Magdalena Gawin Barbara Markiewicz Agnieszka Nogal Rafał Wonicki

Human and Citizens Rights in a Globalized World

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Introduction

The purpose of this book is to analyze human rights through the use of philosophical concepts and to compare the justification and function of human rights from the perspective of political realism and idealism. By doing so, we would like to argue that human rights are, in the context of both domestic state affairs and international relations, in conflict with civil rights and with national sovereignty. The unification of these two systems of rights by means of laws and actions of governments is more effective within a state framework than on an international level. However, due to the process of globalization, the dissonance between civil rights and human rights is becoming clear even within states. Unfortunately, in the international arena, this dissonance is even more obvious, and human rights stand "bare" and deprived of state protection in the form of civil rights, which are guaranteed through judicial, executive, and legislative mechanisms. Within state boundaries, human rights can be introduced into the legislative system as fundamental civil rights. However, due to their moral status, they cannot be enforced within international relations with such efficiency as other regulations can, and, therefore, they resemble more a set of moral guidelines, according to which we judge given behavior, rather than enforceable legal norms.

On the one hand, tensions between postulated norms and the practical implementation of human rights can be seen especially in idealist theories of justice based on human rights. On the other hand, realist theories neglect human rights and the moral dimension in their analysis of relations between countries. Additionally, we are faced with the challenge of understanding the effects of global interdependence. All these aspects make it necessary to take a closer look at the status and role of human rights in international relations, both in theory and in practice.

The process of globalization is the point of reference in our analysis, which leads to either an optimistic or a pessimistic assessment of the role of human rights. At the present level of development in international relations, interdependence has become an important element in the construction of the international system, influencing its effectiveness. Growing international interdependence and its qualitatively new characteristics resulting from the process of globalization are among the main changes in the international community. This growing international interdependence causes civilizational threats, such as the destruction of nature, the depletion of natural resources, and international terrorism, to take on a global character. An important change is the increased permeability of national borders and the blurring of previously clear differences between domestic and international relations. At the same time, this growing international interdependence and increased permeability of borders is contributing to a change in the relationship between human rights and civil rights. This process means that there is a shift from a world of nation-states to a post-Westphalian polycentric world, where power is dispersed and a controversial method of coordinating activities, referring to human rights as an assumed collective axiological foundation, has been developed.

As a result of the processes of globalization, it is possible to observe both a tendency to create a new world order and the need for a new theory of justice. This new version of "global" justice,

which differs from the realist, or even classical, understanding of international justice, is often based on a liberal understanding of human rights and may be developed in various directions, which we will show in this book, such as Rawls' static liberalism, Held's cosmopolitan democracy, and Habermas' constitutionalization of international law. They all, however, encounter the same difficulty—the problem of reducing the tension between human rights and civil rights on a global scale. Generally, it may seem that human rights are a topic which has been analyzed from all angles, but contrary to this belief, not many philosophical studies have been published concerning the relationship between human rights and civil rights at an international level. The most important works on this subject are those of Donelly [2003], Griffin [2008], and Freeman [2004]. After World War II there was an increase in literature regarding human rights, and then again after the end of the Cold War. Today, however, as globalization is expanding, many authors are returning to the topic of human rights as a fundamental frame of reference, especially concerning economic, cultural, and social relations, further developing third-generation human rights. These works focus mainly on showing the importance of complying with human rights, and not so much on their philosophical analysis, which supporters and opponents of Rawls and his proposition from *The Law of Peoples*, such as Pogge, Beitz, and Mouffe, have started to present. In this book we shall refer to these approaches and arguments, but its novelty lies primarily in combining legal and moral aspects (human rights) with normative and political ones (theories of justice and theories of international relations). In our description of these aspects, we would like to demonstrate that under the influence of the processes of globalization, which result in multi-leveled interdependence, a change in the understanding of civil rights and sovereignty is occurring. Moreover, human rights, which are playing an ever-growing role in the field of legal and political reasoning as to what the international order should look like, are being presented as civil rights that require effective institutionalization.

Human rights, however, are not culturally neutral. They are not simply a functional project, but have their own normative content. The justification of human rights and their legal protection, therefore, prevents us from referring to human rights solely from the moral point of view—it is also necessary to consider them from the legal and political perspectives. This, in turn, on a transnational level, brings us to the conclusion that in order for idealist theories of justice to be effective, it is necessary for them to recognize political mechanisms for the enforcement of these rights and, in consequence, to recognize that a global state is the most effective way of guaranteeing human rights in the form of civil rights. This raises objections from most theorists, as it threatens us with global despotism, imperialism, the hegemony of a particular normative model, and axiological unification. On the other hand, realist theories which reject axiology altogether, including the axiology of human rights, make us aware of the threat of a strong, unrestricted power and destabilized international relations. They must also explain why so many states apply human rights regulations in their domestic and international actions. The theories of realism and idealism which we will be discussing in this book will be constantly challenged by these problems, while trying to avoid, and in various ways trying to operationalize, the conflict between a moral and a political or legal understanding of human rights and civil rights.

Aside from demonstrating the contrasting perspectives and the tensions concealed in the human rights model, as well as indicating that these tensions are transferred to the international level (which is reflected in theories of global justice), the most important issue in the dispute between realists and idealists is the search for a compromise between the two. The realist approach to justice in international relations is centered around power and the state, omitting both new political entities and the complicated global relations resulting from the fading of old borders, but it also relativizes human rights as a cultural creation of the West. Civil rights are the

basis of justice in a given state, whereas on an international level, the right of states to sovereignty is paramount. On the other hand, liberal concepts of international justice consider human rights to be an important element of the state's guarantee of civil rights as well as an international, axiological dimension of the law. Both theories, however, are divided internally. Different rules apply within state borders than in international relations (see Goodin, R.E. [1988], pp. 663–86, and Miller, D. [1995]). In international relations, human rights are an important frame of reference, but they are treated as a moral duty rather than as a duty of justice, which means that, due to the lack of a world sovereign, it is not possible to enforce sanctions for the violation of these rights. On the other hand, idealists, such as Nussbaum, hold the moral dimension in such high regard that they forget about the political one. This exposes their political calls for a new institutional order to accusations of Western imperialism or Eurocentric shortsightedness.

It is necessary to emphasize that there is a potentially ineradicable conflict between global justice and the communal particularism of norms resulting from the existence of natural borders between varying cultural worlds or ways of living of diverse human communities. These two perspectives have transformed into various concepts of justice and interpretations of human rights. The first speaks of a certain minimum of values which should be protected throughout the world, resulting from the fact that the world's inhabitants belong to humanity. The second proposes to agree on certain international regulations which will make it possible for different communities to coexist in the world, without, however, accepting human rights as a universal moral standard. Both models make use of the concepts of human rights and civil rights, which means that they should first come to an agreement on how the two relate to one another, especially considering that neither model has assumed these rights to be equal and co-primordial to each other.

Will any of the perspectives referring to human rights which are presented in this book solve the problems mentioned above?

We are not able to predict this. Nor is it the aim of this project. In this book, we would like, above all, to show the ineradicable conflict between human rights and civil rights that appears on many levels and results from fusing the political domain with the moral domain. This conflict is also the result of fusing the unlimited, universal, and extraterritorial nature of human rights with the territoriality of civil rights. The territoriality and finiteness of the latter come into conflict with the postulated universalism and globalism of the former. Moreover, it is possible to defend the universalism of the concept of humanity with reference to different philosophical concepts regarding human beings, which, in practice, are not universally recognized. A common assumption in theories of global justice is the liberal and universal way of understanding human rights, whereas in fact, human rights encounter resistance from other ideologies and world views, which have different frames of reference for the law (e.g. a religious one rather than one derived from the Enlightenment). At the same time, this undermines the assumption that where there is justice, poverty, exclusion, and other social problems that we experience in various parts of the globe will disappear—as if shifting these conflicts from the state level to the international level would by itself resolve them. Meanwhile, the vertically structured solutions put forward by idealists, such as supranational control over the processes of globalization, raise the question of how such constructions can keep in check the phenomenon of globalization, which is a horizontal phenomenon. The solution may be, of course, to demonstrate the fact that from high up it is possible to "see" more, and therefore it is easier to regain control over expanding processes, because from the perspective and level of the state, we may not be able to observe all the pertinent phenomena and connections. Nevertheless, we are still missing an answer to the question: why should human rights be the common normative foundation for the construction of such supranational institutions? The global institutionalization of human rights is a matter that needs to be examined

and the necessity of which must be demonstrated. For now, we are dealing with resistance to such global institutionalization even within a supposedly unified European Union (EU)—one example proving this was the rejection of the Treaty establishing a Constitution for Europe in 2005. In addition, the implementation of global justice would require the creation of a complicated network of supranational relations in such a way that all elements would become more predictable and controllable in a world based on interdependence. Taking human rights into consideration, we could find that we are not yet able to do this due to the diversity of cultures and lifestyles.

Since even the two basic theories encounter serious problems in their analysis and their normative establishment of the role that human rights should play, we shall move our enquiry to philosophical ground. We are searching for a philosophical legitimization of human rights, asking whether it is possible to describe them with reference to categories such as human being, territory, and border.

We start our analysis with a presentation in Chapter I of the characteristics of human rights and their division into three categories,[1] their philosophical conditioning, the role they play in international law, the problems with their status, their relation to civil rights and to sovereignty, and the criticism they face. The interpretation of each category of human rights described in this chapter, the relations that obtain between them and other values (such as civil rights and sovereignty), and the potential sources of conflict and the problems they cause will all help us draw a conceptual map that will then be analyzed in detail in the following chapters.

In Chapters II and III we will analyze the realist and idealist approaches to international relations, taking into consideration the

[1] Later in this book, we generally do not make use of the term *generations of human rights*, but use *categories of human rights* instead, which we will explain in Chapter I.

role of the state and the law (including human rights). In Chapter II we will concentrate on highlighting the most important characteristics of realism, showing how values are understood and how human rights are treated in international law. By analyzing theories by Morgenthau, Schmitt, and others, we will show that, for realists, the dominating entities in the international arena are collective ones—organized into states, competing for power. On the other hand, for some of them, human rights are simply an element of their internal order.

In Chapter III we will present, using selected examples, the role of human rights in international relations from the perspective of idealist and liberal theories of justice. We will start from the general characteristics of idealism in international relations, showing its most important characteristics: individualism, rationalism, and optimism. The basic normative concept, which we will analyze within the framework of the idealist interpretation of human rights in international relations, will be cosmopolitanism. By describing the development of this thought from antiquity to the present day through the use of certain concepts—Stoic and Kantian—we shall demonstrate that they are the main source of inspiration for the various contemporary liberal approaches regarding the way international relations should be regulated. These concepts include Habermas' theory of post-national constellation, Held's cosmopolitan democracy, and even Rawl's law of peoples and Nussbaum's theory of capabilities. At the base of each of these theories, however, the necessity for the supranational protection of human rights can be found. We will analyze these theories, looking at how human rights are defined, what their status is in each of them, and what function they fulfill. Next, we will carry out an analysis of the relationship between human rights and the idea of global citizenship. We will also describe the idealist and liberal approaches to democracy and sovereignty. Finally, we will present a summary demonstrating the problems with the idealist concept of the role of human rights at the international level.

In Chapter IV, we will carry out a philosophical analysis of the category of space and its relationship to human and civil rights in a globalized world. To start with, we will present the spatial dimension of human rights and how such a view of them influences the understanding of what a state is. The territorial positioning of "human rights" has caused many difficulties since the time they were articulated and declared. Although human rights are treated as fundamental and universal, they only "exist" if they are recognized by the people and are integrated into the legal order. They may, however, be undermined, or even annulled, based on legal regulations which exist within given, politically defined, borders. At the same time, globalizational interdependence also results in the fading of political borders within which human rights and civil rights can be effectively enforced. Therefore, not only is there a focus on human rights on a national level, but also civil rights are starting to be extended beyond national borders. This causes problems concerning jurisdiction and executive power, and exposes human rights to criticism.

Inasmuch as the notion of law has a positive connotation and laws are enacted by the statutory authorities, the notion of being *human* refers to an moral concept from the Enlightenment, where people, thanks to their most important characteristics (such as rationality), are, and should be, treated with due dignity. Humanity, however, has this attribute only within the framework of a specific metaphysical and ethical doctrine. Viewed from the perspective of the natural sciences, humanity is reduced to the fact of belonging to one of the many species inhabiting the Earth. Such a biological approach does not warrant a normative concept related to human rights. By capturing the dependence between the biological aspect of human existence and legal personality, we will be able to extract the philosophical sources of tensions between human rights and civil rights and to trace these tensions in international law. This in turn will allow us to demonstrate the philosophical difficulties concerning the linkages between human rights,

sovereignty, and international law, conditioned by globalization. We will also be able to critically judge the role of human rights in both the realist and idealist approaches and show how this role affects the understanding of the concept of international justice within those theories.

In conclusion, having taken into account all the issues discussed above, which have emerged from the perspective that we have taken, we will demonstrate that it is possible to distinguish two methods of evaluating the role of human rights and civil rights. The first is pessimistic, indicating the continuously decreasing real influence of the citizen on government and the lack of protection of human rights, reducing them to a mere ideal. The second is optimistic, showing the ever-stronger expansion of human rights regulations, together with globalization, across national borders. The relationship between human and civil rights described throughout this book also leads us to the conclusion that the maintenance of the system of human rights is crucial in the present globalized world order.

As the methodology for this work, we have adopted conceptual and comparative analysis. This approach has provided us with critical insight into the theories of political realism and idealism, and an opportunity to study, from within their frameworks, the relationship between human rights and civil rights. Furthermore, we present these theories from two perspectives: firstly, as theoretical concepts which can be found in existing theories of international relations, and secondly, as normative concepts, that is, those which form some kind of model for real political action and fields of argumentation, and which indicate the anticipated direction of change. In the case of idealism, the normative dimension does not raise any doubts. In this study, realism has also been treated as having a normative dimension—for realists, security is assumed to be the highest value. Also, the conflict between realists and idealists itself is of a normative character. It not only reveals weaknesses in the description of international relations from the idealists' perspective,

but also draws our attention to the fact that the direction of political action aspired to by the idealists is flawed. The normative dimension of both theories can only be reconstructed with the use of philosophical tools, such as the reconstruction of normative positions and dominating strategies of argumentation. Other philosophical tools that will be used include the analysis of key concepts such as: "territory", "border", "human (being)", "law", "human rights", "civil rights", "sovereignty", and "justice".

This book does not claim to exhaust the subject matter. It is rather a contribution to the discussion, an attempt to shed light on the processes that are presently occurring in international relations, which may be helpful in their understanding. The book is the result of the cooperation of a research team made up of the following members: Prof. Barbara Markiewicz, Dr. Agnieszka Nogal, Dr. Magdalena Gawin, and Dr. Rafał Wonicki. At various stages, Ph.D. students from the Department of Philosophy of Politics (from the Institute of Philosophy of the University of Warsaw) also helped with carrying out this work and deserve a big thank you: Marta Turkot, Jolanta Sawicka, Katarzyna Klimowicz, Bartosz Fingas, and Julia Wrede. As often in such situations, as Umberto Eco ([1995], pp. 189–191) said in his paradigm speech: the responsibility for any imperfections lies solely with the authors. We can only hope that this book will generate a positive reaction. Finally, we must also thank Narodowe Centrum Nauki (the National Science Centre) for providing the funding, without which this publication would not have been possible.

Chapter I

Human and Civil Rights in International Law

Human rights express the conviction that each human being, regardless of his or her origin, nationality, gender, skin color, etc., is entitled to certain inherent and inalienable rights. The issue concerning the status of these rights is an unusually complicated problem to resolve. According to some theorists, these rights are primarily of a moral character.[1] The fact that the *Universal Declaration of Human Rights* (UDHR) was proclaimed to be a collection of common regulations and aspirations as to the general direction of humanity, and not a set of laws to be understood as individual rights in relation to the state, seems to speak for this interpretation. According to this point of view, neither the *Declaration* itself, nor human rights, should be interpreted as a type of meta-constitution of the United Nations member states. An additional argument in support of this view is the fact that at the time of their ratification, no enforcement mechanism was built into these rights; they were, however, strongly associated with the idea of national self-determination and state sovereignty (Osiatyński [2009], pp. 52–56).

Meanwhile, human rights do constitute an integral part of international politics and law. The influence of the UDHR and of

[1] An example of such a theorist is Wiktor Osiatyński—see Osiatyński [2009].

other UN-approved documents (which establish the basis for the understanding of human rights)[2] on the creation of constitutions in countries worldwide, as well as—more generally speaking—on ongoing legislative procedures, is indisputable, although difficult to measure (see Neumayer [2005]). This gives rise to the arguments needed by those who would like to see human rights as a *quasi*-constitution for all of the world's nations.[3]

During the second half of the twentieth century, the UN developed certain procedures which aimed to ensure more effective protection of human rights. However, their enforcement is still extremely problematic and dependent on international politics. Regional mechanisms for the protection of human rights have also been developed, which offer much greater possibilities as far as enforcement of individual rights is concerned. Nonetheless, human rights also encompass rights that are impossible to include in legislative processes. How, for example, would a country's right to economic development be enforced, or what would the right to world peace look like? What entity would be held liable? In practice, how would it be possible to prove the violation of these rights? The so-called second and third categories of human rights (for more on the difference between *categories* and *generations* of human rights, see section 3 below) concern not only rights which can be claimed in court, but regulative ideals, which, it is assumed, indicate the direction of human development.

