***Solving the Problem of the Right to have Rights with Global Federalism: A Critical Theory of Inclusion***

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*“I do not believe that things will turn out well, but the idea that they might is of decisive importance."*

Max Horkheimer (To T. Adorno, Spring 1956)[[1]](#footnote-1)

*“A new society can be brought about only if a profound change occurs in the human heart—if a new object of devotion takes the place of this present one”* -Erich Fromm[[2]](#footnote-2)

**INTRODUCTION**

This quote nicely sets the stage for the kind of theorizing this paper will attempt: a convoluted mix of cynicism, pessimism, quelled optimism, and a kind of radical, concrete-utopian hope. In the shadow of some of the greatest critical thinkers of all time, this paper will attempt to show how things might indeed turn out well and indeed the kind of approach offered is quite demanding on us all. What I am suggesting is far from likely. Many would say impossible. What I will hear them saying is: ‘it will be extremely difficult’, ‘it is highly unlikely’, and for all-intents-and-purposes it will seem impossible. How many things throughout our lives and even human history have seemed impossible until they were not, until they happened? This includes both positives and negatives from the end of legalized slavery, to women’s rights, to the Holocaust, to the Rwandan genocide, to something as simple as the light bulb or as scientifically advanced as splitting the atom or inventing the polio vaccine. In every era of history there are ideas that are believed to be impossible, and for a lot of those ideas history has thus far been proved right, but for a number of other ideas, history has been proven wrong. This paper is more about the pragmatic *possibility* of global justice through universal institutional inclusion than proving definitively a particular way to immediately fulfill the promise of universal human rights.

In *The Origins of Totalitarianism*, Hannah Arendt introduces the concept of a right to have rights. The problem of the right to have rights is that rights (as we conventionally understand them) do not practically or meaningfully exist without a certain kind of membership in a political community. If rights are something we are supposed to have as members of humanity (as most human rights and liberal scholars posit), when people lack state recognition and the opportunity for rights that are tied to it, they lack the conditions necessary to be fully human.[[3]](#footnote-3) Therefore, universal human rights are a deceptive hypothetical so long as they are tied to membership in or recognition by a state. To move global humanity forward in this regard, this paper suggests an alternative cosmopolitan, discursive ethical political system based heavily on the work of Seyla Benhabib along with that of the critical International Relations theorist of the English School, Andrew Linklater. Building on Benhabib (who herself is building on Arendt and Jurgen Habermas) and Linklater, I will promulgate transnationalized sovereignty and world federalism as the guarantors of a universal right to have rights, with decentralized deliberative institutions to prevent globalized tyranny. Including these morally cosmopolitan but local discursive entities with power in the global sphere should act as a check against tyranny, and serve as the democratic, “jurisgenerative” foundation of the limited, “thin” global federal republic serving global justice through discursive inclusiveness.

This paper will begin by deconstructing the concept and referent of the right to have rights, as well as the theoretical and practical implications it illuminates. Then a potential solution, global federalism with local, deliberative communities, will be laid out. Finally, the road blocks that stand in the way of realistically achieving such a solution will be suggested as well along with what I see to be the best, most effective way around (through) those road blocks, namely the eradication of global capitalism, broadly understood.

Up to this point in history, democracies (democratic nation-states) have been unable to solve their initial membership requirements democratically. This is the paradox of democratic legitimacy (Benhabib 2004, 2011). The argument of this paper can be summarized like this, any exclusion of a person from a decision-making process that affects them negatively (as defined by the one affected) without institutionalized processes for redress is unjust and undemocratic. This exclusion can lead directly to the loss of the ‘right to have rights’ as well an immense vulnerability and direct harm with no means for rectification. The best way to ensure a universal ‘right to have rights’ and solve the paradox of democratic legitimacy is to develop a system of ‘thin’, global, cosmopolitan federalism with a post-Westphalian notion of sovereignty with the legal, institutional authority to compel regional and national political entities to include those people in their political decision-making processes that they have unjustly excluded. The centrality of political-legal inclusion is based on creative interpretations of Jurgen Habermas’s theory of communicative action and discourse ethics (especially as interpreted by Benhabib and Linklater).

In almost every critique of thicker versions of global governance and any kind of world government theory (between these ideas is where I would chose to situated my own approach), is that they will fall apart because they are inherently impractical and secondly that if they do work successfully they will be inherently tyrannical (or at least the likelihood of global tyranny would be so great that the project should be abandoned). In terms of the first point, I think it is possibly correct, but I more strongly believe that any attempt at global political integration that failed would simply indicate one more way to not make a light bulb, that failure would only show us that the specific framework that was attempted was deficient. Furthermore, it could have been a problem of apathy of the people of the world that allowed even a workable framework for global governance/government to fail. As far as the second critique goes, and I along with other transnational justice scholars more thoughtful than myself agree that the problem of global tyranny is serious and needs to be explicitly addressed in any transnational approach to politics (as it does in any regional, national, or local approach but it is simply a matter of numbers that makes tyranny at the global level more dangerous). As with any form of political authority, there need to be checks, and in the case of global politics, the checks need to be institutionalized on multiple levels. My approach includes local, deliberatively democratic bodies that have the legal power to check the authority of the global governance structures being advocated here.

The goal is to theorize and justify a kind of system that allows for a global politics that decreases the arbitrariness and contingency of our always already contingent and omnipresent socio-psychological and physical suffering and existential and biological vulnerability and to abolish any kind of politics that increases these kinds of sufferings and vulnerabilities. In the spirit of radical humanist social psychologist Erich Fromm, I argue that capitalism is a backdrop that supports and expands this latter kind of politics.

**THE PROBLEM: THE RIGHT TO HAVE RIGHTS**

Hannah Arendt was the first scholar to articulate to the world, or at least the academic community, of the unique problem of “the right to have rights.” Arendt in her 1948 work *The Origins of Totalitarianism*, she provided an extensively researched depiction of the theoretical and practical connections between anti-Semitism, imperialism, and totalitarianism. But it may well be that what this extremely long and comprehensive historical-theoretical analysis is best remembered for is something which made up only a very small portion of the book, and that is what is known as “the right to have rights.” There has been a growing secondary literature on this topic in recent years, most of which will be a least mentioned here. Other than the apparently riddling phrasing of the problem, Arendt exposed a glaring problem of political justice, something that was seemingly inherent yet was only uniquely realized during the atrocities and aftermath of WWII. Furthermore, Arendt presents this in a very negative light, implying that the ‘Westphalian state system’ is and will likely continue to be unable to solve it (Benhabib 2004).

But what is the right to have rights? First, Arendt prefaces her discussion with a short historical look at what she sees as the inviolable supremacy of the nation-state in the minds of the people of the world (at least the Western world). She argues that the demand for national-popular sovereignty created and cemented almost simultaneously, that the nation-state was the sole entity suitable for the guarantee of the rights of man. In other words, that national governments were the only means to have human rights protected (but phrased as ‘national rights’). Human rights (‘the rights of man’) became equivalent to and with national rights. It was the French Revolution[[4]](#footnote-4), that made this so. “True freedom, true emancipation and true popular sovereignty could be attained only with full national emancipation,…people without their national government were deprived of human rights” (Arendt [1948] 1979, 272).

It gets worse. In Arendt’s view, even if a state government guarantees rights and lives up to the guarantee, once a person is not part of that national community they are deprived of not only the kind of rights they enjoyed or could have enjoyed, but more than that, they are expelled from a socio-political community that at least could grant them a right to have rights, whatever rights they may be. In the *Origins* as well as *The Human Condition* (1958), Arendt explicates what she sees as fundamental to the human experience, plurality—the condition of existing around other human beings and interacting with them, the condition of community. Being stateless, lacking “the right to have rights,” is significant because it deprives people of the condition they need and desire to be truly and fully human or at least that potential is significantly decreased or made increasingly vulnerable. The right to have rights is vaguely defined as the right to live in a framework where one is judged by one’s actions and opinions” (Arendt [1948] 1979,296-297). Furthermore, “the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective” (296).

