived to transcend particular and national interests which would enable it to become an arena of discourse that mediate between humanity and a global legal order. In this regard, he takes NGOS, interest groups and civic society associations as representatives of universal human concerns. However, in the absence of supranational executive body, civil society associations become dependent on the agency of nation-states. "Indeed, even when NGOS invoke former international human rights instruments to make their claims on behalf of humanity, these claims are always channeled through specific national sites, against specific nation-states." (Chea, 2006:166). According to Pheng Chea's observation, human rights NGOs function in an unequal global economic order and are vulnerable to co-optation by computing states on both side of the North /South divide. Chea notes that

In fighting against state violations of human rights, NGOs from the south are precariously balanced between, on the one hand, relying on Northern sources for funding and the risk of co-optation by the international media and the expansionist economic interests of wealthy post industrial countries and, on the other hand, criticizing statist models of development in the south without jeopardizing the ambivalent need for the nation-state as an agent of accumulation in defense against transnational capital. Simply put, NGOs are always part of the linkages of global capital as they invest state-formations and are effective only by virtue of being so.(Ibid:166)

Thus, it is possible to state that the global public sphere does not possess the requisite autonomy to mediate between humanity and a global legal order. Even if there is no other normative choices' in the task of constructing a normative global legal order than human rights, the universality of human rights always function within the historio-material context in which it is posed. This is works for the individualism of human rights justified on the basis of morality

peculiar to western tradition, human rights to cultural self determination on the part of non-western cultures and the individualism of human rights justified on the ground of inter subjective reason in Habermas's case.

To summarize, I have demonstrated that Habermas' justification of human rights moves along both legal and moral lines. He avoids a strong moral interpretation of human rights because it undermines notions of public autonomy or popular sovereignty. The universality of human rights justified in moral discourse is shown to be problematic on the ground that the autonomy of the public sphere and participant's transcendence of ethical values and private interest to serve as a pure ground for a rational articulation of norms is questionable. I have also argued that the justification of human rights as universal individual right which requires only the establishment of global legal order lack cross-cultural validity. It also can not escape contamination by economic globalization. I have demonstrated this by showing the contamination of global transitional public spheres by economic and particularistic interest. This in turn affects the normative status of transitional public sphere to serve as an arena of cross-cultural dialogue to reach consensus on a global human rights regime. In addition, the contamination of global public sphere by economic globalization would make it difficult to pose it as representative of humanity before a global legal order.

4.2. Critique of Cosmopolitan Legal order Without a State

Habermas develops a cosmopolitan legal order based on the universality of human rights and democratic participation—the central normative principles of the constitutional state. However, Habermas makes a distinction between “constitution” and “state” to provide a global constitutional order lacking the character of statehood or simply a multi-level global governance without global government. Habermas locates the realization of world peace and human rights at the supranational level while realization of global distributive justice is located at the transnational level. Nonetheless Habermas's distinction between “constitution” and “state” especially at the supranational level becomes questionable for the reason that the world organization can not apply cosmopolitan law especially against major powers if it lacks the political and military power to enforce its decisions. Furthermore, Habermas adopts an ultra minimalist conception of human rights limited to protection of civil and political rights. In the

following discussion, I will examine Habermas project of a cosmopolitan legal order without a state and also his ultra minimalist conception of human right at the supranational level.

Habermas model of global legal order without a states prescribes human rights protection and world peace to a new world organization or a reformed UN. The reformed UN, however, lacks the character of statehood, that is, it does not possess a monopoly on the legitimate use of force. According to Habermas, a reformed UN would be made accountable to global public sphere and the Security Council would act under constitutional obligation. In light of the selective and inconsistent protection of human rights and world peace characteristic of the UN system, how can a reformed UN consistently apply cosmopolitan law if states retain the exclusive control over military power? This question is important if one recognizes that the UN system itself reflects the hegemonic law of the stronger legally secured in the Security Council. As such, the veto power possessed by major powers can undermine the will of others members or the function of the world organization. The history of the UN attests to this.

Thus, “constitution” and “state” become closely related in that generality and consistency in law presupposes some capacity to enforce legal norms. As such, Habermas’s model of constitutional order lacking character of statehood becomes questionable because the reformed UN lacks appropriate political and military power and hence cannot consistently apply cosmopolitan law especially against major powers such as the USA, China, Britain, etc. Indeed, Habermas appear to be realistic when he suggests that the UN reform should take into account “the legitimate interest of a super power that must be kept integrated into the world organization” (DW: 173). Whatever the case, Habermas’ model of global governance without global government becomes unacceptable because the consistent and non-selective application of cosmopolitan law demands political and military power on the part of the world organization. This is to suggest that even if cosmopolitan legal order may lack the character of state hood as a whole, it requires the establishment of some core elements of global government especially military power.

Habermas attempts to defend this criticism by emphasizing the postnational constellation, that is, the blurring of the distinction between foreign and domestic policy which will force states to replace the traditional forms of diplomatic pressures and military force with “soft power”. He also counts on the emergence of global public sphere and discourse .He argues “we should not underestimate the capacity of international discourse to transform mentalities under the pressures

to adapt to the new legal construction of the international community” (DW: 177). Habermas’s argument is that even if major powers like the USA possess’ military power to ignore the UN and cosmopolitan law, they might not employ this power because of an altered self perception or the influence of international discourse.