Another reason for the controversy surrounding human rights is the fact that they were conceived as a set of practical norms. Human rights are not the result of some anthropological, metaphysical, or ethical theory which is acknowledged by all. One might

[2] The so-called *International Bill of Human Rights* includes: the *Universal Declaration of Human Rights* (1948), the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* with its two Optional Protocols (both documents and protocols were approved in 1966).

[3] Such a standpoint is taken, for example, by Marek Piechowiak—see Piechowiak [1999].

say that in the case of human rights, the order of theory and practice has been reversed.[4] We first have practice, that is, a collection of standards accepted by representatives of people from all over the world (or at least of the majority). A distinct characteristic of these standards is the lack of any direct association with any doctrine. The language used to formulate human rights does not contain any reference to any religious traditions, world views, or philosophical concepts. Today, however, even the concept of dignity stirs up serious controversy. Admittedly, the list of human rights and the legal style in which they are written suggest that they are rooted in Western culture. However, the selection of rights, combining in one document entitlements which can be associated with various, even mutually exclusive, traditions, makes every attempt to build a common theory of human rights, with the inclusion of their metaphysical source, extremely controversial. In any case, any attempts of this sort are constructions rather than reconstructions of rules which exist in the real world. Hence, there is talk of theories of human rights, and not just of one theory. For this reason, the application of a defined set of concepts is, in itself, also problematic, unless it has been preceded by a critical analysis of the terms used.

Below, we will examine this issue in greater detail, first briefly presenting a history of human rights (section 1), the role of human rights in international law (section 2), and their division into three categories (section 3). We will then describe attempts to legitimize them. By *legitimization* we understand here the procedures that give rights their legal validity and the resulting difference in the status of human rights and civil rights (sections 4 and 5). Finally, we will concentrate on the relationship between human rights and sovereignty (section 6).

[4] For example, in relation to what Immanuel Kant claimed—see his essay *On the common saying: That may be correct in theory, but it is of no use in practice* in Kant [1996].

1. A History of Human Rights

Among thinkers who concern themselves with the issue of human rights, there are those who trace the roots of the idea of human rights back to ancient times, whereas others associate them closely with the modern development of individual rights. However, it is worth noting that human rights belong to certain philosophical and legal traditions, and, because of this, it is necessary to examine the legacy that has resulted in their ratification and development.[5]

The concept that each human being is entitled to certain rights, regardless of his or her gender, origin, skin color, or religious convictions, did not appear until the interwar period. Of course, both the idea that human beings are equal in certain aspects, as well as the notion of rights that individuals are indisputably entitled to, have existed throughout the history of civilization. Nonetheless, these concepts are not linked to the contemporary notion of human rights.

The thought that all human beings are equal appears relatively early on in Western culture as it can already be found in the works of the early sophists, Antiphon and Hippias. Furthermore, ancient moral works from later periods articulate the belief that every individual (irrespective of their social status) can attain happiness. This line of thought progressed further mainly in Cynicism, Epicureanism, and Stoicism. Christianity, which, after all, was initially influenced by Stoicism, not only developed the concept of human equality with respect to God and existential matters (such as life and death), but also introduced the practice of humanitarianism into social culture, which was based on caring for the weak and the excluded. In the East, ideas confirming the equality of people

[5] Although we do not analyze the sources of the validation of human rights in our work, it is worth mentioning them briefly here. The most popular tradition based human rights on natural law (see J. Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford 1980). Another tradition based these rights on positive law (see H. Kelsen, *Allgemeine Theorie der Normen*, Manz Verlag, Wien 1979).

also appear in Confucianism, Buddhism, and Taoism. It is, however, necessary to point out that none of these traditions have been directly interpreted as having put forward any kind of social egalitarian proposals, either legal or political.[6]

The history of rights and liberties which have been granted to individuals has taken a different path, linked with the development of laws, political institutions, and social changes. Human rights appear primarily in the legal culture, which stresses fundamental political relations, i.e. relations between the authorities and their subjects (those being governed). Taking this into consideration, the genesis of human rights should be searched for in the constitutionalism of medieval Europe (Osiatyński [2009], pp. 2–3, 7). However, at the time, rights took the form of privileges guaranteed to groups and not to individuals. It was not until the seventeenth and eighteenth centuries that the slow process of limiting the monarchy's supremacy was combined with the idea of rule of law based on the principle of equality. The most important documents of this period are: the *Bill of Rights* (1689), the *Declaration of Independence* (1776), and the *Declaration of the Rights of Man and of the Citizen* (1789). These laid out the foundations for the principle of constitutional government in the Anglo-Saxon world and on the European continent.

At the time, individual rights were considered to be freedoms, as they guaranteed people a certain scope of activity free from state interference. They also went hand in hand with the conviction that individuals should maintain some influence on the state and, therefore, on political rights. Their form and scope, however, were still subject to discussion. We can find a philosophical description of this concept, for example, in the political thought of

[6] Confucianism may be considered an exception, but only to a certain degree. In China, under the influence of the teachings of Confucius, social advancement was possible for all, regardless of their social backgrounds. This did not, however, mean that people were equal under the law, as Confucianism in general did not interfere with the social order. Concerning the relationship between human rights and Confucianism, see Angle [2003].

John Locke. The rights an individual was entitled to resulted from the inalienable laws of nature (or natural laws). They were recognized as inalienable, because man alone had not granted them to himself, and hence did not have the power to waive them. These rights include the inviolability of life, freedom (the right to decide about oneself), and private property. Particular emphasis is put on the inviolability of property and the freedom of trade. As we will see, the situation concerning human rights is quite different, giving greater emphasis to the need for justice and peace.

Individual rights have also given rise to the concept of limited government. The state is obliged to achieve a certain objective, which is to guarantee that inalienable rights are respected. An agreement between individuals in the form of a hypothetical social contract is acknowledged as the source of legality of this authority. If those who govern betray the established objective of power and begin to systematically violate individual freedoms, citizens have the right to active resistance.

At this point, it is worth mentioning which characteristics of individual rights are particularly important when considering the originality of these rights. Firstly, individual rights regulated vertical relations, i.e. the relationship between individuals and state authorities. Secondly, they were restricted to the domestic laws of a given country and did not claim the right to determine the legal order of other countries, or at least did not do so directly. Thirdly, their purpose was to guarantee freedom, understood as *negative freedom*. Fourthly, there were defined procedures for enforcement of these rights. Finally, individual rights were guaranteed only to a select group of inhabitants of a given state, namely white men, or, depending on the country and period in question, sometimes even only to white male property owners. Civil rights were considered another dimension of the law—these were rights related to participation in power and lawmaking.

A fundamental change in the understanding of individual freedoms occurred in the nineteenth century, popularizing them

and detaching them from the requirement of property ownership. The change in approach to the subject of rights that an individual was entitled to resulted from a number of factors. One of them was a reaction to the sudden economic and technological development which occurred in the nineteenth century and the inequality associated with it, together with exploitation of the newly formed working class. Over the century, especially in Great Britain, the concept emerged of protecting workers primarily through the use of legal measures. At the same time, the socialist movement was trying to push for change in the existing legal and political order. With some level of success, it managed to introduce certain changes into legislation, but also, or even above all, it was able to introduce a new perspective on rights into public debate—henceforth, understood not only as freedoms, but also as entitlements, and not only as formal rights, but also as substantive rights. In this context, the significance of the Great Depression in the 1920s and 1930s should not be overlooked. Influenced by these experiences, particularly by the active political fight against poverty that occurred in the US, President Franklin D. Roosevelt outlined a new political framework—the so-called "New Deal" along with the four famous freedoms.[7] These events, combined, paved the way for rights which guaranteed socio-economic protection.

Another factor that contributed to the change in the understanding of rights was the sudden political change that occurred during the first half of the twentieth century, especially during the interwar period. One of the most important figures when it comes to the creation and promotion of human rights is André Mandelstam, a Russian diplomat who had escaped to France after the October Revolution. In 1928, along with Greek-born Antoine Frangulis,

[7] These were: freedom of speech, freedom of worship, freedom from want, and freedom from fear. They were articulated by Roosevelt in 1941 in his State of the Union address.

they proclaimed a declaration of human rights at the International Diplomatic Academy. In 1929, the *International Declaration of Human Rights* was announced at the New York International Law Institute (the author again being Mandelstam). It was the victims of authoritarian and totalitarian states, acting in countless non-governmental organizations (NGOs), who conceived the idea of the *international protection of human rights* (Burgers [1992]).

Events in Russia and Germany, including the accession to power of Stalin and Hitler, showed that the previously existing protection of individual rights was not sufficient. This was, after all, a period when the collective right to self-determination started to decisively take precedence over human rights. Even in developed countries, individual rights were being seriously violated, even those of white male property owners. As in the case of both Russia and Germany, the reason for such a state of affairs was the change in the legal system from a democratic to an authoritarian one that overturned the previous order.[8]

After World War I, due to the recognition of the right of nations (or ethnic groups) to self-determination, a system for the protection of minority rights was established. This system, created within the framework of the League of Nations, included a clause on internal jurisdiction, which in practice was remarkably heterogeneous. Agreements concerning the protection of minorities were imposed upon countries that had a weaker international position (including Poland). Other agreements were bilateral in nature. Therefore, a clear, unified system of protection of minority rights which would encompass all member states of the League of Nations was still lacking (Wippman [1997]). The fact that such a system was not created was, to a certain extent, understandable. The countries that won the war had no intention of surrendering their internal policies to

[8] For example, in the Third Reich, the idea of the rule of law (*Rechtsstaat*) was replaced by referencing German tradition (*Volksseele*), which was a crucial move that made it possible to introduce the Nuremberg laws.

international regulations, especially considering the fact that it was a time of colonization and racial segregation.

In effect, even at the very beginning of the "Big Three" alliance, there were references to human rights, but they were not sanctioned. In 1941, in the *Atlantic Charter*, the importance of human rights was confirmed. This was also the case with the *Declaration by United Nations* in 1942. Still, a mechanism similar to the one that had resulted in the protection of minority rights by the League of Nations, based *de facto* on the power criterion of a given country, functioned in this case as well. After declarations and promises from the leaders of the most powerful Allied Powers, Roosevelt, Churchill, and Stalin, by 1944 it had already been decided that human rights would not be implemented in the newly emerging international order. These agreements were made during the Dumbarton Oaks Conference (a.k.a. the Washington Conversations on International Peace and Security Organization), where the primacy of the idea of state sovereignty was confirmed (Lauren [1998]). As had been the case with the creation of the framework of the League of Nations, the failure to protect human rights throughout the world resulted from a lack of respect for human rights (for example, the final number of victims of Stalinism turned out to be larger than that of Nazism, and segregation laws in the US were not repealed until as late as the 1960s).

In 1945, reference was finally made to human rights at a conference in San Francisco, where the Economic and Social Council (defined as one of the UN organs in the Charter of the United Nations) was obliged to establish a Human Rights Commission which was to prepare an appropriate declaration. This was the result of pressure from weaker countries, activists, and intellectuals from all around the world,[9] as well as from non-governmental organizations, particularly in the United States.

[9] The most important figures that contributed to the successful introduction of human rights into the UN were: Chang Peng-Chun (Chinese scientist, philosopher, writer, and diplomat), René Cassin (French lawyer and judge, winner of the

2. The *Universal Declaration of Human Rights* and International Law

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10th, 1948.[10] Its content was the result of a compromise among member states. Its coming into existence was strongly tied to a wave of hope on the part of the weak and exploited, who, at the time, due to support from public opinion in developed countries, had gained a stronger position. This is the reason why the text contained not only the right of group self-determination, but also a collection of individual rights, including the right to social security and to development, justice, and peace. According to Wiktor Osiatyński, this means that eighteenth-century laws were needed by the middle class, who, at the time, wanted to be protected from absolutism, whereas twentieth-century laws "*were more needed* for (and *demanded* by) the *weak*, the *poor*, and the *marginalized*" (Osiatyński [2009], p. 27).

The list of human rights does not contain any distinct reference to any religious or philosophical tradition other than the recognition that their source is "the inherent dignity (...) of all members of the human family" (UDHR, preamble). The *Declaration* was intended to be a collection of practical moral norms, formulated in the language of rights. This intention has been aptly described by Jacques Maritain:

> Because the goal of UNESCO is a practical goal, agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of

Nobel Peace Prize), Charles Malik (Lebanese philosopher and diplomat), Eleanor Roosevelt (widow of the late US president, American diplomat, and activist), John Humphrey (Canadian lawyer), Carlos Romulo (Filipino diplomat, journalist, and writer), Hansa Mehta (Indian activist, educator, and writer), and Hernan Santa Cruz (Chilean judge, diplomat, and educator).

[10] See http://www.un.org/en/documents/udhr/.

> knowledge, but upon the affirmation of a single body of beliefs for guidance in action. No doubt, this is little enough, but it is the last resort to intellectual agreement (Ishay [2007], p. 3).

The procedure for the ratification of human rights was as follows: delegates voted for each article of the UDHR in turn. Each delegate had to assess whether the article in question was consistent with their beliefs and with the values upheld within the culture they were from or the religion they practiced. The voting was also, to some extent, a test of the universality of human rights. This test was passed in so far that, indeed, the *Universal Declaration* was accepted. This is not, however, a good enough argument to definitely close the discussion concerning the universality of human rights and their legitimization.

Regardless of how the question of the status of human rights is to be treated in the future, it is worth mentioning here that these rights have gone through a kind of evolution, and that this evolution seems to be the result of the way in which they were formulated. The UDHR remains a declaration and not an international agreement. It is a set of standards that claim the right to shape legal, political, and social norms in each of the individual signatory states in accordance with human rights principles. Its proclamation at the UN was an affirmation of principles to which member states wished to adhere, at least on a declarative level. However, at the same time, no mechanism for enforcement of these rights was included in practice. There was no mechanism through which an individual or a group could file a complaint (such a procedure functioned at the League of Nations). The UN was based on the primacy of state sovereignty. This started to change slowly in the 1960s. On the one hand, mechanisms for monitoring human rights violations were created. One of the most notable reasons was reports of brutality by the apartheid regime in South Africa. On the other hand, in connection with Stalin's death, this decade saw a warming of relations between the two sides of the Cold War, thanks to which

the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* were ratified in 1966. Both of these covenants came into force a decade later.[11]

Meanwhile in Europe, the Council of Europe was established, which sanctioned the *Convention for the Protection of Human Rights and Fundamental Freedoms* (now known as the *European Convention on Human Rights*), as well as other documents. Also, in 2000 the European Union proclaimed and approved the *Charter of Fundamental Rights of the European Union*. A much more effective mechanism for the protection of human rights was established through these documents; under European law, the individual became a subject and fell under the direct protection of the judicial institutions of the EU.

Later ratification of other legal documents regulating compliance with human rights was supposed to support their implementation. Both the history of this process and the examination of various categories of human rights show that they have changed over time. They constitute a specific regulative idea that significantly influences the development of international relations and interpretation of various phenomena, which, by their nature, expand more and more beyond nation-state borders.

3. Human Rights and Their Division

Even though it has been generally accepted that human rights are categorized with reference to the concept of three generations of rights,[12] due to the assumptions we have made, we will adopt

[11] For more on the mechanisms for the protection of human rights, see (Hołda, Hołda, Ostrowska, Rybczyńska [2008]).

[12] The classical division of rights describes three generations: generation I—political rights; generation II—social, cultural, and economic rights; generation III—group rights (see, e.g., Vasak [1977]). In order to distinguish our classification, where we have put the emphasis on freedoms, from the classical division, we will be using the term "categories" instead of "generations", which implies the historical development of human rights and not their analytical division.

a different division of human rights that omits group rights:

- The first category of rights deals with fundamental human rights and liberties—it comprises the freedom of speech, the right to assemble, etc.;
- The second category of rights are political and civil;
- The third category of rights are fundamentally economic, social, and cultural.

Another category of human rights is sometimes distinguished, which we have classified as the fourth category of rights. It refers to nations and peoples (group rights)[13] as well as to situations where international cooperation is required; they are the so-called solidarity rights, such as the right of access to the natural environment and the rights to peace and development; we will not, however, be analyzing them here.

Let us now present the three categories (as we have defined them) in greater detail, along with the problems we encounter in their interpretation and how they relate to each other. First-category rights are the foundation of human and civil rights. They are the rights that countries are most willing to ratify. They encompass a set of fundamental rights and individual freedoms, including the right to life, freedom (including freedom of movement and freedom of thought and speech), equality, personal safety, property, privacy. Moreover, these rights include those designed to limit the power of the state, aiming to protect the individual and prevent abuse by those in power.

Human rights, by definition, concern rights to which a person is inherently entitled simply because he or she is a human being and, therefore, can be considered separately from civil matters. However, in practice, people are entitled to these rights within the legal order that exists in a given state. This is because one of

[13] For example, in *The African Charter on Human and Peoples' Rights* (the Banjul Charter), African nations "shall freely dispose of their wealth and natural resources".

the methods for guaranteeing human rights to everyone is to grant the right to citizenship to all, which is further strongly tied to certain entitlements. For example, the second category of rights, civil and political rights, are rights that only citizens are entitled to. In practice, the surest way to guarantee the protection not only of a person's civil rights, but also their human rights is for them to be a citizen of a given state.

The third category of rights, equality rights, includes economic, social, and cultural rights. Without listing these rights, it is worth mentioning here, at least briefly, the tensions between the first, second, and third categories of human rights. The rights of the first and second categories emphasize individual rights—they are mainly based on the principles of negative freedom, but also on political rights in the positive sense. These rights protect the individual from arbitrary state power. Their aim is, on the one hand, to create a systemic mechanism to limit political power, and on the other, to guarantee, through a system of representatives, sufficient influence on the state. This results in a vision of a society where individuals are guaranteed privacy, influence in the public domain, and freedom from government intervention. For this reason, it is possible to associate first- and second-category rights with the liberal democratic vision of the state. This is not the case with third-category human rights. Tasks entailed by the concept of material equality require that the state become involved and maintain certain fiscal, educational, and social policies. They can, therefore, collide with first-category rights.