It is clear that the “right to have rights” corresponds to a real, tangible situation that refugees and denationalized persons face every day, but beyond what I have presented here, Arendt provided little else as far as expansion on what exactly the right to rights entailed. This is where Frank Michelman sought to make a mark, and did so successfully. *Parsing “the Right to have Rights”* is a theoretically rigorous article that fully explains the potential meanings of the phrase “the right to have rights” based primarily on a Kantian approach. He provides an in-depth interpretation and exegesis of this particular aspect of Arendt’s political theory, and explains the variety of understandings that are possible with attempts to bring it down to a more cogent theoretical realm. He claims he is still short of an entirely cogent and logically consistent explanation, but I think he sells himself short. He may be philosophically correct that there is more to be gleaned from “the right to have rights” but his overall point is spot on: “The fundamental Arendtian right is the right of political inclusion” (Michelman 1996, 205). Going further he explains the distinction between the first and second meaning of “right” in “the right to have rights.” He is convinced and with good reason, it would be logically incoherent and philosophically unjustifiable for both uses of the word to share identical meanings. It would create an infinite regress. The first meaning is that the rights we have are contingent, they are not tied to any inherent morality or innate dignity, but on that person’s having individually participated by “action,” in the social production of moral consciousness” (204). “It’s a condition of my having a right that I have, myself, contributed to the production of it, and that I cannot do this on my own, can’t do it except as a correspondent and co-producer with others in a social group in which I have membership standing” (205). To me, this reads more simply as rights are socially created and constructed, but that our ability to participate in the defining of rights is what is meant by the first meaning of right in the phrase “the right to have rights.” The second meaning is the conventional meaning, similar to an entitlement or privilege (but stronger and without the contemporary prejudices against these labels).

Arendt explains the situation of the stateless, those specifically and entirely without the right to have rights against the backdrop of WWII and its aftermath. There were millions of people initially who were entirely without a state. Universal inalienable rights were exposed most egregiously then for the myth that they are. “[Rights]…were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them” (Arendt [1948] 1979, 291-292).

Seyla Benhabib (2004) and Bridget Cotter (2005) take it a step further, using the “right to have rights” as a conceptual tool to look at the international stage, specifically what “the right to have rights” means for international relations and policy making in regards to refugees and asylum seekers as well as the contradiction between universal human rights and state sovereignty. Cotter says in regards to refugees and the “right to have rights,” “While totalitarian regimes have done the most to produce…the refugee….The existence of refugees also exposes several conflicts and contradictions of the European liberal-democratic nation-state,” more specifically the contradiction between the supremacy of national sovereignty and a commitment to global human rights (Cotter 2005, 96). Rights are given by nationality, and in the UDHR, which came after Arendt’s work, the supremacy of national sovereignty is paramount along with an extensive list of human rights, and it seems like this is largely how international law has functioned in regards to human rights. National sovereignty is a trump. There are of course exceptions to this, but the world is far from a standard for interventions on behalf of human rights. Sometimes (perhaps every time) there were self-interested motivations, other times it has been unclear what the motivations were.

What is clear is that national sovereignty and human rights both cannot be supreme. One needs to have precedence over the other. As mentioned above, for a time it was viewed that national sovereignty was the path towards rights’ protection, and it may have worked for a time, and even that is highly debatable. What is true now, is exactly what Cotter points out, the nation-state has failed to make universal rights inalienable, and the fact that there are people who are even more vulnerable for being outside of the system entirely, is even further evidence that the Westphalian system does not hold the answer to problems presented here: the problem of the right to have rights and oppression. This is very similar to what Benhabib points out, although she goes about it in a different way, which will be elaborated on further.

What has become abundantly clear is that rights require belonging to a nation-state (or some other political community) as a necessary precondition. Or at least this is what Arendt observed in her extensive historical research and in her own situation of stateless as a Jew who fled Nazi Germany. This is not an inherently natural order and proponents of the Westphalian structure may have led the world to believe. The sovereign state is an artifact. It is a creation and function of human history and the interactions of socio-political beings. It has changed and evolved. It can continue to do so. What cosmopolitan federalism seeks to offer is a true alternative to the Westphalian system as this structure has become unintentionally destabilized and increasingly post-Westphalian, at least in strict terms of the supremacy of national sovereignty, primarily due to economic and environmental processes but also politically. These are changes that are occurring now whether people like it or not, what are being called for here are intentional changes to the international system to a supranational system based on shared underlying principles that are culturally sensitive and universally acceptable.[[5]](#footnote-5)

**BEYOND THE PROBLEM: BEYOND THE BINARY OF ABSOLUTE INCLUSION/EXCLUSION**

The right to have rights does not just express the concept of absolute inclusion or exclusion, in a binary sense (Although this could be one interpretation of how Arendt presents it). What this concept and real problem illuminates for us intellectually is that inclusion and exclusion rarely functions binaristically. There can be forced inclusion in a specific *demos*, which would seem to violate any autonomous choice that individuals may have. There can be partial inclusion. We see this with the quasi-legal status of Palestinians within the imperial borders of Israel, under internationally legally suspect terms. We saw this historically within the United States prior to the 1970s, black persons and women were legally inferior, although not excluded from the community. The possessed a ‘right to have rights’ but a constitutionalized inferior version. In many ways these ‘other’ groups function as only partially human in a legal-political sense.

Let us look at the predicament of those who are not stateless *per se*, but are citizens or at least possess a nationality that confers on them at the very least a right to have rights. This is the predicament of physical, violent oppression either directly at the hands of government forces or with their support. These people typically lack most of the fundamental, universal human rights contained in the Universal Declaration of Human Rights (UDHR). Beyond the UDHR, many of these people lack protection of their life or liberty (not to mention property or the pursuit of happiness). Simply put they lack most of the exhaustive list of human rights as well as their natural rights (described by Locke and Jefferson). These people lack most if not all of their human rights, regardless of which conceptualization of human rights one applies.

The recent atrocities committed by the Assad regime in Syria demonstrate the moral-ethico-political problems posed by the Westphalian state system. There is a non-elected presidential dictatorship, ruled at least nominally by Bashar al-Assad, and his arguably even more brutal father before him. Although during both the elder and younger Assad regimes, there was a condition of general lack of freedom and omnipresent repressive state agents, the situation over the past year has worsened significantly and is on the verge, if not beyond the verge of becoming an international crisis. The Assad regime, or at least is Allawite Ba’athist minority ruling party and its Iranian and Russian supported military have launched horrendous assaults on the Syrian people. It began as a peaceful protest for more rights, elections and the like, which in turn ‘forced’ the regime to use arms against the protestors. The protesters were labeled as armed terrorists by the Assad regime. There is no evidence that this is the case. However over the past several months many squadrons of soldiers have defected from the Syrian national military to aid the civilians that are being assaulted. Once that happened, the government turned more aggressively to using artillery and heavy arms against whole cities (BBC News, 2013).

The Westphalian state system allows this because it is occurring within the borders of a sovereign state. This may no longer hold true as many people are fleeing the violence into Turkey and Jordan. The UN Security Council has been unable to act appropriately due to the vetoes wielded by Russian and China which have more or less supported the ‘sovereignty’ and prerogative of the Assad regime to treat its people as it pleases. There are multitudes of other examples that are just as blatant and uncontroversial from a humanitarian, human rights point of view. I will not address them here, but the literature as well as the news wires for decades, are replete with evidence of such atrocities (BBC News, 2013).