Habermas also attempts to deal with the problem of applying cosmopolitan law consistently and non-selectively by limiting the function of the world organization to the protection of human rights and world peace which are universally accepted. Human rights protection involves only the negative duties of preventing massive human right violation due to armed conflicts, ethnic cleansing and genocide. According to Habermas, all cultures consider wars of aggression and crimes against humanity human rights violation. This can serve to justify the decision of the world organization.

The negative duties of a universalistic morality of justice-the duty to refrain from crimes against humanity and wars of aggression are rooted in all cultures, and happily correspond to the yardsticks which the institution of the world organization themselves use to justify their decisions (2005:35).

However, Habermas’s argument can be challenged from two directions. First, in light of the global controversy over human rights, and economic globalization, affirming the universality of civil and political rights will not do justice to human rights. I will clarify this argument below. Second, even if the international community can agree on universalistic morality of justice, the decision to go to war is the most fundamental and controversial issue according to realist scholars such as Schmitt. In this regard, realist scholars affirm that states cannot simply transfer their power of decisions on war and peace to a world organization. Indeed, this is historically proven in that even if states sign the prohibition on war of aggression, a central principle of the UN system, it is those same states that violate this law or undermine the UN system. The application of the special function of the new world organization will surely turn out to be controversial. “The fact that the prohibitions on war of aggression or genocide are now universally accepted hardly ensures universal let alone uncontroversial agreement about what they concretely entail” (Scheuermann, 2007:13).

An ultra minimalist conception of human rights at the supranational level is also difficult to accept. Habermas clearly avoids all problems of social and economic origin from the strictly circumscribed and legally specified domain of human rights violations. As such, the new world

organization is not concerned with guaranteeing the minimal social and economic conditions necessary to realize the human right goals of the UN charter. For Habermas, world citizens are not also expected to reach consensus on political issues of economic origin.

*EDT*If the international community limits itself to securing peace and protecting human rights; the requisite solidarity among world citizens need not reach the level of implicit consensus on thick political values orientation that is necessarily for the familiar kind of civic solidarity among fellow nationals (DW:145).

Thus, the solidarity among world citizens and the function of the world organization do not include the positive commitment to overcome global social and economic inequalities. Problems of global economic and social inequalities are issues to be addressed through global domestic politics among regional blocs, and multilateral organizations at the transnational level. Although the world organization can formulate general principles of transnational justice, this is not a strict obligation on global players because political issues that reflect difference in value orientations require negotiation and compromise among global players. As such, the goal of overcoming extreme social and economic inequalities is dependent on the ethical and political orientation of global players. Cristina Lafont correctly notes that:

Fulfillment of the most basic human rights worldwide, say, eradicating severe world poverty, could be a goal of global domestic politics, but yet again it might not be. It all depends on whether altruistic values happen to triumph over other legitimate interests and value preferences of the major global players, such as the interest in eradicating the differential in welfare within their own countries, for example. (2008:74)

Habermas's exclusion of socio-economic rights from the function of the world organization stems from the commonly held belief that those rights are distinguishable from civil and political rights in that they can not be decided in courts of law or are not justifiable. It is commonly argued that violations of socio-economic rights are vague to define and perpetrators can not be easily identified. Hence, the alleviation of those problems depends on benevolent or positive action from third parties which ultimately is open to value preferences. Thus, according of Habermas, assigning the world organization the function of regulating economic and social problems will affect the legitimacy of the world organization Habermas substantiates his argument by taking the lesson of the UN which broadens its task of peace keeping and human rights to overcoming socio-economic problems. However, the result was disastrous for the UN. Habermas explains this as follows:

The expansion of the concept of international security makes it unthinkable for the United Nations to restrict itself to the central tasks of peace-keeping and human rights. The Economic and Social Council was originally intended to interlock those policies with the overwhelming tasks of global development. But in these areas the UN swiftly came up against its limits .Outside its framework an international economic regime was established under the hegemony of the United States... Decision making on international economic matters, particularly in the area of finance and trade, has long left the United Nations and no amount of institutional reform will bring it back (2005:36).

Despite the apparently convincing reasoning of Habermas, there are good reasons to consider poverty related deaths human rights violations and poverty reduction can be an issue of global justice (besides the negative duties of justice). I can substantiate my argument in four different ways. First, more people die from poverty related preventable diseases than in wars. “It is a shocking fact that, in the developing world, almost 30.000 children younger than five die every day from preventable diseases which, in the affluent parts of the world, have been all but eradicated”. (C. Thomas cited in McGrew, 2004:2). The WHO also report that some 18 million people die prematurely each year from medical conditions that could easily be cured (Lafont, 2008:49).

Second, poverty is not always the responsibility of victims themselves. In the context of globalization, poverty is the outcome of structurally interconnected politics, economics and finance. Thirdly, deaths due to preventable diseases and poverty have this time become the identifiable outcomes of the decision of international institutions and multi-lateral agreements. We can take the massive human rights violation associated with the TRIPs (Trade related aspects of intellectual property rights) regime of the WTO as an example in this regard. The TRIPs agreement grants pharmaceutical companies a monopoly on the production of medicine for a 20 year period. These companies can also determine the price of their products in such a way to recover research investment. In the well known case of HIV/AIDS, many poor countries were prevented from providing treatments to victims not because they are unable to produce them but because they have to comply with the TRIPs regime. As such, massive violations of basic rights are associated with specific international regulations. Hence, preventing such violations must be considered a positive duty of the international community.

Finally, limiting the function of the world organization to negative duties of justice -preventing human right violations due to armed conflict, is unrealistic in that it will maintain the status quo of economically stratified world society. This in turn will lead to more conflict which will affect civil and political rights. Michael Freeman affirms this as follows.