Therefore, the first tension that appears between the first two and the third categories of human rights concerns the function of political authority and the limits imposed on this authority. The second tension between freedom and equality rights results from the fact that they are based on different anthropological visions. In both cases, we are dealing with cases of self-realization. However, according to first-category human rights, the individual has the right to self-realization which, in this case, results in the

obligation to provide that individual with the necessary space, independent of others (of other individuals, communities, and authorities). Whereas in the case of equality rights, we are dealing with the right to self-realization that puts certain demands on the state. In this case, the society or community is the frame of reference. These rights guarantee, for example, that everyone is entitled to a social minimum. But in order to actually do this, those who are in power must assume the existence of a political collectivity, which is the sum of numerous interconnected relationships. This is also why the community is partially responsible for helping its members. Furthermore, it is also for this reason that supporting those who have not done very well within the framework of social mechanics has been normatively justified.

Other than the tensions between the first, second, and third categories of human rights, we also come across a difficulty on the international level concerning the implementation of third-category rights. For example, it is easier to come to an agreement to stop the use of torture than it is to gain international approval for the prevention of economic inequality. This demonstrates that civil and human rights can be enforced in every state, whereas equality rights require redistribution. They are, therefore, dependent on the wealth of a given society and can only be completely implemented in wealthy regions. They could only receive a certain level of protection through the internationalization of the third category of human rights. However, these rights have not, as yet, been internationalized, and the state is fully responsible for their enforcement.

The scope of the newest category of human rights, now being discussed, extends beyond basic political relations—the relations between the individual and the state. It defines obligations with reference to certain objectives which require methods of implementation different from the traditional ones. The objectives referred to may contain metaphorical slogans such as “brotherhood” or “solidarity”. This is not, however, the same solidarity that appears in

the third category of human rights, which requires mutual recognition and readiness to share goods with other members of society in order to implement their demands for equality. The fourth category of human rights significantly broadens this perspective. By brotherhood, we now mean brotherhood and solidarity between people of different nationalities, between nations, between states, and between various non-governmental organizations operating in the international domain, such as Amnesty International.

4. The Status of Human Rights

When considering the status of human rights, the question arises as to the importance that should be assigned to them. This problem involves the issue of transforming the *International Bill of Human Rights* into statutory law while keeping in mind that it is more than just a question of the impact of international laws on national legislation.

Firstly, it is necessary to be aware of the difference between civil and human rights and positive law. Although declarations and international pacts are couched in legal terms, their implementation in the legal systems of their signatories is not obligatory. From this perspective, these documents cannot be considered a constitution of the United Nations, as there is no mechanism to ensure that state laws comply with human rights. The acceptance of the *Universal Declaration of Human Rights* and the ratification of international pacts is only a declaration of willingness to carry out interpretive work on a legislative level in order to adapt national legislation to human rights. Only then can these rights become the objective of political activity, which is to ensure a dignified life for every human being. Nevertheless, human rights are sometimes compared to a constitution because it is claimed that they constitute the general axiological foundation of the legal and political order. In other words, human rights could play a role similar to that of a country's

constitution; however, they have at least two characteristics that distinguish them from a constitution. The first is their claim to universality—in contrast to national constitutions, which, even if they do contain references to fundamental values, are treated as relevant only for a given society, and not for humanity as a whole. Secondly, a constitution has different legal validity, a quite clearly defined legal status as the fundamental law, and a mechanism for regulation of the internal legislative order. Human rights, on the contrary, are anchored in international regulations that do not contain any procedures that would allow an individual to defend his or her rights if violated.

Apart from the above-mentioned differences between human rights and constitutional rights, it is necessary to mention a very significant problem concerning the relationship between human rights and civil rights. The latter are rooted in the order of the state, which has its territorial, populational, and jurisdictional borders, whereas human rights demand universal inclusion. This issue will be further discussed later on in this work.

While discussing the practical aspects of the implementation of human rights, it is necessary to consider what entity is obligated to take action in order to achieve this objective. The answer to this question is ambiguous. As human rights define not only vertical relations but also horizontal ones, it may be claimed that not only should each subject of international relations observe human rights, but it should also participate in the global implementation of these rights. Therefore, the state also has its obligations: to conduct its legislative policies in such a way as to provide citizens with the inalienable rights of the first and second categories, to implement third-category rights to the extent its economy allows it, and to conduct its long-term politics in such a way as to contribute to human development, aiming to ensure greater justice and peace on Earth. The latter may require close international cooperation, for example, with regard to environmental protection. These obligations also concern society, which,

for instance, through the creation of non-governmental organizations, can also contribute to the protection of human rights. Companies and international corporations should also conduct their business in a way that complies with economic and social rights and thus contribute to the economic development of certain countries or regions.

Many human rights cannot be formulated as laws. This is especially the case with third-category rights. For example, the right to an adequate standard of living could be controversial as developing countries are not able to provide social security for all their citizens. The rights which require solidarity on an international level are even more ambiguous, and are not subject to any clear legislative processes. In other words, it is necessary for states to freely come to decisions concerning implementation of many human rights, where the only legitimate mechanism for the protection of these rights is pressure from governments, communities, and NGOs.

However, even in the case of the human rights that are considered inalienable for all, such as freedom from torture or the right to a fair trial, no established procedure exists in the United Nations to protect an individual from violation of these rights by his/her own country. The UN was founded on the principle of states' sovereignty. This means that states are subject to monitoring and reporting procedures, but, in most cases, the only penalty for the violation of human rights is a public announcement of the fact.[14]

A document from 1986, *Setting international standards in the field of human rights* (UN resolution 41/120), states that the method of implementation of human rights should be realistic and, therefore,

[14] For example, Poland is criticized for delays in judicial procedures, which compromise the right to a fair trial. However, Poland has not been subjected to any sanctions on this account, as none can be imposed. This is not the case on the European level, where Poland is obliged to pay compensation in the case of individual complaints brought before the European Court of Human Rights.

dependent on the capabilities of individual countries. On the other hand, the *International Bill of Rights* together with its *Optional Protocols* introduces a procedure for individual and collective complaints, which are then considered by the Human Rights Committee—however, conclusions of the Committee are the only effect of such proceedings. These conclusions may influence decisions of the Security Council, but such decisions are based on the whims of politicians rather than on what impartial judges have concluded. Also, a state can, at any moment, withdraw from the *Protocols*. There is another complaint procedure accessible to all citizens of UN member states (the 1503 procedure). However, the complaint should only concern instances of systematic and gross violations of human rights. The complaint cannot, therefore, result in protection of the rights of the individual who filed the complaint. It can only trigger a reaction to the politics of a given country.

As we can see, the protection of human rights within the framework of international law is gravely limited mainly because it is generally accepted that national policies are an internal affair of the country concerned. Countries can put various forms of pressure on one another. However, whether human rights are applied and to what extent depends on the decisions of member states. Decision-making is further limited by the veto power of certain states.[15] It should be stressed, however, that within the UN, procedures for monitoring the observance of human rights around the world have been developed, so at least information that can lead to social pressure is provided by this organization.

Let us have a closer look at the topography of human rights, which will help us to determine their status. It is generally accepted, following the analysis by Wesley Hohfeld (1919), that the term *right* has four distinguishable, fundamental dimensions (or "incidents"), which are interconnected and complementary to one another:

[15] The power of veto is wielded by the permanent members of the Security Council: China, France, Russia, the United Kingdom, and the United States.

– *right* as *claim*;
– *right* as *privilege*;
– *right* as *power*;
– *right* as *immunity* (Hohfeld [1919], pp. 36–64).

Rights understood as *claims* refer to situations where agent A has rights with respect to agent B to a certain state of affairs (S), which means that agent B has an obligation (f) towards agent A, which serves to achieve S. This claim may either be a precept to perform a certain action or a prohibition to refrain from some action. The precept is tied to the right of agent A to performance by agent B. Such a situation may occur when certain agents come to an agreement with each other, e.g. they enter into a contract of employment. Prohibition, on the other hand, means that agent B has an obligation to desist from doing something in relation to agent A. Rights based on prohibition form the boundaries of legally protected freedom.

Rights understood as *privileges* are associated with situations in which agent A is free from obligations towards others, so that agent B does not have any rights over agent A. *Privileges* here mean the freedoms which concern the relations between agents within a state.

Rights understood as *powers* occur when agent A has the right to certain actions and to impose a certain state of affairs in relation to agent B. *Power* concerns specific situations, for example, the right of a ship's captain to order passengers to abandon ship, or of a teacher to expel a student from the classroom. These rights result from the social and political order existing in a given country.

Immunity describes situations where a certain agent A has the right not to be in the power of agent B.

These rights come together in concrete situations. For example, if person A owns an apartment, then (1) he/she has a right based on prohibition, that is to say, others are obliged not to enter his/her apartment without approval, as well as a right based on precept—to be informed about various administrative decisions, (2) he/she

has the privilege of using the apartment, as well as (3) the power to require unwanted guests to leave the apartment, and (4) immunity against the police entering the apartment after 10 p.m.

The hub here is *claim-right*, around which all other dimensions of rights revolve. The UDHR constitutes a set of legitimate claims by individuals, both in the form of prohibitions as well as precepts. For example, the prohibition against torture means that a state is obliged not to conduct certain activities, in this case, not to treat individuals in the state in a violent manner. On the other hand, the right to a fair trial obliges the state to obey a certain precept. Documents that describe human rights also describe *claim-rights* which cannot be directly included in statutory law. The problem in the case of these types of rights comes down to their interpretation in relation to the obliged entity and the desired state of affairs. We have already discussed the question of the entity, or even entities, obliged to act to facilitate human rights implementation. At this point, we would like to draw attention to the centrality of the question concerning the desired state of affairs. If we assume that the aim is a situation in which each person has social security, then the claims made by individuals towards the state will also include the right to welfare benefits. The desired state of affairs is the ideal situation for which humanity should strive.

There is an ongoing dispute between representatives of various standpoints concerning both the list of rights that can be claimed by the individual in relation to the state and the interpretation of the desired state of affairs. Currently, a liberal theory of rights (originating from Locke or Hobbes) widely dominates Western discourse. According to this interpretation, an individual has the right to life, freedom, and property. These rights are treated as inherent; they cannot be renounced, and protection of these rights is a fundamental task of state authorities. These rights generally boil down to prohibitions and rights as privileges. An individual, therefore, has the *claim-right* to life in the form of the prohibition against threats to life. An individual has the privilege-*right* to use his/her body

and property as he/she deems fit. He/she also has the *claim-right* to the protection of his/her private property through appropriate statutory and judicial mechanisms. These rights, however, do not include *claim-rights* based mainly on precepts, for example, to social security or welfare benefits.

In accordance with this tradition, currently represented by liberalism, a necessary and sufficient condition for implementation of the remaining human rights included in the *Universal Declaration* are the first and second categories of rights in our classification. The subject of dispute is not the vision of the ideal state of affairs, but the road that leads to it. Therefore, according to this perspective, in order to achieve a certain desired state of affairs for all people (e.g. a dignified life), specific elements of that state of affairs should not be subject to *claim-rights*.

The liberal perspective faces criticism from many directions. During this time of crisis, many polemics have appeared that challenge the conviction that it is sufficient to provide individuals with first-category rights so that they can gradually, without interference from the state, attain all the other rights. One of the most important recent works is Thomas Piketty's book, *Capital in the Twenty-First Century* (Piketty [2014]). The main argument of this book is that inequalities generated by the free-market economy will result in the limitation of human rights rather than in the extension of their reach. This means that it is necessary to enact legislation that will contribute to restriction of certain liberties (based on prohibition) for the benefit of equality rights (based on precepts).

Human rights consist of a defined set of rights which can be included in national legislation. These rights are rooted in the liberal tradition. However, the liberal concept of rights, despite their presumed universality, has limited application in a world of sovereign states. Following the experiences of World War II and the Holocaust, the UN Charter contains clear references to human rights which are to be universalized. Looking back at the moment of the ratification of the charter in 1948, we can see that Western states

had no problems with its acceptance. Civil rights and the concept of the rule of law were common, and, therefore, only eight countries abstained; e.g. the USSR, together with five of its satellite states, questioned the Charter—they did not, however, call for the abandonment of political liberties, but instead criticized the fact that economic and social rights had not been emphasized.

At the same time, however, the UDHR contains provisions that go beyond the liberal point of view, imposing on various political entities the obligation to conduct their politics in such a way as to contribute to the implementation of these long-term goals of humanity. Interpretation of these regulations and their actual implementation is, nevertheless, extremely difficult. Later in this chapter, we will describe the challenges faced when attempting to implement human rights, which result from the developing process of globalization.

5. Human Rights and Civil Rights

Article 6 of the *Universal Declaration of Human Rights* defines the right to legal personality. Together with other articles that grant each person the right to freedom of movement and, therefore, also to a place of residence, a picture of the ideal state of affairs starts to emerge, in which each individual can freely travel the world, choosing the most suitable place to live, where he/she would be immediately recognized by the existing legal framework and admitted on equal terms. Another interpretation of the same provision claims that an individual has the freedom to choose his/her place of residence only within the borders of a given state. We will come back to this alternative in Chapter IV. The vision of the freedom to reside detached from citizenship has not been implemented thus far. It is, therefore, possible to ask the question whether such a vision can be fulfilled within the existing international political framework and, if so, under what conditions.

Analyses concerning the possibility of implementing human rights within a political framework based on nation-states must begin with the question of how individuals would be identified within such an order. In other words, it is necessary to take up the issue of civil rights and theories of citizenship. At the start, it is necessary to emphasize that we do not have one universally accepted definition of citizenship. This results not only from the multitude of opinions on the subject, but also from historical transformations of citizenship.

Generally speaking, citizenship defines the relationship that obtains between the state authorities and the individual and is based on a certain type of recognition. The individual is recognized within the political order and integrated through a relationship based on reciprocity, even if this reciprocity is asymmetric and unstable. In effect, it is accepted that citizens are granted a certain degree of freedom, and a relationship of being equal before the law obtains among them. Within the framework of this relationship, individuals are granted rights, but also obligations are imposed on them, even if only in the form of the duty to defend their country.

In ancient Greece, in the order of the *polis*, different categories of people were defined depending on their status, i.e. citizens, free persons, and slaves. Citizens made up the foundation of the *polis*, regardless of its political system. Collective identity was not based on the place, but on the people or, to be more exact, on citizens, who could, for example, move the *polis* to another location without changing its name and maintain its identity. However, whether the citizens could make laws or were only subject to laws laid down by a small group of aristocrats, or even if they were ruled by a tyrant, they were recognized within the power structure as persons who formed the political community.

Citizens were obliged to protect the *polis*, as well as to participate in its institutions of power (e.g. in Athens, the officials were citizens, who had been selected—often through a process of drawing lots—to hold a certain office for a certain term). This was somewhat

different in the case of free persons and slaves. The rights of each of these groups were also regulated to some extent. For example, free persons were not allowed to buy buildings within the city limits (they could, however, buy buildings outside these limits); slaves had (at least in Athens) the right to private property (some cases are known where slaves owned other slaves), however, they had no legal personality (Kulesza [1991]).

In medieval times, the relationship between the authorities and the individual was heterogeneous. Above all, most people, such as peasants, were not recognized by the authorities. If the authorities, i.e. the feudal lord, recognized someone as a vassal, it was a recognition of individuals or of their families, but not a recognition of whole social classes like estates. In this period, equality was based on being subject to the sovereign, but the subjects were not directly equal to one another.

Generalizing the above deliberations concerning classical forms of citizenship, we could say that citizenship was traditionally associated with a set of rights and obligations forming the relationship between the individual and the state, as well as with political actions conducted for the common good. Thus understood, citizenship was connected with political (knowledge needed by the citizens to fulfill their duties), cultural (knowledge of common history), or legal status. At present, all of these aspects still contribute to the understanding of citizenship, which is a specific type of direct relationship characterized by defined rights and obligations between the individual and the political community of which that individual is a member.

Looking at the classical definitions of citizenship, we can also say that it is characterized as constant with respect to time (in principle, it continues uninterrupted from birth until death) and as extending in space (being a citizen is not dependent on someone's current place of residence). Following Aristotle, we can state that the elements that make up a citizen's status are place of birth, social interaction resulting from the socio-political nature of man (*zoon*

politikon), and language (*logos*),[16] which allows for the co-creation of rational law thanks to which citizens perceive and describe themselves as equal and free. At the same time, however, it is necessary to remember that, since ancient times, citizenship has been tied not only to belonging to a certain group, but also to the exclusion of those who, for certain reasons, do not belong to this group, for example, those who were not born as citizens (Aristotle [2013]). Citizenship, therefore, is not defined solely within the framework of a given community, but also in opposition to other communities.

It was not until the late Middle Ages and the early Modern Era that, under the influence of liberal ideas of freedom and rights, the understanding of citizenship started to change. Charters such as the *Magna Carta* (1215) and the *Bill of Rights* (1689) imposed certain limits on the sovereign power, while at the same time providing at least part of the community (men belonging to a specific state) with a certain level of legal protection. They also enabled the formation of groups, recognized within the framework of the political order, whose members could interact with each other as equals.