 Let me move to perhaps two more controversial examples that fall under my conceptualization of oppression, but may not be ‘the worst’ most easily recognizable kinds of explicit oppression. In Saudi Arabia, ignoring the obviously generally undemocratic nature of the national government, the state structurally oppresses fifty percent of its population daily. In Saudi Arabia, men are generally allowed to vote in certain local elections for certain local positions in the government and the rest are appointees. Women are not allowed to drive. They are not allowed to go in public without their husband or close male relative. Their bodies must be significantly covered in public as well. Until recently women were not allowed to attend school in the same way that males were. Women can be judicially punished for adultery if they have been raped and they are married. Punishing women for being raped as national policy or allowing such a practice is the epitome of structural oppression. Finally, women are not allowed to vote or participate politically in any substantial way. This is a legislative (meaning mostly non-violent kind of) oppression, but it is oppression nonetheless. An enormous section of the population is being deprived of their political voice, based on male-created traditions and illegitimate cultural practices (BBC News, 2013).

 There is second and different kind of unfreedom that exists that is quite different from what occurs in Saudi Arabia (and other countries with similar practices). China is an extremely fast growing economic, and thus political, power globally. It has been able to neoliberalize its international business activity without liberalizing its political system. China’s government is undemocratic and corrupt. It censors a great deal of the information its people have access to, including resources regarding democracy. They jail political dissidents for simply speaking their political views in public. People are held without trial extensively. People are put to death for crimes that the vast majority of the world does not consider to be capital offenses or even crimes at all (BBC News, 2013).

 There is an even sadder and repulsing aspect to both the situation in Saudi Arabia and China, the world community allows this to happen. Saudi Arabia is the largest oil trading partner of the United States and China is the second largest trading partner of the US in general. This economic positioning unconscionably allows for nation-states to use their economic power to leverage inaction by the US, the weakening global hegemon. Syria is benefitting from both is well armed military, its secrecy, faux-diplomacy, US and NATO war fatigue, and most importantly its relationship with Russia which is not necessarily using its economic influence to deter military intervention to protect the citizens of Syria, but simply its veto power on the UN Security Council. The current structure of the international system allows and seems to encourage this kind of state behavior that is antithetical to human rights or any similar cosmopolitan vision of justice.

 This unique situation likely existed during Arendt’s time, but it was not theorized as such, and that is being a citizen of a failed state. Noam Chomsky defines failed states as states that are exceedingly corrupt, have a democratic deficit, are unable to protect their citizens from internal or external violence, and/or flout international and whatever national laws happen to exist. This is a broad definition but it serves it purpose here. That purpose is to express that there are situations where a person is not stateless in a de jure sense but is de facto stateless or similarly vulnerable as those who are. They are similarly situated by the fact that the state they belong to or are nationals of, is unable or lacks reliable institutions or any institutions at all that a ‘normal’ government of a state would be expect to have. The reliable institutions are necessary for the right to have rights to exist. In failed states, it is often the case that there is no right to have rights; it is ostensibly or literally lawless (Chomsky 2006, Preface, Ch. 1).

The best current example of this is much of the nation-state of Somalia. It has been roughly twenty years since Somalia has had a functioning national government, and it has been increasing overrun in recent years by Islamist fundamentalists in the south, armed bands of pirates in the north, all against a fledgling, borderline non-existent Western supported transitional government around Mogadishu, the capital (BBC News, 2013). The citizens of Somalia are similarly as rightless as people who are expelled or denationalize from a country, even though they technically possess a citizenship still. What the people of Somalia have, that expelled persons and denationalized persons—that is anyone who is truly stateless does not have—is that there is potential for Somalia to rectify its political situation and all those who are citizens will instantaneously possess the right to have rights. As it is they still belong to a socio-political community in which there is at least a potential to be judged by ones actions and opinions, therefore the right to have rights. The truly stateless lack this potentiality even more so that the denizens of failed states. However this should not be construed as arguing that the ‘citizens’ of failed states do not experience a similar kind of absolute vulnerability to suffering that the stateless do.

What is it about the nation-state system, beyond the mere problem of state sovereignty that has prevented the problem of the right to have rights from being addressed legally already? The answer is yet another problem, the problem of democratic legitimacy (or one of the so-called democratic paradoxes). The paradox of democratic legitimacy show us that none of us have a guaranteed right to have rights, that we are all always already excluded from all of the supposedly collective decisions that affect us and our interests (negatively). This is the basic principle of democracy, that we (the people) who are affected by a law are also the authors of that law (or in some formulations, have an equal say in the process that created that law). The paradox of democratic legitimacy is that there is a first decision that is not decided democratically within in the nation-state system. This decision is one which there is no justification for, and to which there exists no higher legal authority to resort to once it has been decided. This is the decision of who is included in the demos or polity (although there are important philosophical and practical distinctions that have been made in the literature, I want to keep them purposefully conflated so that the problem of the foundation of one is identically as tenuous as the other) is not decided democratically. At the level of the nation-state, those who are excluded from the “us” who then gets to democratically decide the laws that affect them.

Seyla Benhabib (2004, 2006), expertly explains the paradox of democratic legitimacy (or the democratic paradox) and why it is the problem that it is, especially when included in a discussion of the topics such as these. The democratic paradox is interesting because it exposes a contradiction in even the most well-meant attempt at national democratic governance. The democratic paradox arises out of the mere fact that a democratic people is self-constituting and self-defining makes people who are outside the demos, labeled as outsiders; if no other state accepts them, they are stateless and we are brought back to the problem of “the right to have rights.” If the outsiders are accepted into and recognized as a member in a different nation-state, they are still affected by the initial demos’ exclusionary constitution. The paradox is that the underlying principle of a democracy is the liberty to decide who is allowed to have a say in the laws and will be subject to them. As Benhabib points out, those people who are initially excluded are not only affected by the legal creation of the demos, but they are subject to that law in that they are explicitly subject to exclusion (Benhabib 2005, 15, 47).

Benhabib, being the consummate scholar that she is, offers a solution to the democratic paradox, or at least she explicates a kind of process that has the potential to solve the paradox or at the very least make it decreasingly an issue. Her solution, based on Habermasian discursive ethics, is what she calls “democratic iterations.” Democratic iterations are “linguistic, legal cultural, and political repetitions-in-transformation, invocations that are also revocations” (Benhabib 2006, 48) Being concerned with the vulnerability that the stateless face, she argues for the disaggregation of the unitary model of citizenship” in favor of a plurality of local, national, regional, and perhaps global citizenships that exist and complement each other simultaneously. She points to the European Union’s unique situation as an existing example of the kind of disaggregation she is referring to. However, the EU does not meet Benhabib’s requirement of including perpetual democratic iterations, at least not in any guaranteed sense. Democratic iterations allow for the self-creation and re-creation of democratic peoples, which is absolutely necessary for an inclusively just, democratic world system.

This is why she leaves us with a call for further exploration and action in this regard. This is similarly where Nancy Fraser leaves us in *Scales of Justice* (2009), a philosophically rigorous and practically informed call for a vague kind of supranational political interactions with the goal of advancing some kind of understanding of universally held and enforced human rights. However, global civil societies such as the World Social Forum are too amorphous and empirically weak to make the changes they seek (at least at this point in time). What the kind of global federalism I present here does, is create the institutional environment required to foster just, democratic iterations that are ‘jurisgenerative’ (that is they allow for the practical and progressive redefinition of the bounds of a democratic peoples) and not ‘jurispathic’ (that is iterations that stifle reformulations of democratic political community) (Benhabib 2011).[[6]](#footnote-6)

Contrary to what Bridget Cotter and others have argued, the nation-state does not need to be the entity that addresses the issues of human rights (Cotter 2005, 111). They may be structurally suited to protect them, but coercing that protection is what matters, because without that we have seen the triple threats of statelessness, rightlessness (oppression), and the extreme vulnerability that comes with nominal membership in a failed or failing state. Why would the entities that have been most responsible for perpetuating injustices and horrendous, solvable vulnerabilities, be assumed to be the necessary agent to base a cosmopolitan global order on? People and communities—thinking, feeling, vulnerable bodies, both individually and collectively on myriad scales—are the appropriate agents. They make up humanity. Humanity may be an abstraction, but it corresponds to the most real thing in the world. In terms of the human condition: we are all here together, and as Kant put it, there is only so much earth, eventually we are going to meet and interact (Benhabib 2004, 4). We can choose how those interactions occur and what they can accomplish but only together, acting individually and collectively.