In the era of globalization, the struggle for economic and social rights is likely to become increasingly important. This struggle will be hard, because the political and economic forces opposed to it are powerful. However, the failure of this struggle will not only be unjust. It will almost certainly fuel the persistent violent conflicts that afflict many parts of the world, and that are associated with gross violations of civil and political rights (2002:166).

4.3. Global Domestic Politics and the Postcolonial South

As it has been mentioned else where in the thesis, in Habema's cosmopolitan project, the political regulation of economic globalization is to be realized through global domestic politics at the transnational level. This was also shown to be dependent on the development of cosmopolitan consciousness through the interaction of national and transitional public spheres. In turn, cosmopolitan consciousness is significant in that individuals can influence their respective states and transitional organizations to consider themselves as part of a cosmopolitan order and formulate a world domestic policy geared towards overcoming global economic inequality and alleviating environmental degradation. The feasibility of Habermas' project becomes questionable if one recognizes the intensification of competition among states created by the new international division of labor (NIDL). Moreover, the difficulty of conceiving cosmopolitan consciousness among individuals independently of this globalization process appears to undermine Habermas' vision of cosmopolitan democratic politics. Both of those, however, demand the reexamination of the central assumptions of this project.

I would like to criticize Habermas' project from two general perspectives. First, his project is based on a Eurocentric analysis of the effects of economic globalization and multi-culturalism(as an empirical reality), both of which lead him to celebrate the "postnational constellation." This, however, makes him unable to analyze the effect of economic globalization on the historically and structurally marginalized postcolonial South. This in turn makes him unable to consider the possibility challenging economic globalization through popular based nationalism, particularly in this part of the world .Second, Habermas' model of global domestic politics is constructed by

extending the norms and democratic institutions of the European welfare state such as the public sphere, which, in other parts of the world are weak or deformed. Given that realizing the goals of global domestic politics depends on these institutions, and given that these institutions are located in the economically hegemonic North and are also dependent on capitalist economy, I would like to argue that Habermas' vision of regulating economic globalization and restructuring the world economic order through transnational negotiation will not only fail to achieve its goal, but also will have devastating consequences for people in the postcolonial south. I will clarify my argument by reexamining Habermas' Eurocentric analysis of economic globalization and multiculturalism.

The Eurocentrism of Habermas' project is evident in his application of cultural diversity and the first world constitutional state to all over the world. However I would like to emphasize that I will not criticize Habermas simply because his project arises from a particular European experience of globalization. My focus is to examine as to whether this analysis reflects the realities in other parts of the world and the success of this project in an economically stratified world society. Habermas' analysis of economic globalization results in two central conclusions. First, economic globalization undermines the traditional nation state. It is also negative in that states can no more individually regulate economic globalization which points to the need to establish supranational and transnational political institutions. Second, with increasing transnational migration, it undermines national basis of democratic solidarity. This is revealed to be positive in that multi-culturalism simply requires shifting democratic solidarity from nationalism to constitutional patriotism. This in turn is of paramount importance to build cosmopolitan consciousness which is the basis of democratic legitimation of transnational political institutions and decisions.

Habermas assumes that cultural diversity will require the constitutional state to recognize not only the rights of individuals, but also their cultural rights. This also enables the state to engage in global democratic politics. Habermas does recognize the problems posed by global socio-economic inequalities in the realization of a global domestic politics geared toward overcoming those problems. However, overcoming those problems requires only a shared consensus on peace full co-existence and human rights. Indeed, the economic stratification of world society could not

hamper the realization of global domestic politics as long as there exists a global democratization process and transnational opinion and will formation. Habermas argues that

In a stratified world society, unredeemable conflicts of interests seem to result from the asymmetrical interdependencies between developed nations, newly industrialized nations and the less developed nation. But this perception is only correct as long as there are no institutionalized procedures of transnational will-formation that could induce globally competent actors to broaden their individual preferences into "global governance". (PNC: 54-55).

This requires the development of cosmopolitan consciousness in individual citizens to influence decisions of global players through transnational democratic institutions and processes. Habermas takes European cultural diversity created by transnational migration from south to north as the model for the development of cosmopolitan consciousness at the global level. According to Habermas, multi-culturalism, intercultural contacts and multi-ethnic connections will "strengthen a trend toward individualization and the emergence of "cosmopolitan identities" (PNC: 76).

This cosmopolitan spirit on the part of states, Habermas argues, is developing only in the first world constitutional state. Third world countries characterized by social tension and second world countries characterized by Authoritarian constitutions cannot provide lessons for a future global democratic politics. "Only the states of the first world can afford to harmonize their national interests to a certain extent with the norms that define the half hearted cosmopolitan aspiration of the UN" (NO: 184). Furthermore, the first world states are the "meridian of a present by which the political simultaneity of economic and cultural simultaneity is measured" (Ibid) .It is first world constitutional state characterized by rule of law, tolerance, pluralism, and sensitivity to the public sphere which can be models for a future cosmopolitan legal order.