Thus, the modern understanding of citizenship is based on the legal personality of individuals as recognized by the state authorities. It involves certain rights being granted (especially those which protect the individual from the arbitrariness of state authorities), which, through the recognition of individuals, have created classes or groups of people that are equal to one another and are responsible for the state. With time, both the set of individuals recognized by the state authorities, as well as the scope of rights granted to them, have been expanded.

According to analyses presented by T. H. Marshall in his work published in 1949, *Citizenship and Social Class*, it is possible to define three categories of civil rights. The first category is related to

[16] *Logos* is an ancient Greek idea that means, among other things, the principles pervading the universe and reasonable discourse.

freedoms which had developed up until the eighteenth century. The second category of rights concerns political rights, which were the cause of conflict in the nineteenth century. The last category of rights is of a social character and includes, for example, the rights to healthcare, free education, and welfare. As can be seen, at least as far as positive law is concerned, the current understanding of civil rights can be directly linked with categories I, II, and III of human rights. In such an understanding of citizenship, individuals also have duties such as obeying the law, paying taxes, and serving in the military.

Along with the expansion and development of citizens' political rights in the modern era (especially active and passive voting rights), the sense of national belonging was also growing. This gave rise to the widespread conviction that citizenship, like nationality, defined a special type of bond that could not be formed arbitrarily. Thus, two aspects of citizenship were differentiated. The first was citizenship as the status of the individual in a given political community made up of legal regulations: the rights and duties which constitute the external dimension of citizenship. The second was citizenship understood as the sense of belonging to a given political community, described as an internal dimension, or nationality.

However, while studying the concept of citizenship, one must bear in mind that together with the development of international legal regulations concerning the status of citizen, a gradual limitation of state competencies is occurring in this area. There is a shift from sovereign power to popular sovereignty, which means that it is the citizens themselves who determine the conditions of membership in the political community that they constitute.[17] Additionally, under the influence of the processes of globalization, the traditional

[17] For example, The *Universal Declaration of Human Rights*, Art. 15 ("Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality").

relations between the state and the citizen have changed. Citizens now have more opportunities to influence state decisions. In conditions of a changing reality, even theories based on the assumptions that a community is a group of people with a common past, founded on solidarity, cooperation, and shared values are losing their significance. Citizenship in the community is starting to be interpreted not only primordially, but also in a modernistic (Gellner [2009]) and ideological way (Anderson [1983]). The model of ethnic or cultural citizenship is being supplemented in Western Europe by the constructivist model. Citizenship is starting to be understood not only as a matter of obligations, but, above all, as a question of rights that the state has to ensure. Nowadays, it is also more common to see citizens through the perspective of modern liberalism, which emphasizes the significance of the free market, as well as of individual autonomy and pluralism. From such a perspective, the citizen is a free and autonomous individual, capable of ensuring his own well-being by means of his own initiative and legally protected freedoms: both positive and negative. Furthermore, citizenship is becoming an ambiguous concept. This is due to the fact that a majority of states allow for dual citizenship. Moreover, citizenship of the European Union has appeared—admittedly, this can only be acquired by citizens of one of the Member States, but it nevertheless introduces a new level of dependence.

Also, a civil society which monitors the functions of the state is forming (Paine [1988]). Together with the progressive processes of globalization, state boundaries are being further dissolved and social relations are being intertwined in social networks (Castells [1996]). In an era of globalization, the nation-state is undergoing a sort of "erosion", and the same is happening with citizenship. There is talk of "homogenization of civilization", hybridization, and the cosmopolitan attitude of the individual, whose identity is no longer centered on the political nation, but is multilayered and changeable. Problems arise that were not known in

earlier history, such as multiple citizenship, the loosening of ties with the state, and the problem of integration in multicultural societies, where previous integration mechanisms based on unification through the law or public education have exhausted their potential (Scholte [2005]).

The number of individuals whose civil rights the state has the duty to secure has decisively increased, including individuals of both sexes (without upholding the property requirement). Fundamentally, civil rights are inherent (*ius sanguinis*), although they can also be attained by birth on a given territory (*ius soli*). Various states, independently of one another, define the process of inheriting and granting citizen's rights, which results in different legal and procedural solutions.

At this point, we come to one of the most important problems related to citizenship, i.e. the issue of inclusion. This concerns the question of who has the right to obtain citizenship of a given country and under what conditions. Human rights require extensive inclusion. Each person, as an individual who is entitled to certain rights defined by the appropriate declarations, has the right to freedom of movement and the right to be recognized within the framework of a given legal order. A strong interpretation of these rights should impose on other entities, i.e. citizens and public institutions, the obligation of providing, for example, immigrants with the same rights that citizens are entitled to, and, therefore, in essence, including them as citizens.

To better illustrate the problem, we will refer to Étienne Balibar. In his book, *We, the People of Europe?* (Balibar [2004]), Balibar, reflecting on the problem of inclusion, demonstrates why the current understanding of citizenship does not aid the observance of human rights. This is because civil rights are related to borders. Nonetheless, in an age of globalization and international migration, it is no longer the territory that defines the limits of civil rights, as such limits and divisions may also exist within given societies (Balibar [2004], pp. 1–10).

This state of affairs results from the historical changes which the understanding of political affiliation, sovereignty, and the process of globalization has undergone. In effect, quite advanced mechanisms that ensure the freedoms and equality rights of individuals have been developed. However, their benefits have only been experienced by some inhabitants of Western countries. That is why, for example, in the European Union, citizens enjoy legal and social protection, while newcomers can be held in refugee camps or deported back to their places of origin. Human rights, which constitute the normative foundations of the EU, imply that every human being should be entitled to certain rights. This means that newcomers should be assimilated into the system of legal protection. This, however, does not happen, which can lead to a situation where, depending on their formal status, people are treated differently despite living in the same country.

These various aporias related to the tensions between civil rights and human rights result from the tensions between elements of the Western legal tradition, which include: religious heritage, the achievements of the Enlightenment, the republican tradition, colonial legacy, the development of the nation-state, as well as the practices of integration and repression (Balibar [2004], pp. 31–50). Moreover, the rhetoric of human rights often coexists with the rhetoric of economic benefits gained thanks to "cheap labor". Exclusion resulting from existing forms of citizenship leads to discriminatory practices towards the weakest, i.e. towards immigrants and stateless people.

With reference to the historical roots of the nation-state, it is possible to demonstrate that a contradiction had arisen between the particularism of the national community and the language of universalism. A symptom of this state of affairs was the proclamation of the *Declaration of the Rights of Man and of the Citizen*, where all human beings were equated with citizens, regardless of the fact that this practice was rather exclusive, as it coexisted with the model of national sovereignty.

> This is why modern citizenship, working through institutions characteristic of national sovereignty whose function is, in a sense, to administer the universal by subjecting individuals to it (the school, judiciary, public health and other systems), has gone hand in hand with a vast system of social exclusions that appear as the counterpart of the normalization and socialization of anthropological differences (Balibar [2004], p. 60).

The merging of civil rights with the universal rights of human beings is an opportunity and a very important event in history. However, the actual implementation of these rights has occurred through practices that emerged together with the creation of nation-states, which are exclusive to those they regard as their citizens. This results in a kind of schizophrenic legal, political, and discursive practice in modern European states.[18] From this perspective, the fundamental problem that causes various conflicts is not the fact that people cannot express their own preferences, which do not fit into the framework of the postulated reciprocity, but

[18] On the one hand, the rights of the individual and respect for human dignity regardless of sex, age, etc. are strongly emphasized, which influences social policy, labor law, etc. On the other hand, the impact of immigrants can be estimated based on the balance of profits and losses for the economy and for society. What we know about immigration is that it takes place. This is a tolerated fact as long as the newcomers work and there is no problem of unemployment in the country in question. In that case the illegal immigrants present pure profit and no costs for the society—they work, but their employer does not need to pay taxes or respect the labor laws; the state does not have to cover the costs of welfare and social insurance (such as support for single or unemployed parents). The problem starts when, in a given country, there is a high unemployment rate. Citizens start to be critical, afraid they will lose their jobs or that their salaries will be decreased. It is also a problem if the newcomers do not find a place for themselves in the job market, increasing the number of the unemployed. Such situations are, without a doubt, very difficult challenges for modern states. The costs of social policies are high, and it is simply impossible to eliminate the purely practical aspect, as the difference in the treatment of citizens and immigrants shows that despite legal acts (e.g. the Constitution of the Republic of Poland includes articles that concern individual rights which every human being is entitled to), the practice is still discriminatory, often exploiting the weak.

rather that a certain part of the population of a state cannot enjoy equal freedoms and equality rights, and is, therefore, subject to discrimination.

It only remains for us to point out that, thus far, no mechanism has been developed within any state that would allow for extensive inclusion. On the contrary, in developed countries, we can observe a tendency to seal borders rather than open them, and to construct complicated procedures for immigrants seeking to obtain the right to legal residence. There are, for sure, many different reasons for this state of affairs. It is necessary here to refer to the dimensions of citizenship that may be in conflict with human rights.

Fundamentally, three dimensions of citizenship can be distinguished: legal, political, and identity-related. The first concerns legal status and was mentioned above. This dimension is tied to the problem of the economic capabilities of a given state. Even relatively wealthy countries may not be able to guarantee costly social security to everyone without exception (i.e. its citizens as well as newcomers). If immigration is maintained at a moderate level, the problem of funds does not have to arise, particularly on the assumption that citizens do not evade their tax obligations and that newcomers are quickly absorbed by the job market and also generate revenue, which in turn contributes to state revenues. If, however, there is a sudden increase in immigration, or if a considerable percentage of newcomers do not find employment, the problem may become very serious.

The implementation of civil rights also requires a society to have an appropriate legal culture (Putnam [1994]). In this sense, it is possible to understand the concept that newcomers—representatives of different cultures—in order to be granted civil rights, should in some way be integrated into the legal and political system of a given country. In practice, this would delay the process of inclusion, which in itself poses a threat not only to the full implementation of human rights, but even to first-category

human rights. So-called "illegal immigration" is a suggestive example. In practice, immigrants can expect humanitarian treatment, at the most.

The second dimension of citizenship concerns political participation as well as—broadly speaking—citizens' virtues. Citizens have the right to influence the state and the existing laws. This not only protects individuals from the arbitrariness of the authorities, but also shapes the public arena of a given society. This dimension is tied to the republican heritage, where citizen participation is understood as a manifestation of the realization of the common good, and to the liberal heritage, where representation and limits on the terms of office of public officials are regarded as the most effective remedy against the abuse of power.

Political citizenship can be tied to the third dimension, the one concerning the issue of identity. What this identity is built on is ambiguous and dependent on various factors. Collective identity may be founded upon a sense of belonging to a nation or to an ethnic or religious group, but affirmation of a legal system may also serve this purpose. Citizen participation definitely influences the shaping of common myths and symbols of a given society, which create the framework of collective identity.

The above-described aspects are a potential source of problems related to human rights. The order and stability of a given state are dependent on various factors, including citizens' virtues in relation to their obedience to the law and their responsibility for the common good, which, according to many, must be based on patriotism and, therefore, on a certain form of loyalty and attachment to the state. The question is whether representatives of different cultures and religions can form a unified civil society–in other words, whether the differing group identities which make up a pluralistic society can be reconciled with the vision of citizens who are united by loyalty to their country.

6. Human Rights and the Issue of Sovereignty

Human rights have been defined in United Nations' documents and codetermine, along with other values like sovereignty, the current international order. This order is based on a model of interactions between sovereign states that mutually recognize each other as equal subjects of international law, which is founded on agreements between states. Equality between states is assumed, which follows from the right of sovereign states to independently determine their domestic and foreign policies. This equality, therefore, is predominantly legal in character, with a diplomatic component as well, based on protocols.

From the viewpoint of state sovereignty, the observance of human rights cannot be enforced by external powers. They can be the subject of agreement between sovereign states, as was the case with the approval of the *Universal Declaration of Human Rights*. However, in accordance with our previous observations, the international enforcement of human rights boils down to the public announcement of their violations. Of course, sanctions are possible and, in extreme cases (e.g. genocide), even military intervention is an option. However, the undertaking of such actions is also dependent on political decisions, i.e. the consent of the Security Council or the General Assembly. No apolitical, transnational tribunal exists of a purely legal nature. Due to this fact, human rights do not have the status of rights which an individual, irrespective of his/her origin and place of residence, could enforce through appropriate judicial institutions. This type of practice is only possible based on positive law, effective in a given country. Whether human rights are taken into account in the country's legal system, and to what extent, depends on the sovereign decision of the state in question.

This model has its advantages, but also limitations due to the recognition of human rights. Certainly, the principle of state sovereignty allows for local conditions, i.e. the existing culture, traditions, and economic potential, to be taken into consideration

during the process of creating legal norms as well as political practices. However, as human rights have been defined as a collection of general norms, the legislative process demands that these general claims be transformed into specific regulations of statutory law that need to be consistent with the legal system of each particular country. Because of this, human rights must first be subject to interpretation. The conviction that these interpretations should not be imposed from outside is well-justified. Surely, a change in the legal system such as increased access to an impartial judiciary would be welcomed by citizens. But granting of equal rights to women in a clearly patriarchal culture or providing citizens with the right to change their religion could in some cases trigger opposition. Moreover, guaranteeing social rights to individuals requires resources and an appropriate political culture. Surely, introduction of reasonable labor laws that would guarantee appropriate wages and social security standards could in themselves quell many social conflicts. However, ensuring living conditions that would enable a decent life (which in itself requires further clarification) for everyone presupposes an appropriate level of economic development or, at least, a thriving, rapidly growing economy. Based on these and other considerations, it seems justified to leave the decisions regarding when, to what extent, and under what conditions human rights are to be guaranteed up to the sovereign power.

This perspective encounters certain difficulties. The first, most obvious difficulty results from the fact that many states, regardless of their official declarations, do not voluntarily implement legal standards associated with human rights. To explain this, we need to look at the problem of sovereignty.

Somewhat simplifying, it may be said that in its classical form, the model of relations between sovereign states was an order based on the balance of power. Wars among countries were an element of this order, whereby it was assumed that the balance of power limited the number of wars and their geographic reach. This model excluded all other types of armed conflicts apart from those which

occurred among countries. Moreover, the great powers of the eighteenth and nineteenth centuries counterbalanced one another, mutually limiting each other's aspirations. In this perspective, any interference with internal state affairs was only thinkable in a case where the country in question did not have the necessary power to constitute a source of its own sovereignty, i.e. resources or allies to prevent such interference. In the model prevailing from the second half of the nineteenth century until the twentieth century, which was based on the concept of the sovereignty of the people, a distinction was made between the state authorities and society. This distinction, coupled with the assumption of the universal importance of human rights, may serve as a tool that allows for normative assessment of the politics of a given state and, in some cases, allows, or even compels (in the sense of moral duty), military intervention.[19]

One of the key issues arising from the current international order is the lack of consistency in the application of this second model. On the one hand, the fact that human rights constitute the normative foundation of the UN indicates that sovereignty is rooted in the will of the people. The assumption here is that the will of the people is at least partially compatible with human rights. This may open up the prospect of morally legitimizing actions of the UN and other supranational entities to implement human rights. On the other hand, the decision-making structure of the UN is based on the idea that the most important decisions made in this organization are of a political nature and result not only from an intelligent, well-established normative reflection on the international situation, but also from the interplay of interests pursued by particular states.

[19] An example of this is the assessment of UN activities in relation to what happened in Rwanda and former Yugoslavia. As a result of these assessments, in the former case, the attitude of the French soldiers was criticized, and in the latter, so was the passivity of the Dutch soldiers who retreated from Srebrenica, which resulted in genocide against the Muslim minority.

Moreover, as in the classical definitions, the source of stability lies with the great powers, whose mutual respect results from the balance of power. In the case of the UN, five countries (China, France, Russia, the United Kingdom, and the United States) hold the dominant position, which is manifested through their veto power in the Security Council. The practical implications of this model are, therefore, just as ambiguous as the model itself. An undoubted success of the UN is the fact that, so far, there has not been any open warfare between the nuclear powers. In this sense, this formula has saved the world from another total war.

Yet, at the same time, protection of human rights and—more generally speaking—the process of their implementation still leaves much to be desired. Often, when taking a clear stand in situations of obvious human rights violations, the UN encounters resistance arising from the political strategies of individual member states. The competencies of the UN stabilization forces are not defined, and in practice, the presence of armies is not backed by the will to resist actual violations of human rights. In recent years, military intervention has taken place on behalf of the protection of human rights. However, in many of these situations, the measures were taken outside the structures of the UN. This was the case in Kosovo, where the intervention was initiated by NATO, because this decision could not be made by the UN due to resistance from Russia. The intervention in Mali, provoked by actions of radical Islamists, was undertaken primarily by France. In contrast, the interventions in Afghanistan and Iraq, although sanctioned by the UN and ostensibly justified by the necessity to protect human rights and international safety, have destabilized the region and led to justified suspicions that they were actually serving the strategic interests of certain Western states, mainly the US.

The current situation, it seems, requires further examination. The two most obvious alternative solutions are as follows: either human rights could be abandoned and an attempt made to return to an order based on the balance of power, or the

international community could actually attempt to implement human rights, which would, however, involve the reconsideration of state sovereignty in its current form. But these solutions are not as simple as they might seem. Two fundamental theories of international relations try to cope with this problem: realism and idealism. The first is in favor of a model based on sovereignty and balance of power; the second supports the idea of extensive human rights protection. Both take into account the growing interdependence in a globalized world.