However democratic the United States is, those people in California who have to deal with the pollution clouds that waft over from China and Japan have no say in the procedures that decided the environmental standards that have led to these Americans being affected by the pollution. The example that Benhabib gives is that of the second Iraq War in 2003 that led to the toppling of Saddam Hussein’s Ba’athist regime. The people of Iraq were not truly included in the decision-making process that led to this regime being in power in the first place, nor were they included in the decision-making process that led to the invasion that eliminated it, nor were they included in the decision-making process of how Iraq was to be reconstructed. These people seem to have the right to have rights, yet they lack any guarantee of rights and have nowhere to turn for redress. This last point is the reason why the problem of the right to have rights has not been adequately solved in practice and why we see pervasively anti-democratic decision-making processes proliferating still. Absent a higher authority to at the very least allow an individual or groups of individuals to contend that they have been unjustly excluded from a decision-making process that affects them and has harmed them, people will continue to be vulnerable to losing both their rights and their right to have those very rights to begin with.

**THE SOLUTION: DISCURSIVELY ETHICAL GLOBAL FEDERALISM**

As has become apparent, my work is immensely indebted to the work of Seyla Benahbib on this topic. With that said she has ended her last two books on this topic including her most recent one (*Dignity in Adversity*, 2011) that the solution to the problems she illuminates, including the right to have rights is best solved by a cosmopolitan federal system. The problem with her scholarship is that thus far she has provided little guidance as to what this might mean. Before delving into my approach I was to clearly articulate what discourse ethics is and the hope is that its importance to this topic will make itself evident.

Discourse ethics is a metaethical theory developed by Jurgen Habermas and Karl-Otto Apel based on a reformulation of Immanuel Kant’s deontological ethics as well as a reformulation of Kant’s (and much of previous Western thought’s) notion of reason as instrumental reason. For Habermas, discourse ethics is a way to “distinguish the ‘good’….which is always context specific and may take a plurality of forms, from the ‘right’, which must take the form of universalizable principles. The right helps us determine what kinds of versions of the good life are morally permissible” (Hutchings 2010, 43). Habermas moves away from the monological determination of ethical and moral principles to one based on dialogue, on actual communication between people. This is precisely the move away from Kant’s individually and transcendentally justified categorical imperative of universalizability to Habermas’s ‘categorical imperative’. The argument, for Habermas and Apel is that actual practices of communication and argumentation between people hold norms within themselves that require acquiescence to, or they wouldn’t be possible at all. Even the most radical skeptic performatively agrees to abide by these norms simply by offering reasons for their skepticism (44-45).

The basics (and these are extremely simplified) of transcendental pragmatics and the theory of discourse ethics that is based on it are as follows: Two major principles can be derived from the norms inherent in communicative action: “(D) Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*” (1990b, 66, 121). And “(U) For a norm to be valid, the consequences and side effects that its *general* observance can be expected to have for the satisfaction of the particular interests of *each* person affected must be such that *all* affected can accept them freely” (65, 120). “Moral argumentation thus serves to settle conflicts of action by consensual means” (67).

There are two guiding principles immanent to discourse ethics and communicative action (see footnote). A. Inclusivity B. Non-Domination. These are immanent, because if a person is using coercion or some form of external power to compel agreement to a norm, the process ceases to be argumentation and becomes something akin to strategic behavior or worse. It would make no sense to say ‘Ah yes, I have achieved general agreement and consensus to a norm, by force or with the exception of the people I *prima facie* excluded without providing relevant, substantive justifications for their exclusion’ (Apel 1990; Habermas 1990).

It is important to note finally with regard to discourse ethics, that as a metatheory, it does not provide explicit instructions for its own implementation or actualization. As Habermas admits, “The principle of discourse ethics, like other principles, cannot regulate problems concerning its own application” beyond the point of proscribing the contravening of any of its premises. He goes on to say:

The application of rules requires a practical prudence that is *prior to* the practical reason that discourse ethics explicates…the principle of discourse ethics can be effective only if it makes use of a faculty that links it with the local conventions of a hermeneutic point of departure and draws it back within the provincialism of a particular historical horizon (105). Furthermore, it must also allow for the discursive critique of its own discursive foundations.

Benhabib’s interpretation of discourse ethics is one that is sensitive to postmodern feminist interpretations of culture, community and individual identity formation and reformulation. In her words, the discourse principle of legitimacy based on discourse ethics is the idea that “all those who are affected by the consequences of the adoption of a norm have a say in its articulation” (Benhabib 2004, 218). This discourse principle of legitimacy provides the philosophical basis for the solution of the democratic paradox and the problem of the right to have rights. However, Benhabib’s work goes deeper beyond the conventional neo-Kantianism of Habermas. For her discourse ethics is sensitive to the “concrete other,” not simply the “generalized other” central to John Rawls’s theory of justice based on the Original Position and veil of ignorance (Benhabib 1987, 1992; Rawls 1971). What this means is that for Benhabib, discourse ethics is constituted by the recognition that what matters is not some abstract conception of a person or human being that we can imagine, but rather that were are all “concrete others” with a concrete individual and social “history, identity, and affective-emotional constitution…”(Benhabib 1987, 92; 1992, 164)…

We seek to comprehend the needs of others, his or her motivations, what s/he searches for, and what s/he desire. Our relations to the other is governed by the norms of equity and complementary reciprocity: each is entitled to expect and to assume from the other forms of behavior through which the other feels recognized and confirmed as a concrete, individual being with specific needs, talents and capacities. Our differences in this case complement rather than exclude one another. (Benhabib 1987, 87).

The inclusivity of a radical interpretation and application of Benhabib’s Habermasian discourse ethics is a theoretically strong lattice from which to justify the proceeding kind of post-capitalist global federal system on. Global federalism—a system where along with limited global democratic institutions, regional governance structures (such as the EU, African Union, and Arab League), nation-states, sub-national groupings (such as states and provinces), along with even more local communities (like communes, counties, cities) all interact with one another and have distinct and over-lapping jurisdictions—is the best solution to the dual problems of the rights to have rights (in both its Arendtian articulation and its connection to the more conventional abrogation of human rights I have detailed) and the paradox of democratic legitimacy. A discursively justified, global federal system should have the following characteristics (from global to local):