Let me raise three points that could explain the unfeasibility of Habermas' project especially to overcome global economic and social inequalities. First, Habermas' exaggeration of the cosmopolitan spirit and peace full character of the first world state can easily be rejected if one takes the US invasion of Iraq against international law. Second, the democratic institution of the First world welfare state that Habermas applies to the global level is itself a result of high economic development which can not be realized in the Third world. Third, while Habermas is correct in recognizing the development of cosmopolitan consciousness and solidarity in European public spheres during the Vietnam war and the recent US invasion of Iraq, it is

reasonable to be pessimistic that this solidarity can be repeated towards overcoming global economic inequalities for the obvious reason that the vitality of European civil society itself depends on uneven global economic structure. “Global economic inequality is simultaneously the material condition of possibility of democratic legitimating in the North Atlantic and that which hampers its achievement in the post colonial south” (Chea,2006:65). I will substantiate my arguments by reexamining as to whether economic globalization or the “New International divisions of Labor (NIDL) offers autonomous ground for the formation of post national identities and a global domestic politics as Habermas affirms.

The NIDL is a neologism coined by Falker Frobel, Jurgen Heinrichs and Otto Kreye to describe the new phase of capitalism or what we now call economic globalization in their book with the same title published in 1977. The authors showed the organization of production at the global level with an empirical study of the relocation of industries from wealthier states of European Economic Community (EEC) to states of the Third world beginning from 1970s. They provide three factors that explain this process: First, the existence of cheap labor force in the Third world. Second, the division and subdivision of production process which can be performed with minimal level of skills; Third, the development of technologies of transportation and communication which make it easier to produce goods any where in the world. According to the authors, these factors changed the classical international division of labor under which Third world countries were only producers of agricultural goods, raw materials, and minerals. Now, the relocation of industries makes these countries producers of manufactured goods in a world economy. They affirmed that:

For the first time in the history of the 500 year-old world-economy, the profitable production of manufactures for the world market has finally become possible in a significant and increasing extent, not only in the industrialized countries, but also now in the developing countries. Furthermore, commodity production is being increasingly subdivided into fragments which can be assigned to whichever part of the world can provide the most profitable combination of capital and labor.... The term which we shall use to designate this qualitatively new development in the world economy is the new international division of labor. (2007:169).

The NIDL is the underlying cause of the weakening of the nation-state and also the pluralization of European societies through transnational migration. According to Frobel and his colleagues, the relocation of industries and capital mobility resulted in unemployment and also undermined the capacity of industrialized nations to achieve its intended goals.

The western industrialized countries are experiencing a long-term fiscal crisis of the state. High unemployment and short-term working have forced the state to increase its expenditure, while at the same time the state's tax receipts have fallen because high unemployment has reduced the revenue from personal taxation and the threat or reality of industrial relocation has reduced the ability of the state to tax private companies. (Ibid: 162).

The relocation of industries and the adoption of Market-oriented industrialization by the Third world have also been considered a solution to poverty and underdevelopment in this part of the world. However, Frobel and his colleagues suspect this conclusion because market oriented industrialization is not the result of autonomous decisions, and policies of developing countries. Rather, "Industry locates itself at those sites where production will yield a certain profit" (Ibid: 168).

It is this unregulated aspect of economic globalization that assumes the central theme of Habermas' cosmopolitan project. Habermas correctly analyzes the effect of economic globalization on the Nation state as a political centre and national solidarity. He notes the effect of the NIDL: structural unemployment, incapacitation of the European welfare-state, and also the pluralization of European societies as a result of transnational migration mainly from South to North. However, Habermas overlooks the devastating effect of the NIDL on the third world and presents the development of cosmopolitan consciousness in European societies as a global phenomenon. Indeed, the newly industrialized countries of East Asia benefited from the NIDL. Nevertheless large segments of the population of the postcolonial South do not benefit. One can say that they are superexploited by the NIDL and local elites. The NIDL also does not end the North-South income gap as many expected. In fact; the NIDL weakens the capacity of European welfare state to meet the demands of its citizens. It also creates unemployment and poverty in industrialized nations. However, the income gap between North (First World) and South (Third world) still persists. Giovanni Arrighi (cited in Pheng Chea, 2006:37-38) notes that:

[Although] the signs of modernity associated with the wealth of the former First world... have proliferated in the former Third world; and it may also be the case that the signs of marginalization associated with the poverty of the former Third world are now more prominent in the former First world than they were twenty or thirty years ago [...]. It does not follow... that the distance between the poverty of the former Third world (or south) and the wealth of the former First World (or North) has decreased to any significant extent. Indeed all available evidence shows an extraordinary persistence of the North-south income gap as measured by GNP per capita... [In 1999 the average

percapita income of former "Third world", countries was only 4.6 percent of the per capita income of former "First world" countries, that is almost exactly what it was in 1960 (4.5 percent) and in 1961 (3.4 percent).

It is this fact that justifies transnational migration from South to North and also the cultural diversification (pluralization) of European societies. Habermas' formulation of postnational identity is then based on a Eurocentric analysis of pluralization of European societies. He globalizes the struggle for difference in European societies created through transnational migration and also the struggle of women, ethnic groups, and nations for recognition. In fact, Habermas consider all struggles and social movements as a form of struggle for cultural recognition. He states that

Feminism, multi-culturalism, nationalism, and the struggle against Eurocentric heritage of colonialism are related phenomenon that should not be confused with one another. They are elated in that women, ethnic and cultural minorities, and nations and cultures defend themselves against oppression, marginalization, and disrespect and thereby struggle for the recognition of collective identities, whether in the context of a majority culture or within the community of peoples. We are concerned here with emancipation movements whose collective political goals are defined primarily in cultural terms, even though social and economic inequalities as well as political dependencies are always also involved. (IO: 211)