Chapter II

Political Realism in International Relations

The aim of this chapter is to present, with the use of selected theoretical examples, the significance of political realism and its criticism of human rights. We will go about this task in the following way. First, we will describe the most important features of political realism in international relations: the recognition of collectivities as political entities, the significance of conflicts and competition, and anthropological pessimism (section 1). The fundamental concept that we will be analyzing within the framework of the realist approach to international relations is the concept of security. Next, we will show how this concept, which is the main source of inspiration for various realist approaches to international relations, has developed from ancient times until the present day.

Five different approaches play leading roles here: Carl Schmitt's reconstruction of the concept of sovereignty and his criticism of human rights (section 2), Hans Morgenthau's classical concept of realism in international relations (section 3), Waltz's theory of neorealism and Schelling's concept of strategic realism, (section 4), and Chantal Mouffe's concept of a multipolar world order (section 5). Security lies at the base of all of these theories, where it is referred to as a value, and the balance of power is the tool through which security can be achieved. We will examine the way

in which realism relates to the law, presenting arguments for legal positivism and criticizing the concept of human rights.

Then, we will explore the relationships between historical changes that have strained the concept of sovereignty, which is central to realism, both internally and externally (section 6). Finally, we will sum it all up by exposing the internal fractures within realist theories, the speculative and naturalist elements, and problems tied with the authority of the law (section 7).

1. Political Realism

General theories in the field of international relations can be divided into two basic groups: realism and idealism. Realism, also referred to as political realism, emphasizes the significance of conflicts and competition between entities of international relations. Idealism, on the other hand, stresses the significance of cooperation and collaboration. The dominant entities in the international arena are, according to realists, collective entities organized, for example, as states, and competing for power; according to idealists, institutions that create conditions for beneficial cooperation between individuals and the institutions that represent them.

It may be said that the history of debate between realists and idealists goes back to the beginnings of political philosophy as such, to the dialogues between sophists and philosophers. The sophists were convinced that the only reality of politics was that of power and domination, whereas Socrates' supporters, whom we will refer to here as idealists, were convinced that it could be shaped by rational debate, consensus, and mutual understanding. Among the pioneering authors of realism, adherents of sophism in its broad sense, we can name thinkers such as Thucydides, Machiavelli, and Hobbes. The fundamental assumptions, whether tacit or explicit, that can be found in most doctrines that fall under the concept of political realism are as follows:

1. A pessimistic view of human nature (Hobbes—competition, resources, power);
2. The separation of ethics and politics (Machiavelli);
3. The conviction that international relations are characterized by anarchy, that they often take the form of conflicts, leading to wars (Schmitt, Morgenthau);
4. National security as a value;
5. Skepticism as to the possibility of progress in international relations.

Furthermore, realism takes on different forms and, depending on the approach to the collectivity, is either more speculative (normative) or more positivist (naturalist). The more speculative concepts stress the equality of collective entities (they can be described as more normative), while the more positivist theories emphasize the significance of hegemony and violence (they can be described as more naturalist). A normative version of realism was propounded, for example, by Hobbes. In his model, the sovereign power reforms the public space, making all subjects equal before the law, of which it is the sole source. Likewise, the international arena is also considered in the light of relations between equal sovereign states that are capable of entering into agreements or conflicts. On the other hand, in the naturalist model, both the internal and external domains remain subject to power struggles. Internally, collective identities and groups clash, and the one that prevails imposes its own rules on the others. The international domain can also be viewed as an arena of struggles for hegemony between collectivities, where the most important factors are population and relative power. Furthermore, there are various theories of political realism which emphasize particular assumptions and theses of realism in different ways. Despite this diversity, there are certain features they have in common.

Contemporary political realism regards international politics as being determined by power and not by righteousness. Both internal and external relations are shaped by the struggle for power and influence. International politics is played out in conditions of

international anarchy, and the principal actors are collectivities that are organized into states, whose aim is to defend their national interests. Entities other than states are not of such importance, nor do they play such roles in international politics. Additionally, all international agreements are temporary and dependent not only on the will of states, but also on the existing distribution of power. Therefore, if state interests come into conflict with international treaties, it is the state that takes precedence over the legal order. All treaties and agreements are upheld as long as they are beneficial and do not come into conflict with the vital interests of the state. In contemporary realism, these principles are recognized as timeless and unchanging.

Classical realism, accepting the above points (made by Thucydides, Machiavelli, Hobbes), recognizes that international politics is in a state of conflict and therefore lacking in security; it maintains that the knowledge (wisdom) which would allow states to gain an advantage and reduce the risk of armed conflict does actually exist. According to Machiavelli, wars can be prevented by the creation of large nation-states; according to Hobbes, balance can be achieved through stable, sovereign states. Contemporary realism, from Carl Schmitt to Hans Morgenthau and Kenneth Waltz, also refers to these theses.

Realism can be defined using notions such as positivism, minimalism, and naturalism. Positivism, with regard to international relations, meant concentrating on the facts, on an analysis of the political situation without taking normative projects into consideration. Realists were positivists in the sense that they sought a theory of international relations based on a scientific formulation as would be appropriate for the natural sciences. It was supposed to refer only to facts and experiences, construct generalizations, and lead to predictions that would be subject to verification or falsification. Realists were also minimalists. They claimed that it was better to describe international relations from the level of the most fundamental interests, since interests were governed by the laws

of probability and could be compared, whereas ideologies tended to universalize their own vision of the world, which did not allow for an objective description and led to conflict. They also used an extremely broad notion of ideology. Every concept which went beyond the framework of this program was considered by them to be an ideology. Realists can also be called naturalists, as in their analysis of international relations, they only took into consideration the naturalist dimension of state power—its territory, population, quality of leadership, and military potential—basically omitting any aesthetic, moral or even international law aspects.

Positivism and the intentional anti-idealism of realism did not, however, mean that it was free of normative elements. Although consciously avoiding great projects to reconstruct the world, it considered security to be the central value in political relations. A balance of power was supposed to be the means to achieve it.

Realism was a complex of related ideas, such as egoism as the dominant force in politics, collectivity as the political agent, and the politics of power and anarchy as the central feature of international relations (Goodin [2010], p. 133). Egoism implied a model of politics that was based on conflict. The collective character of political actors guided realists towards the concept of sovereignty. This was because sovereignty introduced an internal order in the collective entity and was the source of law and international agreements. The notion of the politics of power concerned both domestic and international affairs. Domestically, the politics of power meant the acceptance of legal positivism, and internationally, a struggle for hegemony. Legal positivism, which was inextricably linked with realism, meant that the law was the will of the sovereign and was accompanied by the threat of force. The politics of power in international relations meant a fight for hegemony, but at the same time, international relations were treated as relations between competing collective entities—nations competing for resources, and in the interest of the collectivity, scaring off potential competitors by displaying their capacity to attack others. The politics of power demonstrated,

therefore, the objective competitiveness in the international order of sovereign entities, which also defended their interests through the use of coercion, military power, and economic sanctions. Fear was, therefore, a tool of international, as well as of internal, politics. Anarchy as the model of international relations demonstrated that there was no law that could stabilize these relations.

The principal philosophical assumptions of classical realism were: the limited or non-existent role of morality in politics; the primacy of the state as an agent in international relations; the necessity of measuring the power of individual states; and the lack of a stable international order. Another important element of the realist theory was the conviction that state interests were the major objective that the political elites of sovereign states were pursuing. According to adherents of this theory, this inevitably led to antagonism, which made pursuit of state interests through the use of universal, global organizations impossible. In accordance with the assumptions of this concept, it was only under conditions of a relative balance of power that states would be willing to refrain from mutual aggression for fear of retaliation and its consequences.

In the normative domain, realists claimed that all moral doctrines, including political doctrines which themselves had a normative dimension, were of a universal character. In the case of normative conflicts, which were interpreted by realists as conflicts of interests and, therefore, as conflicts of wills, debate did not lead to any meeting of the minds. This is because debate in such a situation could only result in a consensus when it was a matter of scientific cognition. However, the objectives pursued by wills were fundamentally different in nature. They were either correlated or contradictory and, thus, a debate concerning correlated objectives could lead to cooperation, whereas with contradictory objectives, debate could only articulate the differences and bring them into sharper focus. That is why, for realists, conflicting wills always resulted in conflicts and tensions, which, in the political arena, meant war. War, on the other hand, served to break the will of the opponent and to

impose one's own will. For this reason, debates, panel discussions, and international organizations were not able to prevent conflicts. On the contrary, by presenting contradictory arguments, they only led to the strengthening and clarification of potential front lines. It was also for this reason that realists proposed a somewhat "external" viewpoint on politics, where directions of collective activity could be analyzed as vectors analogous to those representing physical forces. From this perspective, it was possible to start analyzing the political arena using tools appropriate for empirical sciences.

Due to the assumptions made, political reasoning should, according to realists, be able to calculate real interests and realistic possibilities, as well as the real potential of friends and foes. In this way, rational behavior would favor the maintenance of the status quo, or would gently and gradually reshape the international situation to strengthen the rational actor's own position while maintaining the general balance of power. Each action was to be assessed according to the consequences it had for the entire system, where the notion of *system* described the entirety of interdependent collective relations. At the same time, however, it should be noted that although the notion of *international system* appeared in the realists' terminology, it was still not very clear. Researchers assumed that it consisted of so many elements that, in practice, each analysis could only include a portion of the data. In effect, prudence started to become a political virtue, where *prudence* was understood as the capacity to foresee the probable consequences of alternative courses of political action and the capacity to make correct decisions despite lacking full information.

One of the leading representatives of classical realism was Hans Morgenthau. It was he who had the greatest influence on an entire generation of theorists and practitioners of international relations. His concept evolved in response to the idealist perspective which had dominated the interwar period. Liberal internationalists, also referred to as utopians, and Marxists can be included among the idealists of the 1920s and 1930s. The objective of both of these

doctrines was to eliminate armed conflict. Liberals sought the solution to this problem in the international legal system created by international organizations. Marxists hoped for a complete change of social relations. Their aim, however, was much the same: to bring about a transformation of political relations that would result in the elimination of wars, or even more broadly speaking, in the elimination of political conflicts. In addition, both the Marxist and liberal projects emphasized the role of the economy. For Marxists, the base level of conflict was the so-called *class struggle*, or collective economic conflicts. It was believed that ideologies were merely a reflection of these conflicts and that, with the disappearance of conflicting economic interests through the abolition of private property that was to be replaced by common ownership, other conflicts would also be averted. The victory of the proletariat in all countries was supposed to eliminate the political dimension and lead to the end of wars. *The Communist Manifesto* propagated the necessity to change the world, and was, therefore, an idealist proclamation of struggle, envisioning an ideal image of post-political peace. Furthermore, Marxism was a maximalist theory, aiming for the total reconstruction of social and political reality. It was also moralizing, pointing out the evil rooted in class relations. The source of this evil was the private economic sphere, inequality, and the influence of economics on other domains of life. The objective was to create a community in which economic differences would be eliminated through the collectivization of property and by giving all citizens equal access to communal property.

Liberals, on the other hand, believed that the major source of conflicts was politics itself, associated with power, domination, and violence. The chief objective of liberalism was, therefore, to eliminate conflicts by turning away from politics, limiting the role of the state, and replacing it with the rule of law, which was meant only to protect individuals from each other. Hence, the objective was to reduce the area of political power and to protect private property. For this reason, liberals intended to establish international institutions

that would create and implement international laws. The twentieth century, however, brought two global conflicts—World War I and World War II. While World War I resulted in a shift towards idealist solutions, after World War II, with the onset of the Cold War, realism once again became intellectually tempting.

From the beginning, political realists pointed to an impurity present in human nature, which even the most excellent institutional or social systems could not countervail. They recognized collectivities and their antagonisms as being an ineradicable element of the political arena. According to realists, conflicts, including armed conflicts, had always been present in history. In view of this constant empirical experience of wars, the prediction that wars would disappear one day was not justified.

Currently, the advantages of realism over idealism have decreased as a result of criticism in relation to, for example, the transformations of the early 1990s. According to its critics (such as representatives of so-called liberal institutionalism and adherents of the transnational concept), realism could not provide a sufficient explanation either for these transformations or for other phenomena due to a lack of adequate tools for the analysis of international cooperation, of the increasing significance of supranational institutions, and of laws that reach beyond the borders of sovereign states. Moreover, realism did not answer the question of the source of legitimacy of the law and, due to its assumptions, could not grasp and explain the increasingly important role of human rights within the frameworks of its analyses.

2. The Concept of Sovereignty and a Criticism of Human Rights—Carl Schmitt

The pioneering author of post-war realism has turned out to be Carl Schmitt. It is in his writings that it is possible to find a comprehensive formulation of the main philosophical assumptions of

realism. The first assumption identifies egoism as the dominant mechanism within the political sphere; the second specifies collectivity as the political agent. In response to the question of what binds egoistic individuals to each other and organizes them into a political community, Schmitt points to hegemony which forcefully imposes an internal political unity, on the one hand, and anarchy in international relations, on the other.

Above all, Schmitt, inspired by the writings of St. Augustine, assumed that *will* was the main source of human actions. However, *will* could either aim to cooperate with or to confront others. Human action was, thus, determined by two opposing principles: good and evil. This led to never-ending conflicts and tensions as individual and collective egoisms clashed. And although it was possible to reconcile the former through the presence of authority and power, the collective egoisms remained in constant confrontation. According to Schmitt, the political perspective differed from the moral one in that it took the presence of others into consideration, including their freedom, which meant that a conflict could only be resolved by a power greater than that of the conflicting parties. For this reason, Schmitt believed that all political theories must be based on the assumption that human beings might be potentially evil and dangerous to one another: "all genuine political theories presuppose man to be evil, i.e. by no means an unproblematic but a dangerous and dynamic being" (Schmitt [1996], p. 61).

On the individual level, the existence of *will*, or more precisely, *ill will*, made indispensable the presence of an external institutionalized authority, embodied in the Church. In the collective dimension, political power became the solution to the conflict of wills: "In a good world among good people, only peace, security, and harmony prevail. Priests and theologians are here just as superfluous as politicians and statesmen" (Schmitt [1996], p. 65).

Schmitt did not endorse the Enlightenment's vision of progress in which will and conflict were gradually replaced by reason or even by expanding rationality, collaboration, and mutually

agreed cooperation among individuals (Schmitt [1996], pp. 73–76). On the contrary, according to Schmitt, the source of political order had to be *will*, expressed through decisions that established the law, e.g. decisions determining the shape of a constitution. Consequently, only a political unity could constitute a polity, and the power creating that unity sustained it through law and force. The political "us" was not constituted by rational dialogue, consensus, and representation (from the bottom up), but by the political, sovereignty, decision-making, constitutions, and law (from the top down). It is only within such an established and organized whole that an area for cooperation appears, as do sanctions for violations of the adopted rules.

It is also for this reason that Schmitt embraced legal positivism and was particularly critical of the idea of human rights. In his opinion, only particular constitutions existed, based on concrete decisions, each forming a specific legal system that was politically anchored. This system was protected by force, and the use of the term *law* to describe something that exceeded the will of the sovereign was unwarranted. In this context, human rights were either empty or meaningless, or, even worse, could become a tool of hegemony. This was because if one of the collectivities considered its particular law to be universal, then it would be only one step away from imposing this law on all others, and, furthermore, any collectivity which resisted would, from this perspective, be regarded as inhuman. As Schmitt stated:

> To confiscate the word humanity, to invoke and monopolize such a term probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity; and a war can thereby be driven to the most extreme inhumanity. (Schmitt [1996], p. 54)

Meanwhile, according to Schmitt, war was an inevitable collective activity whereby collectivities fought each other either for spiritual or material goods, such as a geographically defined territory,

together with its material resources, i.e. natural resources, production, and population. Victory in a war allowed the victors not only to seize material resources, but also to impose their way of life and values on another collectivity. This coequality of opponents clashing in war, however, was fundamentally undermined by the rhetoric of human rights.

In effect, by referring to the rights of a certain political community as universal and by calling them "human rights", the path to global conquest was opened, the object of which would be to impose one's own hegemony on others. In this way, "they" ceased to be a rival on equal terms, a competing collectivity—instead, they became evil, immoral, and in need of resocialization. Along with the ideology of human rights, the language of domestic legislation was replaced by the language of external politics. Therefore, war, understood as the clash of two coequal collectivities fighting for their own interests, was invalidated. It became more like a punitive expedition:

> War is condemned but executions, sanctions, punitive expeditions, pacifications, protection of treaties, international police, and measures to assure peace remain. The adversary is thus no longer called an enemy but a disturber of peace and is thereby designated to be an outlaw of humanity (Schmitt [1996], p. 79).

It was for this reason, according to Schmitt, that there was no place for the concept of human rights in normative formulations of equality concerning the treatment of political collectivities, since the law could only be executed as the domestic law of a given political community, the law of a particular state. Such an approach to the law, however, was tied to a vision of anarchy in the international arena, in which coequal collective agents clash with one another, fighting for domination, until they finally enter into alliances, agreements, and treaties with each other.

Among the terms used in the vocabulary of political realism, as well as in Schmitt's writings, the term *sovereignty* has risen to

the top. This term already had a long tradition, and it is not by chance that it found its way onto the list of key terms in political realism. It was tied to the order which came into place after the Peace of Westphalia (1648). At the time, the principle *cuius regio eius religio* was adopted, and autonomy and independence were established as the principles for relations between states. The sovereign became completely responsible for the domestic order, even the religious order, and in the imaginary arena of international relations became equal to other sovereigns, regardless of differences in power and military potential. In such a state of affairs, the notion of sovereignty turned out to be extremely important. The sovereign's task was to present, as well as justify, political solutions in both the internal and external orders.