1. World Court of Inclusion: The World Court of Inclusion is the judicial body where any person in the world can file a suit in which they challenging having being excluded from any decision-making process that harmed them and they were excluded *ex ante* from participating in (and participated here means participating in a non-coercive, non-dominating, power-free communicative action-oriented deliberation). Each judge would be appointed by the Council of Nations and approved by majority vote in the World Parliament.
2. Democratized versions of the International Criminal Court and the International Court of Justice (which both would have expanded jurisdiction to check the powers of the World Parliament, The Council of Regions, and the Council of Nations). In addition, the ICJ would be expanded to deal with jurisdictional disputes similar to the role that the United States Supreme Court fills with regard to American federalism.
3. World Parliament/Congress/Assembly: A popularly elected world government with very limited jurisdiction. This jurisdiction would include only issues of a truly global nature such as climate change and the global economy, including usage and progressive income/wealth taxes and other redistributive socioeconomic policies. This legislative body would elect judges from around the world to serve on the three global courts. In addition to this role, the legislature would approve and give support to the policies that support the following efforts:
	1. Expanding and democratizing transnational regional governments (such as the EU, African Union, Arab League, etc.).
	2. Support for local, regional, international democratizing efforts with regard to nation-state governments, specifically in terms of inclusion.
4. Council of Regions: Representatives of the democratically elected regional organizations meet here to discuss issues that cross regions but are perhaps not of completely global significance.
5. Council of Nations: This would be a reformed version of the United Nations where nations are represented equally. The Security Council would still exist as a sub-council of this body, but without the veto powers. The veto power of all five permanent members (who under this system would no longer be permanent) would be eliminated and that power would be transferred to the International Court of Justice, which would have to approve (or not veto, thus legitimizing) all economic sanctions and uses of military force called for by the Council of Nations’ Security Council. For the time being, I will suggest that no global military force be created, but rather that the existing UN intervention/peace-keeping practices be continually reformed and applied judiciously.[[7]](#footnote-7)
6. Local governments need to be democratized simultaneously, if not a bit ahead of any of the rest of these parts, particularly in terms of inclusion (The exception is perhaps the World Court of Inclusion because this court would be of immense help in supporting the efforts to inclusively democratize at the local level. We must keep in mind that what make these institutions discursively ethical is that they can be challenged after they have been implemented. So the WCI need not be democratically elected to start with but rather that it must include in its founding charter the ability of the people of the world to democratically challenge and change those very principles). This point is immensely important because these local polities must serve as a check on the power and authority of the nation-states, regional governments, and the global institutions. They must be deliberative but difference-sensitive.[[8]](#footnote-8)

This is just one proposal, which is admittedly quite expansive and vague. It is in no way meant to be the final outline of a concrete global federal system. In fact, it would seem necessary to write these procedures into a limited global constitution of some kind. How this would be done is a matter of great concern, but I am unable to address it at this point. People may say that this a utopian vision, and they might be right that it will never happen, but what I am concerned with is whether it is theoretically justifiable, defensible, and finally whether it is possible and illuminating the conditions for its possibility. My main goal here was to avoid the vagueness of the concept of cosmopolitan federalism in Seyla Benhabib’s work.

People may further argue that this kind of expansion is unnecessary, that the existing state system and international institutions can solve the problems I have explained. However, we must keep in mind the practical and theoretical problem of exclusion. Think about how the Constitution of the United States was established. Think about how the Charter of the United Nations was founded. Even the Lisbon Treaty of the European Union, none of these documents, regardless of the qualitative-categorical political differences between them, included all those people who might be or actually were affected by them. These important legal documents did not include, even abstractly, those who were subjected and affected by the laws as the authors of the laws. Although the European Union does associate itself closely with the European Court of Human Rights, which does allow for non-EU citizens to challenge human rights violations, one of those violations that they could potentially have redress for does not include exclusion on the basis of living outside of the EU. As James Bohman (2007) and less enthusiastically so Jurgen Habermas ([1998], 2001), argues, the European Union is the closest thing the world has ever seen to inclusive global federalism (and even Bohman would agree it is really not that close to being inclusive in the sense that I am advocating here). A global federalism of the kind I have elucidated is the most expansive solution available (or available in the coming future from a practical point of view, this is not really an option that can be implemented tomorrow).

Nancy Fraser discusses the fear of global tyranny that is often associated with any suggestion that sovereignty be expanded beyond the nation-state. The deliberatively democratized local polities I have suggested offer the best protection against what she calls “totalitarian crystals” (Fraser 2009, 131). Local, deliberative democracy is both internally consistent and justified because it serves as a pragmatic check on a totalizing regime emerging on a global scale. With this very fear in mind, it is instructive to return to the thought of Hannah Arendt who saw political institutions as the manifestation of the types of people that brought them into existence. “Political institutions, no matter how well or badly designed, depend for continued existence upon acting men; their conservation is achieved by the same means that brought them into being” (Arendt 2006, 152). This means that if global government of the kind I suggest were to become totalitarian, it would require for its continued totalitarian-ness the continued existence of people who were willing to infuse such a government with their efforts and energy. This means not even a totalitarian regime, however dangerous, harmful, and deadly is ever permanent, but then again neither is the ideal federal democracy. Both require the belief of the people who participate in them to flourish; they require if not every person, just about every person.

Connected to this important themes are the concepts of subsidiarity and “differentiated universalism” which for Richard Beardworth should be defined together (2011). In his recent book *Cosmopolitanism and International Relations Theory* (2011), he argues that a cosmopolitan future, perhaps of the kind I have been politically imagining, must be based on these two principles, both of which are co-constitutive with federalism. First:

the principle of subsidiarity means that decisions are taken at the lowest level at which they are both effective and legitimate regarding the people that these decisions affect….The political cosmopolitan position is particular in that, to one side of effectiveness, it insists on democratic legitimacy, not simply accountability….[The goal is that] “public decisions…provide and deliver public goods at the appropriate level of effective governance and be placed within a wider context that should embrace, as far as possible, democratic principle (105).

Subsidiarity as differentiated universalism means that “the implementation of cosmopolitan principles is necessarily layered….a theoretical framework of differentiated agents, different levels of analysis and different outcomes” (231-232). Beardsworth’s work avowedly in support of liberal cosmopolitanism clearly places him outside of the kind of radical global federalism I am arguing for, but his principles of cosmopolitan subsidiarity and differentiated universalism can easily justify and support my program as well.

Political inclusion, in the form of an irrevocable global citizenship/legal-juridical standing, is pragmatic in the framework of global federalism I have laid out. It allows for a greater security of dignity/humanity/human-ness of all sentient bodies, all persons, all so-called *homo sapiens*. Discursive-theoretically justified political inclusion makes absolute vulnerability less arbitrary and less politically contingent.[[9]](#footnote-9) Although I firmly accept and promote an argumentative foundation based on Arendt’s notion of plurality (see earlier mention of *On the Human Condition*); at its flimsiest, this notion can viewed herein pragmatically, not phenomenologically as Arendt presents it (although with an astute groundedness). We all experience pain and suffering in some manner or another, in isolation (mentally) and in our extensive relations with others (socially/in plurality), in highly personalized and socialized ways. This pain, this vulnerability has the potential for translatability across languages, cultures, sub-cultures, nations, and genders. This translatability should be assumed to be a part of both discourse ethics and Arendt’s notion of plurality. We are social creatures. We can and do empathize; although I want to reiteration this all happens in highly contextualized and contingent ways.

**BEYOND THE SOLUTION: HOW CAN WE GET THERE FROM HERE?**

This translatability in conditions of vulnerability and plurality, this institutional reform based on ethico-political considerations centering on inclusion are by no means as simple and straightforward as I have just made them seem (if I have indeed done that). Andrew Linklater provides us with the first major attempt at applying Habermasian discourse ethics to international relations and IR theory. The key text in this project is *The Transformation of Political Community* (1998). The general purpose of this book was to “…reaffirm the cosmopolitan critique of the sovereign state system and to defend the widening of the moral boundaries of political communities” (2). Linklater isolates the inclusion/exclusion dichotomy as the central axis of contemporary normative international relations scholarship and it is this axis where he justifies his attempt to transcend the modern Westphalian state system through the explication of a globalized discursive ethical praxeological theory. His approach is praxeological in that it approaches theoretical-sociological inquiry by searching for the seeds of novel forms of political organization within the extant structures, in “existing forms of life and anticipated by their moral reserves.” It is praxeological in another sense as well, in that it looks to isolate the aspects of existing forms of socio-political community that function as road-blocks toward the achievement of new, more emancipatory forms of community (5).