From the above reading, one can understand that Habermas reduces the struggles for decolonization and the struggle of postcolonial societies against political repression and structural economic marginalization to a struggle for cultural recognition. The struggle of postcolonial societies, however, cannot be understood through a European paradigm of multi-cultural recognition. The struggle of postcolonial societies involves a struggle against political and economic repression. This struggle for freedom in general involves both the struggle against oppressive political regimes which are associated with transnational capital, and struggle against structural impoverishment in uneven global economic order. Indeed, Froebel and his colleagues foreshadow this as follows:

After decades and centuries of under development of the so-called developing countries, the recent export-oriented industrialization of those countries offers but faint hope that living standards and condition of the mass of their population will undergo any substantial improvement in the foreseeable future. Moreover there is no reason to assume that the main goal of the politics pursued by the governments of many developing countries is, in fact, the improvement of the material conditions their population. (Ibid: 164)

Habermas' characterization of states of the Third world as full of social tension, disorder, and his reading of postcolonial social movements with the paradigm of European multiculturalism becomes less convincing if one understands the effect of the NIDL. The NIDL and export oriented industrialization adopted by the Third world benefited only few privileged minority. Thus, the NIDL intensifies social tension and struggle between the few beneficiaries and majority who suffer. Indeed, "the militarization of the so-called third world is a clear indication that increasingly overt and repressive force is needed to prevent the violent eruption of social tension" (Froble, et al, Ibid).

Thus, Habermas' analysis of economic globalization is limited to Europe. He overlooks the effect of the NIDL on the postcolonial south and claims to see the development of cosmopolitan identities at the global level. In other words, Habermas' cosmopolitan project is constructed on the basis of the democratic institutions of the European Welfare state and cosmopolitan consciousness of transnational migrants. The question, however, is, can post national identities and cosmopolitan consciousness developed within the stratified field of field of economic globalization transcend this field and claim for humanity? Pheng Chea argues that multiculturalism and cosmopolitan consciousness developed in European societies will not be concerned with uneven economic development and the suffering of peoples in the periphery.

[a] cosmopolitan consciousness formed in North Atlantic space that is attentive to struggle for multi-cultural recognition is not necessarily concerned with the problems of uneven development and the super exploitation of labor in the peripheries. The difficulties and injustices experienced in Northern multicultural migrant space-struggles over citizenship rights, problems of internal colonization, racism and discrimination within a constitutional framework where justice will be done in the best scenario-are not continuous with the struggles for subsistence of former compatriots left behind the other side of the NIDL (2006:69).

Even if Habermas is correct in pointing out the development of cosmopolitan consciousness in the areas of development, environment, and rights of women particularly reflected in successive UN summits and NGOs, it is also a fact that UN summits are not determinant of the global economic structure and decision making. It is the undemocratic decisions of the IMF and WB especially the structural adjustment policies that forced developing countries to liberalize markets and reduce government spending that brought devastating consequences. The WTO agreement also creates uneven global economic structure. Even if Habermas criticizes neo-liberalism and suggests democratization of those global economic institutions, the problem is so complex

because international trade agreements are supported by ideological convictions of western governments and corporate lobbying. Robert Hunter Wade notes that the TRIPS regime of WTO was signed due to the pressure of few industries and with the support of the USA. He states that:

The TRIPs agreement was propelled by a few industries-mainly pharmaceutical, software and Hollywood-that stand to gain a lot from the protection of whose interests the US government championed. It is not obvious that agreement was written to suit western pharmaceutical companies, software companies, the motion picture association, and wall street city of London are good for the world (2007:289-96).

Thus, the UN summits and the NGOs attending these are not in a position to put pressure on these global economic institutions. Indeed, to posit NGOs as representatives of global civil society is dangerous because these NGOs are sometimes co-opted by western governments and transnational capital. Thus, Habermas proposal of global public sphere or international civil society to make global economic institutions accountable becomes less convincing. David Hulme and Michael Edwards (cited in Pheng Chea, 2006:72) argue that:

The danger of imposing foreign models (economic or political) on other societies have been well-documented... with increased funding from Northern governments, NGOs are now in danger of being used in precisely this way, especially where large number of new organizations are being formed on the back of readily available donor funds, with weak social roots and no independent support base... Is this really strengthening civil society, or merely an attempt to shape civil society in ways that external actors believe is desirable? Will it promote sustainable forms of democracy?

It is possible to argue that most NGOs advocate neoliberal policies and even further its global expansion. This is not, however, a wholesale rejection of some of the activities of NGOs. Rather, it is to note that those NGOs are vulnerable to transnational capital and western governments. Hence, Habermas' model of global domestic politics geared toward alleviating global economic inequality appears to be problematic in a stratified world society.

I have argued that Habermas' proposal arises from European experiences of globalization, that is, the weakening of welfare state and multi-culturalism. His idea of constitutional patriotism both as particular and universal forms of identity does not reflect the realities of the postcolonial south. Transcending nationalism might suit European context. However, in light of the effect of the NIDL on local, transnational and global public sphere, it is very difficult to provide autonomous grounds, both from economic globalization and particularistic interests, as arenas of discourse and deliberation for the common interest of humanity. Indeed, the dependence of

European democracy and public sphere or civil society on uneven global economic structure suggests that Habermas model of global domestic politics among global actors may not realize its goal of overcoming of global economic inequality. Rather, it will maintain the status quo of economically stratified world society.

What strategies are available for the postcolonial south if Habermas is correct in pointing out that the nation-state and nationalism are undermined by economic globalization?