Traditionally understood sovereignty had been described in the language of politics, i.e. the sovereign was the one who had the final say when it came to decision-making, or in legal terminology, the will of the sovereign became the law. In the case of international law, the sovereign was the one who had the ability to enter into international agreements, the one who was the subject of international relations. In the case of domestic law, the sovereign had a monopoly over establishing the law. The fundamental frame of reference of the sovereign was territory and its borders. The notion of sovereignty, both in its political and legal dimensions, assumed autonomy and exclusivity. Autonomy was essential as, by definition, dependence negated the concept of sovereignty. Exclusivity was also ineffaceable by definition. This contributed to the drawing up of the political map—divided into autonomous territorial wholes, states had the exclusive right to establish laws within their own territories and were coequal to one another in the theoretical international order (Schmitter [1999], p. 217). Borders were of key importance for sovereignty understood in this way. The notion of sovereignty brought attention both to the borders outlining the demarcation line between two sovereign powers, as well as to the obligation to protect them. It is worth noting that the notion of

sovereignty leads to the treatment of collective entities as equal to one another. The sovereign power on a given territory made everyone under its rule equally subject to its will, and at the same time, together with other sovereign powers, organized the international arena—sovereigns became equal to each other as types of "collective individuals", who were the source of will, agreements, obligations, and declarations.

The notion of sovereignty suited legal positivism. Lawyers who represented the positivist position noticed that the law was always dependent on a particular political power and fundamentally belonged to the broader domain of the political. The law existed, according to legal positivists, thanks to politics and through politics. Admittedly, it could also be viewed as a philosophical or religious concept—however, the notion of law fundamentally referred to the statutory law. Thus, the notion of sovereign power underlay the notion of law. One of the theorists that presented the law as the command of sovereign power was John Austin, a nineteenth-century English lawyer and legal philosopher, a representative of legal positivism who introduced the command theory of law. Austin defined the law as a set of rules established for a reasonable human being by another reasonable human being who has authority over the former (Austin [1832], p. 4). Therefore, every law was a command backed by a threat—a command that had been issued by the sovereign. Such an interpretation of law was accompanied by the conviction that law and morality were separated. In this way, morality became something individual, while the sovereign power laid down the law, which was, first of all, public—it had to be announced in order to come into force—and secondly was equally obligatory for all, making all subjects equal before the law.

Historically, legal positivism was associated with many consequences which, from today's perspective, could be understood as valuable. Positivism unified the legal order in a given territory and introduced the principle of equality before the law. It

introduced the principle of the equality of subjects to each other and of sovereigns in the international arena. Legal positivism, however, also brought with it many consequences that, from today's perspective, could be described as negative. Issues concerning the form of power and substance of the law were left outside the area of interest of legal theorists, and the obligation to abide by the law was treated as absolute. Positivists attempted to create a neutral form of law, unrelated to values. They essentially considered the law to be only what was established through appropriate procedures, defined as binding by the organs of state authority, and which was obeyed by society. Realists, therefore, defined law in relation to the authority that established it and to the institutions that applied it, which, in short, can be summarized in the claim that the law was whatever the organs of state authority commanded and the courts applied in their decisions.

Thus understood, legal positivism was mainly criticized for making assumptions concerning the free choice of an axiological framework for the functioning of society and the free choice of the direction of practical reasoning. The term "free choice" was identified with a completely unconditioned decision, from which the finality of the law, as well as compliance with the law, originated. The basis for undertaking certain actions had been left to contingency. Action could result from either fear of punishment or uncritical conformity. Positivism, therefore, moved away from recognizing polity, i.e. a political community constituted by sovereign decision, towards an individualistically understood social ontology. Individuals were subjects of the law, but at the same time, the law isolated them from each other. The domain of social cooperation had been left outside the purview of legal positivism. In the positivist interpretation, cooperation could be spontaneous and did not require support in the form of rules and practices—only conflicts demanded intervention from the top down, from the sovereign. At this point, questions arose concerning the social legitimization of the law, the customary law, and the practices that regulated ordinary human

relationships. Critics of legal positivism demonstrated that social cooperation required either social unity or the authority of the law. The concept of social unity assumed full social agreement as to the objectives pursued; however, the authority of the law had to in some way be above the order of the sovereign power so that the law was adhered to by people of their own free will, and so that interference by the authorities was only the result of the violation of the rules established in the social order, unrelated to the sovereign power. From the perspective of the critics of positivism, a vision of power that placed a policeman behind every subject to follow his/her every move in order to effectively oversee the functioning of the law was not only unrealistic, but also undesirable.

Such tensions between the sovereign power's decisions as the final source of law and a certain organic form of life of a given political community, understood as the source of legitimization of the law, had already been included in Carl Schmitt's considerations. In his early writings, the perspective of decisionism and legal positivism dominates; in his later writings, the attention of the German jurist was concentrated more on the organic forms of life of a given community. Schmitt introduced a term to describe them: absolute constitution, which meant a specific way of existing, inherent to every political community. A constitution, in the absolute sense, is "the concrete manner of existence that is given with every political unity" (Schmitt [2008], p. 59). This is how, in Schmitt's writings, a conflict appeared between the ontologically given absolute constitution as a defined way of collective life and the positive constitution, which was the result of an unconditioned decision:

> The constitution in the positive sense originates from *an act of constitution-making power*. The act of establishing a constitution as such does not involve separate sets of norms. Instead, it determines the entirety of the political unity in regard to its peculiar form of existence through the single instance of decision (Schmitt [2008], p. 75).

Schmitt was aware of the tension that arose between the absolute and the positive understanding of the constitution. The legal philosopher emphasized that "[t]his act *constitutes* the form and type of the political unity, the existence of which is presupposed. It is not the case that the political unity first arises during the 'establishment of a constitution'. (...) Such a constitution is a conscious decision, which the political unity reaches *for itself* and provides *itself* through the bearer of the constitution-making power" (Schmitt [2008], pp. 75–76).

Hence, both the ideas of establishing a constitution (from the top down) by the power of sovereign decision and of a constitution which had existed previously as a collective form of life, expressed (from the bottom up) through representatives, by the power of the people's will, appeared side by side. Of course, it is possible to explain this specific entanglement as a development in Schmitt's thought, his return to the sovereignty of the people. However, one issue cannot be omitted—an issue that reveals itself in full vividness. Legal positivism, by defining law solely in reference to the sovereign power, neglects an issue which is central when it comes to political theory broadly understood, namely the issue of legitimacy of the law. Schmitt's successors also struggle with this issue. Furthermore, a new problem arose as subsequent theories of political realism turned to naturalism. The basic theories of political realism were present in Schmitt's works; they were, however, further developed into a political theory of classical realism by Reinhold Niebuhr and Hans Morgenthau in a way which reduced the equality of states. This is how the doctrine known as classical realism was formed. Later on, structural realism and strategic realism emerged as well, and they will be discussed later in this book.

3. The Classical Theory of Political Realism—Hans Morgenthau

Reinhold Niebuhr and Hans Morgenthau were both representatives of classical realism. Morgenthau, in particular, had a huge influence on theorists and practitioners of international relations. He returned to the fundamental assumptions of realism, molding them into a coherent theory of international relations, constructed in opposition to idealism. According to Hans Morgenthau, the world was full of conflicting interests, which could, at most, be balanced (using a system of checks and balances), but could not come to an agreement. Morgenthau pointed to national power as the primary source of influence on the international situation. In his opinion, national power was a result of geography, natural resources, industrial potential, readiness for combat, population, national character, morale, the quality of diplomacy, and the quality of government. All of these factors could generally be seen as the "natural resources" that allowed for the execution of political will. However, it was not only these natural resources which are important, but also social cohesion and unanimity, support for political decisions, and the determination to implement them. Morgenthau claimed that national power comprised all of these elements combined—this power was never objective, but could only be measured in relation to other subjects of international relations. Therefore, it was not so much territory itself that was important, but the territory of a specific country in relation to other territories, its natural resources in relation to the resources of potential rivals, industrial potential in relation to other potentials, and so on. This also meant that there was a constant need to assess the situation in other countries; for example, any change in a neighbor's military potential might result in the weakening of one's own military position.

Morgenthau dismissed the vision of international politics where the equality of states was assumed; on the contrary, in his

opinion, due to the increasing inequality of the subjects of international relations, classical realism needed to redefine the objective of political theory.

> The modern fact of interdependence requires a political order which takes that fact into account, while in reality the legal and institutional superstructure, harking back to the nineteenth century, assumes the existence of a multiplicity of self-sufficient, impenetrable, sovereign nation-states (Morgenthau [1993], p. 9)

The result of such a redefinition of the international arena, while maintaining most assumptions which had already been made by Carl Schmitt, was the shift of classical realism towards naturalist theory. Morgenthau, drawing attention to the inequality between subjects of international relations (two of which were superpowers in possession of weapons of mass destruction), identified national interests as the central concept which organized their relations. The second concept that organized these relations was the balance of power, which arose between subjects that entered into various explicit and implicit alliances with each other.

Morgenthau presented six famous principles that have become the foundation of the school of political realism:

1. Politics is governed by objective laws that have their roots in human nature.
2. The main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power.
3. Realism assumes that its key concept of interest defined as power is an objective category that is universally valid, but it does not endow that concept with a meaning that is fixed once and for all.
4. Political realism is aware of the moral significance of political action. It is also aware of the ineluctable tension between moral imperatives and the requirements of successful political action.

5. Political realism refuses to identify the moral aspirations of a particular nation with the moral laws that govern the universe. As it distinguishes between truth and opinion, so it distinguishes between truth and idolatry.
6. The difference, then, between political realism and other schools of thought is real, and it is profound (Morgenthau, [1993], pp. 3–17).

As Morgenthau states: "Power may comprise anything that establishes and maintains the control of man over man" (Morgenthau [1993], p. 11). If people, therefore, wish to enjoy a secure public space, free from the interference of others, they must mobilize and organize themselves into an effective and strong state. Only hegemony of the state can introduce order into the political community and, externally, can lead to a balance of power. Without a strong state, internal conflicts may be exploited by external, hegemonic political powers.

The unit in which both internal and external political action is measured is prudence—the ability to predict the consequences of alternative actions and to assess them in categories of power, that is, by the advantage of one state over other states. Political prudence is a rare virtue, as it requires an evaluation of the situation, which has to be done based only on fragmentary knowledge. In reality, politicians only know a fragment of what they should know in order to predict the consequences of their own actions. Therefore, their actions are often based on intuition and a certain contingency. There are also, however, elements that can be evaluated and taken into consideration in political calculations. Such elements include: a pessimistic anthropology, the conviction that the sovereign is the source of the law (interpreted here as hegemonic sovereignty), legal positivism combined with the dismissal of the idea of human rights, decisionism, and naturalism.

The first element, which is relatively stable, is the common aspiration for hegemony, which, as Morgenthau claims, is rooted in human nature. According to him "[t]he drives to live, to propagate,

and to dominate are common to all men" (Morgenthau [1993], p. 36). However, the urge for domination takes on different forms in relations between individuals as compared to relations between collectivities. Between individuals, it has been tempered through cultural artifacts such as behavioral norms, ethics, and accepted standards. Western societies have achieved advanced social cohesion in this respect, in contrast to other societies. All of these elements have contributed to the alleviation of the effects of the urge to dominate among individuals who have undergone this socialization. Law has become another key element. As a result, internal political order is more stable and less susceptible to sudden changes than international order (Morgenthau [1993], p. 50). Therefore, actions of states are ruled by a different logic of evaluation than are actions of individuals. Equating these two orders, as Woodrow Wilson did in his address to Congress in 1917, is morally inacceptable and intellectually wrong, as it does not differentiate between, and even equates, the public domain and the private domain.[1] While individuals can and should be guided in their interactions with others by moral principles, instilled through the process of socialization, to follow behavioral norms, patterns of conduct, and accepted standards, as adherence to them serves the individuals that make up a society, collectivities are primarily guided by the urge for domination. Furthermore, moral principles function in the consciences of individual people. The precondition for the existence of an international ethical system would be to identify specific individuals who would be responsible for international politics and who would personally bear the consequences of political actions. Yet the responsibility of government is divided among many individuals, and these individuals are not always visible, nor are they accountable for the effects of their actions. It should also be pointed out that there is a fundamentally different concept of moral requirements in international

[1] About Woodrow Wilson's idealism, see more in Chapter III.

relations. Morality between individuals may be absolute, but morality with respect to a collectivity means, at the most, that those in power are accountable before the collectivity for the effects of their actions.

The aspiration for domination is expressed through aggression towards other collectivities. Aggression, however, uses tools that are elements of *national power*. National power, according to Morgenthau, is a combination of two types of factors: the first type consists of relatively stable elements, while the second undergoes constant changes. The most stable element of national power is the territory on which a defined collectivity lives, i.e. geography. The geographical positioning of a community remains a factor of fundamental significance, which all states must take into consideration in their international politics. For example, the vast territory of Russia has always been an asset that has thwarted any attempts at conquest.[2]

In the realist approach, since the moral concepts are variable and subject to modifications, power is something that can be objectively evaluated. According to Morgenthau, the biggest threat to politics is its ideologization, which would, firstly, impose its own vision of the world and its own objectives as the sole objectives, and, secondly, would portray those who disregarded these objectives as irrational individuals, sometimes even non-humans, incapable of thinking, cognitively handicapped. By blotting out the differences between will and knowledge, Morgenthau states that ideologies present their own objectives as real, depriving other people of alternative choices. In realism, a better picture of reality is, despite everything, considered to be one where the freedom of the individual and of collective entities is accepted, even if this results in conflict. The total elimination of freedom in the name of truth leads to the intensification of activity and escalation of conflicts.

[2] "Instead of the conqueror's swallowing the territory and gaining strength from it, it is rather the territory that swallows the conqueror, sapping his strength" (Morgenthau [1993], p. 126).

The marginalization of freedom and the ideologization of politics—e.g. the fight for communism or the fight against communism—both lead to a situation where the opponent ceases to be perceived as a human being who has his/her own will and different ideals; he/she begins to be treated either as a mindless maniac or as a liar.

By freeing politics from the aesthetic considerations of ceremony and etiquette, and the moral considerations of the inferiority or superiority of one collectivity over the others, realism has allowed statesmen and scholars to compare and assess specific elements, such as territory, population, political unity, the modernity of political tools, and readiness to resist an armed attack. Realists have emphasized that, other than, or even in spite of, sound moral convictions, it is also necessary to wield political and military power.

An interesting motif in Morgenthau's work was the attention paid to diplomacy as the peaceful art of constructing national power. In his opinion, it is diplomacy's task to define the objective of collective action, to identify the goals pursued by other collectivities, and to assess the chances of achieving one's own objectives as well as the chances of others achieving theirs. Diplomacy must evaluate to what extent these objectives are compatible. It should also take advantage of appropriate means in order to attain its own goals (Morgenthau [1993], p. 361). Diplomacy functions, therefore, in the arena of wills and the collective performance of tasks. Their definition, coherent implementation, and use of available resources are all important factors. Other collectivities also determine their objectives and implement them more or less consistently while taking advantage of the available resources. The aims of such collective actions can either coincide or diverge—in the former case, cooperation is possible; in the latter, it becomes impossible. This is the reason why discretion is needed in diplomacy.

Secrecy becomes a requirement of diplomacy for several reasons: the interests of other parties, the pressure of public opinion, and the very nature of divergent objectives. Firstly, negotiations

taking place between particular parties are not without influence on other entities of international relations. Only by keeping them secret can talks be protected from the often conflicting pressures from third parties. Secondly, another source of pressure is internal public opinion, which usually demands maximum results and requires negotiators to show their skill and cunning in order to defend the status and power of the state they are representing, and to display superiority over other parties. "No government that wants to stay in power or simply retain the respect of its people can afford to give up publicly part of what it had declared at the outset to be just and necessary, to retreat from a position initially held, to concede at least the partial justice of the other side's claims" (Morgenthau [1993], p. 375). Finally, according to Morgenthau, when objectives are in conflict, their mere declaration escalates the conflict and exposes the impossibility of their resolution. He claims that, for the reasons discussed, diplomacy must be discreet and that realistically set goals can be achieved more quickly by using understatements, secretive negotiations, or even misleading suggestions instead of having an open public debate.

It is not a coincidence, in Morgenthau's opinion, that diplomats have always been treated with reserve from the moral perspective. In fact, only diplomats have turned out to be effective: "The diplomat's reputation for deviousness and dishonesty is as old as diplomacy itself" (Morgenthau [1993], p. 368). Therefore, it is sometimes necessary to sacrifice a less important good (honesty) for the sake of a more important one (citizens' security), choosing the lesser of the two evils. This kind of situation is a source of situational ethics. From among the historical models, it is possible to distinguish two fundamental approaches to lying. The first considered lying to be unacceptable in any situation; there can be no situation in which it would be admissible to deviate from the truth. It is, after all, possible to limit the number of people informed, to maintain secrecy and discretion in certain situations, but it is forbidden to deliberately mislead. The second of these two traditions is the tradition of

situational ethics, which sometimes allows one to lie. Morgenthau shows his support for this tradition. He argues that there are certain situations where lying not only becomes morally acceptable, but is even necessary. This occurs when the lie is used as an effective weapon against an aggressor. Situational ethics is, however, accompanied by a strong conviction that lies are constantly present in politics. It refers to the fact that truth, as presented in political matters, is usually just an illusion or pretense masking the actual interests of individuals or groups, "ontologically" conditioned by the nature of politics itself.

> It is a characteristic aspect of all politics, domestic as well as international, that frequently its basic manifestations do not appear as what they actually are—manifestations of a struggle for power. Rather, the element of power as the immediate goal of the policy pursued is explained and justified in ethical, legal, or biological terms. That is to say: the true nature of the policy is concealed by ideological justifications and rationalizations (Morgenthau [1993], p. 99).