Linklater argues that discourse ethics at the global level is the primary method by which the necessary “triple transformation of political community” can occur. By the triple transformation of political community, he means “creating [1] social relations which are more universalistic, [2] less unequal, [and] [3] more sensitive to cultural differences.” It is through the fair procedures of discourse ethics that these transformations can occur fairly and justly, and in myriad contexts. The necessity of this kind of emancipation-oriented approach is based on the perspective that existing forms of socio-political organization are inadequate to address the problem of transnational harm[[10]](#footnote-10), broadly construed, but also in order to have internationally institutionalized “dialogue and consent replace domination and force” as the primary modes of national and global politics. If one were to reject this normative position, that at the very least domination and force are unsatisfactory modes of resolving political disputes and that coercion-free dialogue and consent would be more satisfactory, then one likely would not accept the lengthy vision Linklater presents based on this normative assertion (17, 21). “[The hope is] the modern society of states may yet turn out to be the first international society which is not destroyed by conquest and war but transformed peacefully by the normative commitment to extending the moral and political boundaries of community” (9).

The keys questions this text answers are: where are the seeds of this radical change in global political organization found in existing structures and what forms should progress towards these new forms of discursively ethical global communities take? Within modernity, mirroring Habermas, Linklater argues there are seed of change that should be watered and given sunlight for progress towards more just world to be made. The modern conception of citizenship is the seed of greatest significance for Linklater. Citizenship has been a historically progressive idea that has served the needs of those questioning modes of exclusion and inequality of rights. In order to continue to serve in this role, the modern understanding of citizenship must be de-linked from nationality and territoriality associated with state sovereignty because “the sovereign state cannot, in Hegelian terms, reconcile the universal and the particular” in the manner necessary to move away from unjustifiable frameworks of inclusion and exclusion (201).

The solution for Linklater, borrowing from E.H Carr and others, is a post-Westphalian understanding of the state and citizenship. The achievement of this kind of global political system is found in transnationalizing discursive ethical principles: inclusivity and domination -power- free communication between all peoples, societies, and nations. “All that has to be assumed is that cultural differences are no barrier to equal rights of participation within a dialogic community” (85). Citing Habermas, Linklater goes on to describe how the principles of discourse ethics hold the greatest promise of institutionalizing liberal cosmopolitan goals in ways that alternative world-views will not be oppressed by or find inherently disagreeable. “Dialogic cosmopolitanism…make[s] it possible for ethical universalism to ‘be reawakened and further developed in the form of multiculturalism’” (88). How to accomplish this is left mostly underdeveloped, but it must draw on the modern ideals of constitutionalism, extending democratic possibilities, and the evolution of more nuanced perspectives towards the social and economic necessities prior to the formation of true dialogic communities (169). “Breaking with the classical nation-state, post-Westphalian communities would promote a transnational citizenry with multiple political allegiances and without the need for submission to a central sovereign power” (181).

Daniel Levine, in his recent work *Recovering International Relations* (2012), presents a critique of Linklaterian critical IR theory, although not the primary function of the book, which is to rearticulate a negative dialectical theory of sustainable critique in IR, what he deems to be “recovering international relations.” Levine’s reading of Linklater is overly narrow and at times essentialist bordering on outright falsity. Levine accuses Linklater of offering an overly rigid misapplication of Habermasian theory to the international realm, and that it has the potential to become as oppressive and totalitarian as the system it seeks to overturn (88-89). Levine goes on to criticize Linklater’s lack of including any concept of sustainable critique within his application of discourse ethics globally. This is simply incorrect. Although it may be true that Linklater does not explicitly include an Adornoian negative dialectical concept of sustained critique within his thesis, he does explicate how discourse ethics includes immanent critique of its own formulations and applications within its own premises (what I take to be a fundamental aspect of Levine’s theory of sustainable critique) . Discourse ethics, in the Habermasian and Linklaterian modes, inherently and explicitly includes perpetual opportunities for participants to critique the foundations and procedures of discourse ethics itself. Any theorization or institutionalization of discourse ethics that does not include such opportunities is vehemently contradictory to the principles and premises of discursive ethics.

This point is made more vaguely by Linklater, but more emphatically and pointedly by Seyla Benhabib. Benhabib has her own critiques of discourse ethics that she made prior to Linklater’s seminal text, so they were co-opted into his articulations as I mentioned early.[[11]](#footnote-11) Her main problem, and it is a perspective held by other feminist thinkers as well, is that discourse ethics does not deal with the disparities present in social relations prior to the ideal dialogue occurring and therefore maintains and preserves patriarchal domination of political life. This criticism is fair and relevant, which is precisely why Linklater saw the need to explicitly address it. He and Benhabib both did not see this critique as destroying discourse ethical theory but rather quite the opposite. They both argue that discourse ethical theory needs to be more clear about the necessary preconditions required to reach the ideal communication situation, which includes the restructuring of socioeconomic relations so that true domination - power- free communication is achievable.

The argument provided by Linklater, incorporating Benhabib’s thinking, is that a praxeological account of discourse ethics at the global level must illuminate the socio-economic barriers to achieving the ideal communication community, including income and resource inequality but also socially constructed gender norms. Without ways to mitigate these disparities, the ideal communication community in which discourse ethics could structure institutions and global arrangements will forever be a distant dream. Linklater believes that there have been and will continue to be important efforts to address the necessary preconditions of discourse ethics and thus dialogic communities will continue to become more and more realizable. Those people who disagree with any aspect “can challenge the principle of universal moral respect and egalitarian reciprocity within the moral conversation, but if they want to establish that their position is right not simply because it is mighty, they must convince with argument that this is so” (Benhabib 1990, 340). As alluded to early, this is exactly the line of thinking that the World Court of Inclusion is designed to solve.

The most withstanding critique of or problematic found within discourse ethics and its attempted global application by Linklater lay in the scholarship of Richard Rorty. Now Linklater attempts to pre-empt some of Rorty’s previous critiques of Habermas and cosmopolitanism more broadly, but he does so with only partial success. Linklater presents Rorty’s critique of universalism that “it is meaningless to appeal beyond one’s community to some larger entity known as humanity…” (Rorty 1989 in Linklater 1998, 65). Linklater goes on to cite a countervailing point made by Rorty in the same text, that “…a more humane morality is centered on the conviction that the differences between groups are ultimately less important than the shared experience of ‘pain and humiliation’” (66). Not only is Linklater arguing that people should and can appeal beyond their community and not to an abstract notion of humanity but rather to other real peoples and other real communities, but he is also making a very similar argument made in Rorty’s second point. Linklater apparently believed that he had adequately dealt with the Rortian critique of globalized dialogic ethics. What he actually did was more of a strawman fallacy, pointing out the weaker points of an opponent and showing them to be weak in an attempt to avoid the stronger critiques.

The stronger Rortian critique is formulated in “Who Are We? Moral Universalism and Economic Triage” (2008 [1996]). In it Rorty argues that questions of moral responsibility and obligation (questions attempted to be addressed in discourse ethics) turn on linguistic constructions of an ‘us versus them’ dichotomy. Those who are construed as other thus exist as agents of insignificance or worthy of less moral consideration compared to those who are considered part of the ‘us’ (321-322). The critique of Habermas and thus Linklater becomes, if the Linklaterian thesis is: there needs to be good reasons, that is discursively articulated, acceptable justifications for treating equals (all people) unequally, then what happens when some people do not see others as equals? By the logic of discourse ethics, one is required to see others as equal moral agents in order for them to be required to be included under the (D) and (U) premises explained above. Rorty’s point is relatively simple, members of other communities are not viewed as equals and therefore a great deal of the project of discourse ethics and emancipatory dialogic community formation is left with a serious, potentially fatal flaw: the reality of socio-political identity formation and the consequences of that for any potentially universal program.