It is undeniable that economic globalization undermined the nation-state in the post-colonial south. This is simply a matter of fact that most developing countries are implementers of the economic policies prescribed to them by IMF and World Bank such as the Structural Adjustment Policies (SAP). All those prescriptions demand market liberalization, privatization and deregulation so that Third world countries can get the promised aid or loan from developed countries to realize their development projects. Nevertheless those prescriptions simply serve to facilitate transnational capital flows to the detriment of the large population of the post colonial south. Habermas is correct that economic globalization undermined the nation state all over the world. However, his Eurocentric analysis of postnational identities is not a solution either.

I would argue that addressing economic globalization in the Postcolonial South requires not so called cosmopolitan consciousness but nationalism. This nationalism is to be constructed or developed by people themselves and economic globalization does not undermine this possibility. In this regard, using the analysis of Samir Amin, the Egyptian dependencia theorist, Pheng Chea argues that economic globalization leaves a room for the development of popular based nationalism in the post-colonial south. According to Pheng Chea, Samir Amin notes that the liberalization of trade and capital flows globally is not accompanied by the free movement of labor from South to North. Even if economic globalization brought the global integration of commodities and capital, large reserve army of labor remain enclosed within national framework. As such the deterritorialization of people is limited. The deterritorialization of people expresses the idea that globalization would bring the free movement of people all over the world without the limitations or restrictions of citizenship laws and migration policies of states. In as much as states remain determines free movement of labor through citizenship laws and migration policies, the deterritorialization of people remain limited which paves the way for developing nationalistic solidarity to make the postcolonial state serve peoples interest. Chea notes that:

[i]nstead of producing large groups of deterritorialized migrant peoples who prefigure the nation-state's demise and point to a postnational global order, uneven globalization makes the formation of popular nationalist movements in the periphery the first step on the long-road to social redistribution. In this spirit, Amin suggests that in an uneven capitalist world system that largely confined the most deprived masses of humanity to national peripheral space, popular nationalism in the periphery is a necessary component of socialist cosmopolitanism (2006:39).

We have to be careful here to distinguish Chea's and Amin's idea of popular nationalism from the nationalism of European societies which Habermas rejects. Nationalism in European context was the construction of the bourgeois class articulated through public media. It was grounded on pre-political identities or common descent. The idea of popular nationalism that Chea and Amin propose in the post-colonial south is based on suffering from uneven economic development and the historical legacy of antiimperialist struggles. As such, national culture and national self-determination is not equivalent to self-assertion of a chauvinist pre-political identity. Chea notes that:

Following the work of Frantz Fanon and Amilcar Carbal, national self-determination can be understood as people's achievement of collective dignity so that it can participate as an equal member in democratic self-legislation on the global stage (Ibid:73).

Related to the idea of Chea, we can also mention the idea of cosmopolitan localism that describe the assertion of diverse localisms as a new form of universal rights .Philip McCheal explains this as a form of struggle by communities against the devastating effect of economic globalization and cultural homogenization.

Cosmopolitan localism questions the assumption of uniformity in the global project. It is by definition part of the contradictory dynamics of globalization, often being a protective response where communities try to avoid the marginalization or disruption of unpredictable global markets. Such questioning also asserts the need to respect alternative cultural traditions as a matter of global survival (2007:228).

Philip McCheal takes the 1994 Chiapas peasant revolt in Mexico as exemplary of cosmopolitan localism. The Zapatistas rebelled against the privatization of communal lands by Mexican government. "The Zapatistas perceive the Mexican state as the chief agent exploiting the regions cultural and natural wealth" (Ibid: 228). The Mexican government privatizes lands under the pretext of structural adjustment policies and the promises of NAFTA (North American Free Trade Agreement). The NAFTA demands deregulation of commodity markets especially for maize-staple food of peasants. The Zapatistas rebelled demanding recognition, representation and inclusion. According to McCheal, the significance of this rebellion is its coincidence with

the days of the implementation of NAFTA which make it a powerful and symbolic critique of the politics of globalization.

This critique had two objectives; first, opposing the involvement of national elites and government in implementing neo-liberal (economic) reform on a global or regional scale (which undo the institutionalized social entitlements associated with liberalism); and second, asserting a new political agenda of renewal of a politics of rights that goes beyond individual (property) rights to human, and therefore, community rights (Ibid: 229).

To summarize, I have argued that Habermas' model of global domestic politics among global players at the transnational level constructed on the premise of the democratizing effect of cosmopolitan citizens is limited to North Atlantic societies. In as much as national and transnational public spheres depend on uneven global economic structure; it is unlikely that Habermas' proposal will realize the goal of overcoming global economic inequalities. I have tried to show that the development of popular based nationalism in the postcolonial south can make serve the interest of the majority of the people and also challenge economic globalization. This is shown to be possible because economic globalization is structurally limited, that is, cannot bring a complete deterritorialization of people. Indeed, the majority of people remain within national territories which open the possibility to use the state in the postcolonial south to serve peoples interest. This will be important to fulfill the minimum social and material conditions for people in the postcolonial south to participate in global political order.

Conclusion

The research project has demonstrated that Habermas envisions the cosmopolitan condition as a constitutionally structured multi-level global order in which human rights, democracy and peace would be realized. It has also been shown that Habermas project is developed based on the premise that globalization and the problems associated with this process is the manifestation of European modernization process at the global level. As such, Habermas' solution to the problems associated with the uncontrollable aspect of economic globalization is analogous to the solutions he provides to the pathologies of modern societies. Habermas analyzes modern societies into life world and system with the corresponding action coordination effected through communicative and instrumental reason. The pathologies of modern societies arise due to the colonization of the life world by systemic imperatives that are, political power and money. What is at stake here is that the intrusion of the subsystems of state and money into the life world erodes the normative foundations of communicative action. Habermas' solution to the problems of modern social integration involves a reconstruction of the normative potential in the use of language.