The actual and sole purpose of political activities is the acquisition of power. This objective must be somewhat obscured from view in both internal and external relations. In this way, lies become not only a natural tool for conducting politics, but also a desirable one. Morgenthau claims that the idea of justice is also undermined, as each entity considers its own pursuit of power to be just, whereas the similar pursuits of others are considered to be unjust. According to the notion of hegemony, which organizes internal and external relations, the disclosure of actual objectives and information concerning the tools possessed would only provide potential rivals with additional advantages.

International relations have an anarchic nature and involve multiple entities. The power of a given party is decided by its national power, as well as by the power of its alliances. This is because if it pursues hegemony, its rivals will seek to consolidate, unite, and cooperate.

> That frank admission would, on the one hand, unite the other nations in fierce resistance to a foreign policy so unequivocally stated and would thereby compel the nation pursuing it to employ more power than would otherwise be necessary (Morgenthau [1993], p. 102).

In these categories, lies turn out to be useful or even necessary. One should obscure one's own pursuit of dominance over other entities of international relations and simultaneously attempt to weaken the position of potential rivals through a network of alliances. Secretive and discrete diplomacy serves this purpose, as does hiding the nature of one's pursuits behind some ideology.

It should also be emphasized that the central value which can be effectively protected in such a way is internal and external security. If politics is governed by objective laws rooted in human nature and the natural pursuit of domination, then truth cannot become a criterion for assessment of political actions. Realists leave the search for the truth to scholars, who study facts and construct scientific theories that describe these facts. Meanwhile, the arena of interpersonal interactions is an arena of wills; therefore, it can be based either on collaboration or on conflict. And this is where politics comes in, since it aims not only to secure areas of cooperation between individuals, but is also concerned with security on an international level. Thanks to the unifying structure of the law in the areas of economics, politics, and culture, Western societies have become a relatively well-integrated whole, in which people have accepted similar behavioral models, which in effect, supports cooperation, but has not eliminated individual conflicts. It is also for this reason that the law is needed to protect the social order from individuals who violate it.

Security becomes the highest value in the international arena as well. This occurs due to the diffusion of responsibility for collective actions and fundamental moral differences. Collective actions become an arena where, above all, the urge for domination and conflict is revealed. Political realism refuses to identify the moral aspirations of specific states with universal moral principles. Without

negating the existence of a moral dimension to political activities, realism points out that the identification of a specific collective particularism with a universal good is wrong, and only leads to an escalation of conflicts. Security, therefore, can only be ensured through power, and the conditions necessary for lasting security are created through a system of balances, which discourages all parties from adopting imperialist policies. It is precisely this notion of the balance of power that later became the central concept in Schelling's strategic realism.

4. Neorealism and Strategic Realism—Kenneth Waltz, Thomas Schelling

Regardless of its weak points, Hans Morgenthau's *Politics Among Nations* has become a classical work, defining the way of theoretical thinking about international relations that dominated the post-war generation. In the 1950s and 1960s, however, new methods of quantitative studies were developed. Game theory gained popularity. Moreover, the Cold War period showed that it was not so much states that stood in opposition to each other as blocs of states. Contrary to what Morgenthau claimed, it was not nations that competed with each other, but military and political blocs. Furthermore, in the 1970s, the role of international organizations was growing. Industrial giants had begun to cross national borders and an increasing number of international corporations had begun to expand their operations. Currency, taxes, financial flows, economic policies, and security ceased to be dependent on the autonomous will of the state. And although armed forces were still considered national, they too had undergone extensive standardization, both due to cooperation within the framework of NATO and of the Warsaw Pact, as well as through the specialization of arms production, a field where division of labor was also becoming more and more

pronounced. Specific states began to focus on certain types of weaponry, while others would purchase them from their allies. This development led to the questioning of realism and the strengthening of idealist thinking, which was labeled neoliberalism or pluralism. While accepting the main assumptions of realism, leading pluralists, such as Robert Keohane and Joseph Nye, proposed the concept of interdependence as the central concept for the international system.

As a response to the hope connected with the development of international cooperation, and of international law and institutions, Kenneth Waltz formulated a new concept of realism relating to Hans Morgenthau's assumptions and statements. In his book *Theory of International Politics*, published in 1979, he came up with a theory that came to be known as *neorealism*. In it, Waltz abandoned the notion of human nature and constructed a theory of international relations by analogy with microeconomics. He compared international players to companies competing in the internal market. From his analysis, an image emerged of an international system in which the state occupied a specific position in relation to other elements, which was only partially dependent on the way it articulated its own interests. This is how he created a structural approach to explaining international relations.

According to Waltz, the behavior of political actors could be explained through the limits that were being imposed on them by the international system. The structure of the international system was, in Waltz's opinion, shaped by three elements:

1. The rule that organized the international system—unlike the internal political order of a state, which was based on the principle of hierarchy of power, the international order remained anarchic, deprived of a superior authority, and, therefore, out of necessity based on the principle of the balance of power.
2. The principle of balancing the units of the system—where states continued to be the fundamental elements of the system. Waltz

did, however, recognize transnational actors in international relations, but he considered them weak and, in fact, dependent on dominating state entities.

3. The distribution of capabilities and power among individual units—related to the distribution of power in the international system.

Waltz believed that these three elements could explain the most characteristic aspects of the behavior of actors in the international system, which should be treated as a zero-sum game. The stake was no longer just the struggle for power; it was also observation of the distribution of capabilities and power across states. Waltz emphasized the necessity of empirical study of the world system to test research hypotheses, subjecting them to verification and falsification.

For realists, the objective that states should be aiming for is the balance of power. A situation of balance does not allow the domination of one state and is therefore conducive to maintaining security. Topics related to the security and balance of the international system, recognized as a whole, have been developed by adherents of this movement. Besides Waltz, another active theoretician was Thomas Schelling, an advocate of strategic realism, who accepted most of the assumptions of classical realism. He based his considerations on the notion of sovereignty and legal positivism; he criticized the idea of human rights and recognized the international domain as an arena of anarchy, rivalry, and permanent conflict. He also accepted Morgenthau's assumption that the international domain was defined by the pursuit of domination: national power was the key to success. He dismissed, however, as Waltz did, the anthropological assumption concerning human nature and made use of the latest achievements in science—in the case of strategic realism, this was game theory.

Strategic realism, concentrating on empirical knowledge and comparative study, pushed the process of decision-making to the forefront of its considerations, incorporating the latest research

results concerning game theory. Schelling, like Morgenthau, did not regard war as a final showdown, but rather he was interested in the decision-making process regarding whether or not to go to war. He viewed diplomacy as a way of strengthening international security by restraining the opponent. From this perspective, diplomacy's task was to set up a situation in which the only rational decision of the opposing party would be peace. In his opinion, a fundamental tool of diplomacy was to use "threats" as a mechanism in an instrumental and rational way to frighten off one's potential rivals. It was therefore necessary to expand one's army and threaten to make use of it. According to Schelling, the domain of international relations was also free of moral choices and had a purely technical nature. As he wrote:

> Diplomacy is bargaining; it seeks outcomes that, though not ideal for either party, are better for both than some of the alternatives. In diplomacy each party somewhat controls what the other wants, and can get more by compromise, exchange, or collaboration than by taking things in his own hands and ignoring the other's wishes. The bargaining can be polite or rude, entail threats as well as offers, assume a status quo or ignore all rights and privileges, and assume mistrust rather than trust. But whether polite or impolite, constructive or aggressive, respectful or vicious, whether it occurs among friends or antagonists, and whether or not there is a basis for trust and goodwill, there must be some common interest, if only in the avoidance of mutual damage, and an awareness of the need to make the other party prefer an outcome acceptable to oneself (Schelling [1980], p. 1).

There are significant differences between strategic realism and classical realism. From the perspective of strategic realism, extortion is a method of persuading an adversary to do what a given state wishes, without using brute force. In this approach, the normative core is secondary and is not subject to analysis, although, of course, the concept of security still remains in the background. The reasons behind how the players should behave have not been

fully explored by Schelling. The actors are treated more like rational individuals participating in negotiations, and not as representatives of collectivities. Values, such as national power and prestige, which were studied by classical realists, have been practically omitted from analysis, as the question concerning the balance of power has been redefined in the context of possible use of nuclear weapons.

Schelling's conception, therefore, springs from the need for a realistic analysis of the situation, but the result of this analysis evolved under the influence of the Cold War, in which two states decisively dominated over the rest, becoming the major players in the international arena. Schelling claims that nuclear weapons not only influenced the modification of the international system and the introduction of the bipolar model, but also contributed to the stabilization of a new balance of power. Nevertheless, the bipolar model is, in Schelling's opinion, better than a unipolar or multipolar system, as it is more predictable. This is because the actors are clearly defined, their actions are tied to their responsibility for world order, and the real risk of war is reduced. Moreover the fewer the superpowers that take part in establishing the system of deterring adversaries, the more effective the system is.

The language that neorealism and strategic realism use and, therefore, the values they adhere to can be clearly seen, for example, in the debate concerning the expansion of NATO after the end of the Cold War. Realists stood apart from neorealists and strategic realists. The realists claimed that such an expansion of NATO would increase security in the region; neorealists and strategic realists, on the other hand, claimed that it would undermine the Cold War arrangement. As to values, both positions referred to national security. And both schools used language such as "danger", "risk", "deterrence", and "credibility". They disagreed, however, in their assessment of the consequences of NATO's expansion. For realists, it meant an increase in the power and potential of one's own alliance, while for neorealists and strategic

realists, it posed a threat to the balance system and the bipolar arrangement (Waltz [2000]). Among the arguments regarding the imminent dissolution of NATO due to disturbance of the bipolar order caused by its expansion, we find the opinion of John Mearsheimer, who claimed that the alliance remained, above all, a manifestation of the bipolar division of Europe, and that it was the balance of power (NATO versus the Warsaw Pact) and not the existence of the alliance itself that had been the key to maintaining stability on the continent at the time of the Cold War. In accordance with the alliance theory, NATO was, therefore, bound to dissolve, as without any threats, the pact was much like a plant without water; it had to die off, and the only question was: how quickly?

Kenneth Waltz and Thomas Schelling, advocates of neorealism and strategic realism, respectively, emphasize that international relations as a whole that put pressure on states can be referred to as a system. This system restricts the choices that national governments can make. This is why the significance of "human nature" is disappearing, as are the motivations of statesmen, whereas the significance of the system of international relations, understood as an interdependent whole, is growing. Such a stance moved the debate between (neo)realists and (neo)liberals onto the next level. They were no longer concerned with human nature or morality, but with how a state's behavior was characterized by an anarchic struggle for position within the system (neorealism), and to what extent this behavior was being modeled by the international institutions that organized cooperation between collective entities (neoliberalism). Hence, the difference of opinions expressed in the debate between realism and idealism and between neorealism and neoidealism has remained essentially unchanged. For realists, politics, as well as conflicts between political communities, remain unresolvable. For idealists, the objective remains the elimination of conflicts between political communities through development of international law and international institutions.

5. A Multipolar World Order—Chantal Mouffe

At the turn of the twentieth and twenty-first centuries, there was a return to realist theories of international relations, when discussions were undertaken concerning the new world order which started emerging after 1989. The bipolar system had failed, and responsibility for the world order fell on the world's only superpower, the United States. This brought hope, but also fear of world hegemony, not balanced by any other world power. One advocate of the multipolar system was Chantal Mouffe. From a neo-Marxist perspective, she argued in favor of pluralism and multipolarization in international relations.

Mouffe declares herself in support of the reinstatement of the agonistic dimension of present-day politics. In reference to Carl Schmitt's theory, according to which the political is based on the difference between friend and foe, she argues that to accept other assumptions would mean replacing politics with morality. At the same time, Mouffe remains an advocate of radical pluralism. In her opinion, internal hegemony is expressed through law, and hegemony in external relations is expressed though domination by the United States. Both forms of domination are, according to Mouffe, undesirable. Admittedly, hegemony cannot be eliminated, but it could be limited by pluralism, both internal and external. She claims that the established system of liberal democracy, which is not based on conflict, has led to many disturbing and even dangerous consequences. Right-wing populism was the reaction to domination of a supposed societal consensus on liberal values and the concealing of conflicts in the internal domain. In the external domain, the pseudo-universalist hegemony of the US was accompanied by terrorism and global chaos.

Mouffe criticizes the idea of human rights, as did Schmitt and other realists that followed. In her opinion, there is no such thing as human emancipation in general—one can only speak of the emancipation of social groups. In this case, equality is implemented as

a principle. She claims that inasmuch as the right wing is in favor of freedom, the left wing should be implementing equality, where this equality concerns all groups that demand a voice in the political arena and is based on supporting the weaker groups. This mechanism can also be applied to international relations. A unipolar world is deprived of the elementary equality of entities in international relations. It is necessary, therefore, to strengthen the weaker entities that aspire to create a multipolar order and a balance of power.

It should be noted that Mouffe reached conclusions which are consistent with political realism from a completely different perspective, initially having started from a neo-Marxist perspective. In classical liberalism, the individual was considered the political subject. In Marxism, it was class. Both these agents were understood substantially. Meanwhile, in her project of radical democracy and multipolar order, Mouffe does not define a fixed political subject. This approach is different from liberalism due to the fact that the individual is not considered to be the political agent; rather, the political agents are collectivities. However, in contrast with the assumptions of Marxism, or even of classical realism, collectivities are not constant; they transform and evolve, creating significantly more collective identities than just classes or nations: race, gender, problems of life and death, and environmental problems can all become sources of antagonism and collective identities. Similarly, the agents of the international order change—they form coalitions, alliances, temporary relations, and more permanent friendships, and cannot be grasped by essentialist forms. Inspired by Schmitt, Mouffe claims that collective identities are constructed through the contrast of *us versus them*. The problem of *who they are* cannot be reduced to a class problem. The recognition of collective identities, in her opinion, was an accomplishment that gave Marxism an advantage over the individualistic ontology of liberalism. However, the project of radical democracy and of a multipolar order drifts away from the concept of

classes and directs itself towards an elementary and anti-essentialist antagonism.

Mouffe also does not acknowledge universal collective subjects such as humanity. In her opinion, the Marxist project, in calling for the end of classes and the coming of an era of universal internationalism, turned out to be a failure. She assumes an intermediate position in the debate between cosmopolitans, who think that, since problems concerning people are global in scope, policies should also be global, and the advocates of the idea of sovereignty, who define the horizon of political actions as being that of the nation-state, which also brings her closer to neorealists. According to Mouffe, democratic authority on a global level is not possible. She considers big regional blocs of states to be the centers of future multipolar international politics. Only multipolarization and pluralism can create an alternative to hegemony. Admittedly, she views every type of order as hegemonic, but claims that problems resulting from it can be partially avoided through the pluralization of the centers of power.

In this way, the problem of hegemony takes on a similar form, whether it occurs at the nation-state level or the global level: it is determined by the domination of one hegemonic power, one center of power. In the case of international order, this hegemonic power is the United States. Its domination mobilizes opponents; an anti-hegemony wave rises, creating a terrorist network. The abandonment of politics based on a balance of power between equal agents not only results in the hegemony of a specific country, but also of its laws, which begin to be treated as universally applicable laws, referred to as "human rights" and which in themselves are a tool of hegemony. Due to this, the boundary between war—as a clash of equal entities—and police activity, which is directed against those who violate the internal order of the hegemonic leader, is becoming indistinct. This is why Mouffe criticizes the idea and application of human rights. The recognition of the laws of a particular political community as universal laws results in all other laws being

considered evil and, hence, in the redefinition of politics in the language of morality. We no longer enter into equal battle with evil enemies, so we no longer treat them as legitimate opponents. In the international arena, such a moralizing attitude is expressed as a crusade against an "axis of evil". Having said this, Mouffe does not propose to abandon human rights, but instead shows that, at most, it is necessary to identify practices in other cultures that would perform a similar function. She consequently proposes a multitude of equally legitimate interpretations of certain practical solutions (Mouffe [2005]).

In order to escape the trap of unipolar hegemony, Mouffe claims it is necessary to treat weaker agents of international relations in such a way that they would jointly counterbalance the position of the hegemonic leader. The Belgian philosopher is an advocate of tightening political cooperation in various regions of the world, such as Europe. Mouffe sees the possibility of cooperation in the region not based on legal documents, but on cooperation "from the bottom up", cooperation among communities themselves. If the principle of democratic majority voting cannot be implemented for all the European states, then it should, at least, become obligatory for the states that are ready for deeper integration. Mouffe would like to see Europe as one of the elements constituting a multipolar world order. She does not want a post-national Europe aspiring to the cosmopolitan model, nor a Europe conceived as a superstate. Europe should become a pole in the multipolar order, strengthening pluralism and polycentric power. According to Mouffe, the forced universalization of the Western model, instead of bringing peace and prosperity, leads only to violent reactions from those whose culture is being ruined by westernization (Mouffe [2005], pp. 86–87).

In her writings concerning the issue of international order, Mouffe refers to previously unknown works of Carl Schmitt from the 1950s and 1960s, where Schmitt considered possible outcomes of the end of the Cold War. Mouffe revisits Schmitt's scenarios

of what could replace the Cold War order. One of these scenarios was balance under the hegemony of the victorious United States, but this balance was not related to its ultimate victory and the unification of the world, but involved the US functioning as the "world's policeman" that would make sure that no collective entities threatened its dominating position. Another possibility was the initiation of the dynamics of pluralism, the effect of which would be the establishment of balance between several centers of political power. This balance would be global and not Eurocentric (Mouffe [2005], pp. 117–118). This is the model which Chantal Mouffe leans toward. In her opinion, the cosmopolitan project is based on false assumptions, whereas realization of the multipolar world vision requires, above all, solving practical issues. Indeed, the world is deeply pluralist and marked by a conflict of values, however, it is possible to find common practices, which, reinforced by various discourses, could counterbalance the American order (Mouffe [2005]).