Indeed there are many other models of transnational politics, from John Dryzek’s *Deliberative Global Politics* (2006), Daniel Bray’s *Pragmatic Cosmopolitanism* (2011), to James Bohman’s *Democracy Across Borders* (2010). Of these three, Bohman’s is by far the most theoretically deep and pragmatically amenable to my own approach. Bohman critiques Dryzek’s outright rejection of any kind of institutionalized procedures or governmental structures in support of global deliberative politics. Bohman’s book argues for an institutionalized transformational transnational democracy based on overlapping *demoi*, not *demos*, supported by a critical cosmopolitan republicanism defined by non-domination. Beyond the difference that my approach focuses on inclusivity (a concept and practice with an affinitive connection to Bohman’s non-domination, which I am sure he would agree with), all the relatively recent conceptions of transnational democracy, loosely labeled cosmopolitan, including Bohman’s and David Held’s global social democratic theory presented in *The Global Covenant* (2004), do not adequately address theoretically the problems of recognition and alienation, (i.e. the problem of capitalism) in any kind of radically necessary way that is required for a transformative, inclusive global politics.

**ALIENATION, RECOGNITION, REDISTRIBUTION, AND THE PROBLEM OF CAPITALISM**

The problems that precede the kind of system I have advocated here are not small. Discourse ethics and any institution, even one based on *ex post* inclusion, requires that those who are *ex ante* included view those who are not as potentially relevant moral agents worthy of *ex ante* inclusion in legal practices that all for all those affected by a decision to be included in the decision-making process, even if that means including them after the decision has been made. Those who have been excluded but affected must be recognized as deserving *ex post* inclusion in order for cosmopolitan federalism to work. This is more or less the “problem of recognition” that was originally articulated by Axel Honneth and debated against/with Nancy Fraser (Fraser and Honneth 2003).

Nancy Fraser on her own terms, has argued that the problem of redistribution is of much more concern, because if we get to the point where a polity believe that redistribution is necessary then recognition is included in that thought-process. However, if only recognition is achieved, inequality could in theory still be justified in practice (however philosophically unjustifiable it is). The problem I am left with between these two thinkers arguments is that both recognition and redistribution (at least to the point of redressing large economic inequality) are necessary for a discursively ethical global federal system to be established. Now, it seems as though there is a circularity, because I have implied earlier that the purpose of this global federal order is to reduce extreme vulnerability (namely poverty and physical violence) experienced in a state of exclusion or even in unequal inclusion. It is apparently a chicken and egg problem. It may be that as people engage in dialogue with one another which is empirically the sociological trend visible in globalizing processes (Linklater 1998), or that we are slowly progressing, quasi-linearly towards cosmopolitan harm conventions which socialize us through emotional connections into seeing each other[[12]](#footnote-12), no matter how different as increasingly worthy of inclusion in a shared notion of humanity, however thin or contentious that shared humanity may be. What then is slowing this process down or even will prevent it from culminating or continuing?

In the *Economic and Philosophic Manuscripts of 1844* Marx discussed the problem of alienation in capitalism. The general idea is that capitalism is dehumanizing in that in turns human beings into both consumers and the consumed. Capitalism compels people to view themselves and others as commodities to be sold and bought. This view of alienation is correspondent to the ownership of the means of production by the bourgeoisie (Marx, Tucker 1978). This is to say nothing about the material inequality that global capitalism has sought fit to spread around the world to the material benefit of some, to the minor material benefit to others and to the detriment of the rest. In fact, alienation is something we all experience as part of global capitalism no matter how rich we are. Just as Frederick Douglass claimed that the institutions of slavery harmed the slave master as much as it did the slave[[13]](#footnote-13), capitalism alienates the controllers of the means of production and the holders of the excesses in wealth that are barely comprehensible to the average person. Even for the bourgeoisie, there is a loss of humanity because as they dehumanize others they dehumanize themselves. For Marx, and later humanist Marxists such as Erich Fromm, alienation hinders our ability to see and feel our connections to one another. It promotes a kind of thinking that sees humankind as radically distinct from ‘nature’, and it promotes the having mode of existence as opposed to the being mode (Fromm 1976). “One experiences oneself as a commodity or rather, simultaneously as the seller *and* the commodity to be sold. A person is not concerned with his or her life and happiness, but with becoming salable” (148). Those under a capitalist mode of production (which would be just about every person in the world), are made to see each other strategically instead of empathetically and equally. This is opposite to the kind of post-conventional moral perspective that Habermas argued was central to discourse ethics. This is one of the main factors I see leading to the problem which Rorty presented, if we see each other as objects of competition, as commodities instead of as emotional, potentially rational and dignified moral agents worthy of inclusion in the ‘we’ how can a cosmopolitan federal order ever be actualized? My fear is that it cannot. Fromm offers four preconditions that can lead to the end of the problem of alienation:

1. We are suffering and aware that we are [and that we are complicit in the suffering of others].
2. We recognize the origin of our ill-being [the ‘natural’ human condition and the huge exacerbation those tragedies and sufferings by capitalist social character]
3. We recognize that there is a way of overcoming our ill-being.
4. We accept that in order to overcome our ill-being we must follow certain norms for living and change our present practice of life (168).

Absent any thoughtful dealings with the problem of alienation on behalf of liberal capitalists, I remain with the position that the social character[[14]](#footnote-14) that capitalism fosters is antithetical to the post-conventional moral perspective the kind of ubiquitous communicative rationality and discourse ethical institutionalization required by an inclusively motivated cosmopolitan federalism, which I have argued is the best way to both theoretically and pragmatically address the contradictions (paradoxes) of democratic values and democratic practice. What these leaves my argument with is the solution to the problem of the solution is that redistributive, recognitive, global federal, and local deliberative democratic policies all need to be pursued simultaneously and with equal fervor on the part of those who believe that these are worthwhile causes.

**CONCLUSION**

The examination of the right to have rights has shown us that politics as it has been historically practiced is a politics of unjust exclusion, and this unjust exclusion is not only theoretically problematic but leads to the potentiality and vulnerability to absolute harms. The good news is that this is not, as previous scholars have argued, an unresolvable paradox (see those cited in Benhabib 2011). Democratic procedures can indeed be applied to its own practical foundations, but it requires institutionalized *ex ante* inclusion in a global polity (*demoi* or *demos*)[[15]](#footnote-15) so that at the very least *ex post* contestation and re-deliberation can be carried out. This ensures that those who are (negatively) affected by a political decision have formalized legal redress. Additionally, a popularly elected, global assembly is not the end goal but rather an institutional check on the other branches of the global government designed to promote local, deliberative inclusion. Legally codifying that every sentient being on Earth have citizenship in a global polity and can therefore contend in a legal setting that they have been harmed by being unjustly excluded from the deliberative decision-making processes at any level, is the necessary foundation for a non-contradictory, inclusive democracy.

It remains a hope, my hope that it will not take a horrendous international crisis, whether structural, ecological, or the continuing human destructiveness we constantly bear witness to in order to make the necessity of such a political transformation I have suggested apparent. The hope, my hope is that within the remnants of the sovereign state system in which we reside, state and global leaders will emerge to assert their political responsibility and move the world toward an institutionalized, inclusive, ‘post-Westphalian’ system.[[16]](#footnote-16)

The first requirement… of the new society is to be aware of the almost insurmountable difficulties that such an attempt must face….those who have not given up hope can succeed only if they are hardheaded realists, shed all illusions, and fully appreciate the difficulties. This sobriety marks the distinction between *awake* and *dreaming* ‘utopians’ (Fromm 1976, 173).