Habermas upholds the enlightenment ideals of freedom, democracy, and rule of law on the ground of intersubjective reason, that is, communicative rationality which is shown to be implicit in everyday use of language. At the centre of both Habermas' theory of communicative action and his account of communicative rationality is the thesis that speech acts as the smallest unit of communication raise various kinds of validity claims. Universal validity of claims in discourse is derived from communicative freedom or the presuppositions actors in communicative action which are considered universal pragmatic norms. As such the validity of norms produced in discourse is measured in terms of the fulfillment of the procedures or presuppositions of discourse. In other words, normative validity in the areas of politics, law and morality depends on the fulfillment of the procedures of discourse including among others inclusiveness and consensus.

Habermas' democratic and legal theory gives a normative account of the legitimacy of political systems and legitimate law making. In other words, Habermas' solution to the problems of modern social integration involves the reconstruction of the normative functions of the

constitution in a way to give shape and maintain a balance among the three forms of modern social integration: money (capitalist economy); power (the administrative state); and communication or solidarity (civil society). Thus, Habermas defends the universality of the constitution and its normative principles that is, human rights and democracy, subject to procedural discourse.

At the domestic level, the constitution is conceived as an ongoing project with the goal of realizing a system of rights in changing circumstances. This goal is to be achieved through the control of the political and economic system by the will of the people developed in deliberation and discourse. This is the foundation of what Habermas calls constitutional patriotism – the commitment to maintain the constitutional project as an association of a free and equal citizens under laws they have themselves created. Habermas develops the discursive and procedural conception of law and democracy in a way to account for the legitimacy of the European welfare state in face of multiculturalism and the rights of cultural minorities

Habermas' democratic theory is based on the idea of the autonomy of the political in two senses: first, political deliberation and discussion should BE free from the political and economic forces; second, the sphere of politics is the sphere of human freedom conceived in terms of self-determination that is, individuals should abide by the laws and norms that produce through discourse. As such, the democratic ideal is to control and guide the political and economic system by the will of the people produced in discourse. In this regard, the two-track model of deliberative democracy involving the formal and informal spheres of politics suggests that the laws and decisions of the state are legitimate if they reflect the interest of the people articulated through discourse in the political public sphere. The two-track model of deliberative democracy explains Habermas' claim that rule of law and democracy is internally linked as well as human rights and popular sovereignty is inseparable.

Habermas' cosmopolitan project is developed by extending the function of the constitution and democratic institutions at the level of the state to the global level. The weakening of the nation-state by economic globalization, which directly endangers democracy, demands the construction of a cosmopolitan democratic order. Globalization erodes the capacity of individual nation-states and at the same time there is no supranational political institution to regulate economic globalization. In this postnational conjuncture, Habermas notes that multi-national corporations

have become powerful competitors to nation-states which reflect the replacement of the regulatory mechanism of power by money.

Thus, cosmopolitan law would give shape to and maintain a balance among supranational governance, the global economy and civil society. Habermas' multi-level cosmopolitan legal order, though lacking the character of statehood, is geared towards the realization of universal constitutional principles at different levels: human rights and world peace at the supranational level; distributive justice at the transnational level. This requires the institutionalization of transnational opinion and will-formation so that norms can be justified independently of economic globalization, supranational and transnational legal orders, and particular national interests. This is considered significant to develop cosmopolitan consciousness and solidarity in individual citizens so that they can influence their respective states and transnational organizations to consider themselves as part of a cosmopolitan legal order as well as formulate global domestic policy geared toward overcoming economic and social inequality and environmental degradation.

I would like to summarize the problems identified in Habermas' cosmopolitan project in two general categories. First, Habermas' distinction between constitution and state especially at the level of supranational governance seems to be indefensible for the obvious reason that the consistent and non-selective application of cosmopolitan law requires some capacity especially military power on the part of the world organization. In addition, the global controversy over the validity and content of human rights would ultimately affect the function of the world organization in its task of securing world peace and protecting human rights at the global level. Furthermore, limiting the function of the world organization to negative duties of justice, that is, gross violation of human rights in armed conflict and genocide, is controversial and lacks universal consensus. This is justifiable in view of gross human rights violations that result from international agreements. I think, human rights violations of economic origin especially poverty related deaths should be considered human rights violations demanding that poverty reduction is a genuine issue of global justice

Secondly, Habermas' model of global domestic politics geared toward overcoming global economic and social inequality through negotiation among global powers at the transnational level appears to be unfeasible in an economically stratified world society. Habermas develops his

project based on the assumption that the norms and democratic institutions of European welfare Habermas' model of global domestic politics is constructed by extending the norms and democratic institutions of the European welfare state such as the public sphere, which, in other parts of the world are weak or deformed. In addition, Habermas takes European cultural diversity created by transnational migration from South to North as the model for the development of cosmopolitan consciousness at the global level. The development of postnational identities and cosmopolitan consciousness significant for the legitimaion of transnational negotiations through discourse independently of particular national interest and economic globalization. I have argued that Habermas' proposal arises from European experiences of globalization, that is, the weakening of welfare state and cultural diversity. However, in light of the effect of the NIDL on local, transnational and global public sphere, it is very difficult to provide autonomous grounds, both from economic globalization and particular interests, as arenas of discourse and deliberation for the common interest of humanity.