**Bibliography**

Adorno, T. and Horkheimer, M. [1956] 2011*. Towards a New Manifesto*. New York: Verso.

Apel, Karl-Otto. 1990. “Is the Ethics of Ideal Communication Community a Utopian? On the Relationship between Ethics, Utopia, and the Critique of Utopia.” In *The Communicative Ethics Controversy* eds. Seyla Benhabib and Fred Dallmayr. Cambridge, MA: MIT Press.

Arendt, Hannah. [1948] 1979. *The Origins of Totalitarianism*. Orlando, FL.: Harcourt.

Arendt, Hannah. [1954] 2006. “What is Freedom?” in *Between Past and Future: Eight Exercises in Political Thought*. New York: Penguin.

BBC News. Country Profiles & Historical Timelines. British Broadcasting Company. 2013:

China: <http://www.bbc.co.uk/news/world-asia-pacific-13017882>

Saudi Arabia: <http://www.bbc.co.uk/news/world-middle-east-14702705>

Somalia: <http://www.bbc.co.uk/news/world-africa-14094503>

Syria: <http://www.bbc.co.uk/news/world-middle-east-14703856>

Beardsworth, Richard. 2011. *Cosmopolitanism and International Relations Theory*. Malden, MA.: Polity Press.

Benhabib, Seyla. 1990. “Afterword: Communicative Ethics and Current Controversies in Practical Philosophy.” In *The Communicative Ethics Controversy* eds. Seyla Benhabib and Fred Dallmayr. Cambridge, MA: MIT Press.

Benhabib, Seyla. 1993. *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*. Cambridge, MA: Polity Press.

Benhabib, Seyla. 2004. *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge, UK.: Cambridge University Press.

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

Benhabib, Seyla. 2011. *Dignity in Adversity: Human Rights in Troubled Times*. Malden, MA.: Polity Press.

Chomsky, Noam. 2006. *Failed States: The Abuse of Power and the Assault on Democracy.* New York: Metropolitan.

Cotter, Bridget. 2005.“Hannah Arendt and ‘The Right to have Rights’” in *Hannah Arendt and International Relations: Reading Across the Lines.* ed. Anthony F. Lang, Jr. and John Williams New York: Palgrave Macmillan.

Fraser, Nancy. 2009. *Scales of Justice: Reimagining Political Space in a Globalizing World.* New York, NY: Columbia University Press.

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

Fromm, Erich. 1976. *To Have or To Be?* World Perspectives series. New York: Harper & Row.

Habermas, Jurgen. 1979. *Communication and the Evolution of Society*. Trans. Thomas McCarthy. Boston, MA: Beacon Press.

Habermas, Jurgen. 1990. *Moral Consciousness and Communicative Action.* Trans. Christian Lenhardt and Shierry Weber Nicholsen. Cambridge, MA: MIT Press.

Habermas, Jurgen. [1998] 2001. “The Postnational Constellation and the Future of Democracy” in *The Postnational Constellation.* Boston, MA: MIT Press

Habermas, Jurgen. 2006. “Religion in the Public Sphere.” In the *European Journal of Legal Philosophy*. Pg 1-25.

Hutchings, Kimbery. 2010. *Global Ethics: An Introduction*. Malden, MA: Polity Press.

Levine, Daniel J. 2012. *Recovering International Relations: The Promise of Sustainable Critique*. New York: Oxford University Press.

Linklater, Andrew. 1998. *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era*. Columbia, SC: University of South Carolina Press.

Marx, Karl. 1978. “The Economic and Philosophic Manuscripts of 1844” in *The Marx-Engels Reader*. Ed. Robert C. Tucker. 2nd edition. New York: W.W. Norton.

Michelman, Frank I. 1996. “Parsing ‘A Right to have Rights.’” *Constellations*. Vol. 2 no. 2. Blackwell: Cambridge, MA pg. 200-208.

Rorty, Richard. 2008 [1996]. “Who Are We? Moral Universalism and Economic Triage.” In *Global Ethics: Seminal Essays.* Ed. Thomas Pogge and Keith Horton. St. Paul, MN: Paragon House.

1. In *Towards a New Manifesto*, T. Adorno & M. Horkheimer (2011). [↑](#footnote-ref-1)
2. In *To Have or To Be?*, E. Fromm (1976, 133). [↑](#footnote-ref-2)
3. For Arendt, membership in a community was a requirement for action which she believed to be the defining characteristic of freedom. Without community membership, there can be no freedom. See “What is Freedom?” in *Between Past and Future* (2006). [↑](#footnote-ref-3)
4. And although Arendt does not say this, I would argue that the American Revolution was at least partially contributory towards this amalgamation as well, however different the two revolutions were, they were both were couched in language opposed to perceived tyranny and in favor of some form of national sovereignty (at least rhetorically). [↑](#footnote-ref-4)
5. Universally acceptable here requires that those attempting to determine whether they would accept the premises or not is actually interested in global justice (broadly defined), the problem of the right to have rights, as well as oppression (in the least controversial sense like genocide or ethnic cleansing). Shared goals may or may not be a given, which is why it is important to convey, that the shared goals are inherently tied to the solution I provide. [↑](#footnote-ref-5)
6. In *Dignity and Adversity* (2011), this is Benhabib’s response to F. Michelman’s critique of her concept of democratic iterations as exclusively jurisgenerative. [↑](#footnote-ref-6)
7. The Responsibility to Protect (R2P) as a legal policy would be an excellent place to start on the issue of humanitarian (military) intervention. I want to make it clear: violence (structural or conventional/immediate) should never be ethically or morally justified. What I want to acknowledge here is that there are rare times when violence may be politically defensible in limited instances; to ignore this is to be utterly naïve (something I have attempted to avoid being). Any use of political violence can only be defensible to prevent the immediate loss of life (i.e. to stop other violence), hence the suggestion of R2P as a reformative starting point. [↑](#footnote-ref-7)
8. Deliberative democracy in the sense of the discourse-theoretic model of democracy presented by J. Habermas in *Between Facts and Norms* (1998) and “Three Normative Models of Democracy” in *Inclusion of the Other* (1998) [↑](#footnote-ref-8)
9. These terms (as with all language) are deployed in a broad way that is meant to allow for the widest possible interpretation. As with my whole argument, and a generous reading should allow it, my language should be understood with a spirit of inclusivity, with an openness to contestation. [↑](#footnote-ref-9)
10. Transnational harm can be interpreted in locally, culturally sensitive, contingent ways—therefore it is not simply an alternative ‘foundation’ in a philosophical sense. This is also a concept that Linklater has gone on to write an entire treatise on. See *The Problem of Harm in World Politics* (2011). [↑](#footnote-ref-10)
11. See Benhabib, *Feminism as Critique* (1987) and *Situating the Self* (1992) [↑](#footnote-ref-11)
12. See Linklater, *The Problem of Harm in World Politics* (2011). [↑](#footnote-ref-12)
13. See Douglass, *The Narrative of the Life of Frederick Douglass* (2005). [↑](#footnote-ref-13)
14. See E. Fromm *The Fear of Freedom (1994)*, *Man For Himself (1990)*, and *To Have or To Be? (1976)* For more detailed discussions on his original concept of social character. [↑](#footnote-ref-14)
15. See Bohman, *Democracy Across Borders: From Demos to Demoi* (2007). [↑](#footnote-ref-15)
16. (Elite) Political responsibility seems to be where Beardsworth (2011) rests his liberal cosmopolitan hopes. This kind of aristocratic element, even for the ‘greater (democratic) good’, leaves me unsettled because it comes dangerously close to vanguardism and is thus open to the same kind of (authoritarian) risks. Beardsworth may still be correct that is kind of elite responsibility is where our best hopes lay. I remain uncomfortable with and unsure of the ramifications this proposition. [↑](#footnote-ref-16)