It is also possible to state that democratic institutions of the public sphere and civil society might be used to pursue particular interests. As such, it would appear difficult to make a clear distinction between life world and system. That is, communicative action and democratic public spheres would sometimes depend on technical progress and economic development. Conversely, public spheres which are guided by communicative action oriented to reaching understanding might be instrumental to pursue ones' interest. In this regard, the dependence of European democracy and public sphere or civil society on uneven global economic structure suggests that Habermas model of global domestic politics among global actors may not realize its goal of overcoming of global economic inequality. Rather, it will maintain the status quo of economically stratified world society.

I have also argued that Habermas' idea of constitutional patriotism both as particular and universal forms of identity does not reflect the realities of the postcolonial south. Transcending nationalism might suit European context because this can serve to secure economic interest in an uneven global economic order. To the contrary, cosmopolitan consciousness may not serve the interest of the majority of people in the structurally and historically marginalized postcolonial South.

In this regard, I have tried to show that the development of popular based nationalism in the postcolonial south can serve the interest of the majority of the people and also challenge economic globalization. This is shown to be possible because economic globalization is structurally limited, that is, cannot bring a complete deterritorialization of people. Indeed, the majority of people remain within national territories which open the possibility to use the state in the postcolonial south to serve peoples' interest. This will be important to fulfill the minimum social and material conditions for people in the postcolonial south to participate in global political order.

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Acknowledgements

I would first of all like to extend my deep gratitude to my teacher and advisor Mr. Daniel Smith for his invaluable scholarly comments, suggestions and questions throughout the course of the study. I should admit that Mr. Smith's critical and open mindedness gives a student the freedom to question and explore philosophical problems from different perspectives. This research will not be as it is now without his willingness and cooperation to make discussions, provide materials and to tirelessly read and comment on each and every part of the study.

My special thanks go to staff of philosophy department and my classmates in my graduate study. Especially, I would like to thank Dr. Bekelle Gutema for providing materials and clearing my confusions with regard to Kant's' scientific Racism and his cosmopolitan project. I also thank Mr. Shikur Seid for his willingness to provide materials and make discussions on human rights and related issues. I also thank my classmates especially Fasil Merawi and Biniam Mekonnen for the debate and discussions we make in regards to modernity and other philosophical problems which contribute to the richness of the study.

I owe debt to my family, friends and other people for their generous support, insights and assistance throughout the study. I appreciate Addis Ababa University for granting financial support for the study. Last but not least I thank Genet for her patience and persistence from typing to editing the study.

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Bibliography	

Abbreviations of Major texts of Jurgen Habermas

- TCA 1 *Theory of communicative action vol.1, tr. Thomas McCarthy (Boston: Beacon press, 1987)*
- TCA2 *Theory of communicative action vol.2, tr. T. McCarthy (Boston: Beacon press, 1987)*
- PDM *the philosophical discourses of modernity, tr. Frederic Lawrence (Cambridge: MIT press, 1987)*
- PMT *Post metaphysical thinking, tr.W.M.Hohnegarten (Cambridge: Polity press, 1992)*
- BFN *Between facts and Norms, tr. William Rehg (Cambridge: MIT press, 1996)*
- PNC *the post national constellation, tr.Max Pensky(Cambridge: polity press,2001)*
- TRS *toward a Rational Society, tr.J.J.Sapiro (London: Heinmann, 1971)*
- STPS *The structural transformation of the public sphere, tr. Thomas Burger and F. Lawrence (Cambridge: MIT press, 1989)*
- DW *The divided west, tr. Ciaran Cronin (Cambridge: polity press, 2006)*
- IO *The inclusion of the other: Studies in Political Theory, Cambridge: MIT Press. (1998).*

Abstract

The multi-faceted processes of globalization have been associated with the increasing interconnectedness of the world or the creation of a global village. These processes are, however, full of ambiguities in that they challenge human freedom, dignity, rule of law and democratic self-determination. Especially, economic globalization creates what Pheng Chea calls the “inhuman conditions” that describe the defective features of human existence due to commodification, technology and totalitarian domination. In this condition of human existence, cosmopolitanism is being advocated as a practical consciousness of universal humanism and as a political project to regulate the dehumanizing effects of economic globalization. The thesis explores and analyzes Jurgen Habermas’ conception of the cosmopolitan condition as constitutionally structured multi-level global governance without global government geared towards the global realization of peace, human rights, and democracy. Habermas upholds the enlightenment ideals of rationality, freedom, human rights and democracy based on the notion of communicative reason implicit in everyday use of language. Hence, Habermas defends the universality of the constitutional state subject to procedural discourse. The democratic ideal at the level of a state is to bring the political and economic system under the will of the people articulated in discourse. The global realization of human rights and democracy is conceived as the control of supranational and transnational governance by the will of world citizens developed in national and transnational public spheres. I argue that Habermas’ democratic theory seems to be unrealistic in existing liberal democracies where the autonomy of political discourse and public sphere is challenged by political and economic forces. Analogously, Habermas’ cosmopolitan project is problematic in that the development of cosmopolitan consciousness and global public sphere is compromised by economic globalization. In as much as national and transnational public spheres depend on uneven global economic structure; it is unlikely that Habermas’ project will realize the goal of overcoming global economic and social inequalities. I argue that the development of popular based nationalism in the postcolonial south can make the state serve the interest of the majority of the people and also challenge economic globalization.

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Habermas and the Cosmopolitan Condition

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To:

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May 2011