It is in this way that Mouffe, having started with completely different, Marxist assumptions, manages to revive and refresh the language of political realism. It turns out that the only remedy for a world of terrorism and permanent threat is peace built on the principle of balance between various centers of power and models of life. The Western model of modernity with its instrumental rationalism is characteristic of a specific culture. A democratic community demands the loyalty of its citizens to moral and political values connected with democracy (Mouffe [2005], p. 122). The claim of this loyalty, however, cannot be stretched over other political communities. The order that Mouffe is striving for will not be freed from conflicts. However, the balance of power will, in her opinion, ensure a certain "channeling" of aggression, its placement in the context of risks and threats.[3] A unipolar world requires absolute resistance, whereas in a multipolar world, conflicts

[3] Mouffe builds a conception of agonistic democracy, in which its function is to discharge domestic tensions and counteract populist political movements.

could take on more moderate forms: "To be sure there will still be conflicts in a multipolar world but these conflicts are less likely to take an antagonistic form than in a unipolar world" (Mouffe [2005], p. 129).

This is how Mouffe passes over the issue of the limitation of sovereignty, constructing a new model of political realism, where blocs of states are subjects and agents. She does not, however, solve the problem of the lack of authority of the law, which accompanies political realism. On the contrary, her argumentation demonstrates that virtually every legal order should be questioned and challenged, because the law is simply a manifestation of domination.

6. A Criticism of the Concept of Sovereignty and Supranational Law

Realism and neorealism have been criticized from various perspectives. This criticism can be divided into two basic groups: the first, which includes neoliberalism, criticizes realism and neorealism, so to speak, "from without", that is, starting from different assumptions. The second group criticizes realism "from within", pointing out internal tensions inherent in the realist and neorealist positions. The first type of criticism developed under the influence of changes occurring in the international order, especially European integration; the second demonstrated that the fundamental internal tensions present in realism from the very beginning cannot be solved. Finally, in addition to the two groups described above, a third movement emerged, which evolved through the modification of certain elements, both in philosophical doctrines that are associated with realism and in those that are opposed to it. Such self-correction took place, for example, in relation to the concept of human nature: neorealism, strategic realism, Chantal Mouffe's concept of a multipolar world, and neoliberal movements all dispense with it.

The development of the European Union contributed to the formulation of fundamental arguments "from without". They point to the twilight of the concept of "sovereignty" and of legal positivism and to the emergence of supranational law. In the criticism "from within", the tensions present in realism and neorealism are revealed, such as the lack of justification for the authority of the law, as well as the contradiction between the postulated equality of international entities and the constant clashes that occur in the struggle for hegemony between groups, both within states and at the international level. While the internal tensions are of a theoretical nature, the external criticism is formulated in reference to historical changes, especially with respect to the process of European integration.

Admittedly, the end of the concept of sovereignty began to be anticipated even before World War II and before the process of strengthening European cooperation; in fact, the arguments that appeared then were only repeated by later commentators.[4] The crisis of the concept of sovereignty was most often associated with technological changes which were to result in greater interdependence between states and to change the entities participating in wars. Already in the mid-nineteenth century, some German states could be crossed in under an hour. This technological innovation historically turned out to be a threat to the autonomy of these states (Milward [1999], p. 150). The introduction of air traffic heightened the conflict between the concept of autonomy and increasing interdependence, along with the ability of each state to defend its borders only as a member of a broader coalition. Alongside the development of various means of transportation, the role of commercial international exchange was also growing. In a situation of

[4] These issues are further discussed in the chapter *Prawo ponad narodowe* [*Supranational Law*] of the book *Ponad prawem narodowym. Konstytucyjne idee Europy* [*Beyond National Law: Constitutional Ideas of Europe* (A. Nogal [2009], p. 309).

increasing dependence, both on imports and exports, it was increasingly difficult to speak of independent internal economic policies; at the same time, the role of international law was increasing and the technology of warfare was changing. After World War II, these processes overlapped with the processes of European integration, which clearly indicated the end of the state's monopoly on establishing the law.

The notion of sovereignty, therefore, referred to two levels—the first comprised the monopoly on establishing the law, the second the monopoly on entering into international agreements and deciding on matters of war and peace. It has to be acknowledged that the concept of sovereignty no longer applies to the legal domain (Walker [2006]). Internal sovereignty, understood as a monopoly on establishing the law, has given way to interdependence and legal pluralism, in which state law functions alongside supranational law. Moreover, states have lost their sovereignty in the military domain as well—they have been replaced by defensive blocs and military cooperation.

It should be noted that as European states were recovering after World War II, the US, as part of its defense strategy, promoted the idea of a "United States of Europe".[5] Beneficiaries of the Marshall Plan reconstructed their national economies while accepting the conditions imposed upon them. And all this occurred during the Cold War, when economic arguments were not simply economic, but concerned defense policies as well.

The reconstruction of statehood and the simultaneous deepening of integration were only characteristic of the first part of the post-war period, of the 1950s and 1960s. In this period it was possible to observe both the strengthening of European states and the furthering of cooperation between them. Economics became

[5] It is no coincidence that in the preamble to the German Constitution of 1949, the pursuit of policies leading to the establishment of a United States of Europe is referred to as one of the constitutional objectives of German foreign policy.

a very important factor, as did redistribution that was linked to the construction of social security systems. Welfare states were being formed. In the 1950s and 1960s, Karl Deutsch wrote about the necessity of opening Western states in order to effectively compete with the Eastern Bloc during the Cold War (Deutsch [1966]). One must not forget, however, that similar ideas legitimized the domination of the United States in this part of the world.

The classical definition of international politics describes it as being concerned with issues such as war, peace, and defense. With the growing importance of state administration, state education, and national social and economic policies, international cooperation also started to address these issues. In fact, until 1968, the process of strengthening the nation-state was connected with the process of European integration and was reinforced by it (Milward [1999], p. 162). Meanwhile, however, a certain level of legal pluralism surfaced. European law, which was a tool for the coordination of cooperation, started to overlap with state law.

In the 1960s, national governments in most European countries proved more effective in meeting the electorate's expectations than ever before, and the redistribution carried out by the state strengthened the position of these governments. The difference in comparison with the interwar period was enormous. Before the war, democratic states faced serious problems of social stratification, unemployment, social tensions, and mass social movements that exposed them to revolutionary threats from both the right and left wings of the political spectrum. The goal of an economically active state was to calm the social situation through the pursuit of macroeconomic stability, combined with elements of social security. Thus, the welfare state was created—a state which maintained private property, but also reduced social stratification.

Since the 1970s, due to changes taking place in international economic policies (connected with the increased liberalization of markets), states slowly started to lose their independence in the shaping of economic and social policies. While politicians still

promised electors effective macroeconomic policies and redistribution of goods, they were, at the same time, increasingly losing control over the economy. The implementation of objectives that voters still wanted politicians to fulfill became possible only on a European level. It was not until the 1970s that symptoms of the welfare state crisis were recognized; nevertheless, the concept of social welfare is still alive and continues to play a very important role. Fundamental change, however, occurred not only in the economic field, but also in the law. Subsequent treaties introduced four liberties: the free movement of goods, services, capital, and people. In this way, states began losing legal control over their territories and borders; citizenship and migration, as well as economic policies and security, became common problems for EU Member States and ceased to depend on the internal decisions of states.

The significance of sovereign states has been declining since the 1970s, accompanied by the increasing importance of supranational institutions, such as the European Union. The crisis of power in the internal dimension was responsible for the weakening of the notion of sovereignty, understood as the unlimited power to establish the law. This is because the notion of supranational law had emerged. An example of supranational law is European law, together with its two principles: the principle of direct effect and the principle of supremacy. The principle of direct effect states that European law applies not only to the state signatories of the European treaties, but also directly to the citizens of those states. The principle of supremacy, on the other hand, gives primacy to European law over national law in situations of conflict between the two. This means that the possibility of many legal orders being simultaneously in effect is recognized, as are conflicts between them (Nogal [2009]).

The principle of direct effect has been in force since 1962. According to this principle, European law, as long as it is sufficiently clear and precise, should be applied directly to the citizens of Member States; it becomes the internal law. Thus, the major principle

of international law, according to which states are the main subjects of international regulations, is undermined. Classical international public law is made up of regulations between states, but it is the states that decide whether and to what extent international agreements will apply to their citizens. International law binds the states—they may answer to international institutions, and if they violate the law, they may be subject to sanctions, but this does not apply to their citizens. Citizens may invoke only the rights which have been incorporated by the state into its internal legal order. The principle of direct effect, granting individuals the right to invoke provisions of European law and to pursue individual claims resulting from these provisions before national courts, ruptures the traditional legal framework. From the moment of its introduction, citizens were empowered to enforce the uniform application of European law.

Interestingly, the principle of direct effect has not been formulated directly in any treaty, but has appeared within the many volumes of the European Court's jurisprudence. The authors of the legal revolution that saw the emergence of supranational law, therefore, were judges. The ruling in the Van Gend and Loos case established that Community law, in order to be effective and of real significance in the unification of certain matters, must also be uniformly interpreted—conditioned not by a state's internal law, but by Community law.[6] It emphasized the fact that Community law forms an autonomous legal system, and although it is applied by national courts, it must be interpreted in accordance with the norms of European law, and not according to the opposing norms of the states. This is because the application of an internal interpretation would undermine the uniformity of the law itself. European law should be applied uniformly in all Member States; therefore,

[6] Case 26/62 *N. V. Algemene Transport-en Expeditie Onderneming Van Gend & Loos v. Nederlandse administratie der belastingen (Netherlands Inland Revenue Administration)* [1963], ECLI:EU:C:1963:1.

its position in domestic law is determined by Community law. This is how Community law has been recognized as the direct source of citizens' rights and obligations, which can be claimed before domestic courts and European institutions.

The principle of the supremacy of European law, which continues to be subject to doubt until the present day, is of an even more revolutionary nature. In a series of rulings since 1964, the European Court of Justice has held that in areas covered by regulations of European law, this law takes primacy over the domestic law of signatory states. Furthermore, although it has not been formulated directly, the Court has indicated that it is within its competencies to define the scope of application of European law. This means that in cases of conflict with state laws, state courts should apply European laws rather than their domestic laws. The reasoning in the ruling on Costa v. Enel revealed that the doctrine of supremacy, expressed in such strong terms for the first time, could result in the transfer of sovereignty. By stating that European Community law formed a new and independent legal order, the Court of Justice dismissed any external references linked to the process of establishing this law. This is how the Court explained why it considers the European Community to be an autonomous, sovereign source of law.

> By creating a community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their Nationals and themselves.[7]

This ruling carried two messages. The first indicated the primacy of European law in a situation of conflict between two legal orders: the

[7] Case 6/64 *Flaminio Costa and ENEL* [1964], ECLI:EU:C:1964:34.

domestic state order and European law. The second illustrated not only the supremacy, but also the autonomy of the European legal order, which had its source in the sovereign rights transferred to European legislation by Member States.

When observing the achievements of European law and its increasing significance, it is possible to come to the conclusion that state competencies have shrunk and have been superseded by a supranational structure. Although such an interpretation may be justified on the basis of an analysis of rulings, it is somewhat confusing from the political perspective. This is because the nature of legislative power in reference to states did not change. The states remained bound by their will, expressed in the Treaties, and subordinated themselves to the law which had been a result of their own free will. But while real legislative power remained in the hands of the states, this power was also gradually weakening.

While sovereignty was being weakened by European law, juridification was being developed "from the bottom up". Within the transformation caused by the processes of globalization, power often shifted into the hands of corporate arbitration tribunals, institutions that establish technical regulations, etc. As a result of the developing market—its deregulation, relatively low taxes, and an increasingly fluctuating labor market—production activities often changed location, which directed different institutions towards sectoral rather than territorial regulations. Furthermore, many public services had been privatized.

The integration processes and the overlapping process of globalization led to the emergence of a new type of political community, which was neither a proper confederation, in which the subjects were nation-states that would cooperate within a defined framework of jointly implemented objectives, nor was it a federation-type state, in which all sovereign competencies would belong to a central authority while leaving a certain level of autonomy to lower-level political entities.

All of these changes (the process of European integration and the increased significance of supranational law) led to numerous violations of legal sovereignty, and in turn, to an increase in legal pluralism. Legal pluralism is understood here as a situation in which the state does not have a monopoly on settling conflicting legal issues. Supranational and non-governmental institutions also began to be considered as political entities. Along with this, the problem occurred of "translation" of laws, codes, etc. between parties (i.e. states and other entities) with divergent legal cultures (Weiler [1999], p. 270). Legal pluralism, in which many entities are acknowledged as being entitled to participate in the legal debate, means the end of both the hierarchical structure, which was crowned by the state, and the concept of sovereignty, which describes and justifies the finality of decisions made on a state level.

The blurring of the distinction between private and public personality is also a characteristic feature of this new type of legal relations. Management in the public domain is not limited to governing one type of entity. The new type of legal relations is non-hierarchical and is also based on extralegal methods such as persuasion, negotiations with private and public entities, and reaching agreements. The classical model of the process of establishing the law was hierarchical. This is because, whatever way a government was established (democratically or through other means), it would act through the law from the top down. The new type of legal relations refers to various principles of conduct and focuses on grassroots initiatives, from the bottom up. Its characteristic features are: it is voluntary (the objectives of the regulated activities are not set in a binding way, the legal instruments are rather mild in character, and the subject of these new legal relations is the independent activities of private and public entities); it is subsidiary (changes are defined and specified from the bottom up; the autonomy of entities and states is not fundamentally breached); and it is open (increased knowledge and the mutual learning of subjects

and states through the standardization of knowledge, the sharing of experiences, discussions concerning objectives and their gradual clarification, building of time frames and accountability for the progress achieved).

7. The Internal Tensions within the Realist Theory and the Lack of Authority of the Law

Regardless of the criticism "from without", which indicated that political realism was outdated in relation to issues such as external sovereignty (the freedom to enter into alliances) and internal sovereignty (the freedom to establish the law), realism was also criticized "from within". Internal tensions indicated the lack of authority of the law and revealed a contradiction in the definition of the agents of international relations—on the one hand, they were treated as equal opponents, but on the other hand, as manifestations of underlying power relations, both domestically as well as in international relations.

The argument regarding the lack of authority of the law, which had been emphasized since the beginning of the development of realist theory, started gaining greater significance. The law was to be obeyed by people of their own free will, and not only as a result of fear of punishment. But a social awareness was also spreading—the awareness that in many cases unjust laws should not be complied with; on the contrary, they must be contravened through so-called civil disobedience.[8]

Carl Schmitt had already struggled with the tension that arose in realism between the law, understood as the unconditioned will of the sovereign, and social acceptance of the legal order. The unconditional will of the sovereign corresponded to Schmitt's notion

[8] The need for civil disobedience has been propagated by many philosophers, including, for example, J. Rawls and R. Dworkin.

of decision. Social acceptance of the established law, practices and customs, and the traditional way of life had also been taken into consideration by the German jurist. Schmitt introduced a term to describe this: *absolute constitution*, which meant a particular way of existence, inherent in every existing political community. Later theorists of realism were not able to resolve this tension. They increasingly shifted towards violence and hegemony as the source of unity, further questioning the principle of the acceptance of the law—which would be accompanied by the authority of the law and drawn from sources external to the state, distinguishing between just and fair laws and those which should, sometimes, be disobeyed.

Another tension in political realism that it has not been possible to eliminate is the tension arising from the fact that the agents of international relations are defined as coequal, while, at the same time, hegemonic power relations are present in both the internal and external orders. Since Thomas Hobbes, the realist tradition has treated citizens as being equal to each other and, similarly, states as being coequal. The key feature of this equality is the ability of individuals to kill one another and the ability of states to wage war against each other. However, Carl Schmitt introduced the principle of inequality and hegemony as the source of internal order. Hans Morgenthau then expanded the scope of application of the principle of hegemony from internal to international relations, defining it as the principle which ensured order. Both the internal and external domains of a political community are considered arenas of the struggle for hegemony. Chantal Mouffe followed a similar line of argumentation. In effect, realists ended up with a completely opaque image of both domestic and external relations. This is because the internal struggle for hegemony overlapped with the international struggle for hegemony. Internal forces—for example, those of minorities—could enter into strategic alliances with dominant forces in other states. The image of relations which was supposed to be simplified by this theory and

reduced to relations that could be described, with these descriptions being verifiable or falsifiable, turned out to be rather unclear and chaotic and only served to promote further divisions and ruptures, alliances, and secret machinations, as well as invisible regroupings, resulting in further internal fragmentation and the growing potential for aggression.

Chapter III

Political Idealism in International Relations

The purpose of this chapter is to present, through the use of selected theoretical examples, the role of human rights in international relations from the perspective of idealist and liberal theories of justice. We will carry out this task in the following way. First, we will characterize idealism in international relations, presenting its most important features: individualism, rationality, and optimism. The fundamental normative concept that we will analyze within the framework of the idealist interpretation of human rights in international relations is cosmopolitanism (section 1). We will show the development of this concept from ancient times until the present day by reference to selected theories: Stoic (section 2) and Kantian (section 3), which constitute the main source of inspiration for various modern liberal approaches to the regulation of international relations. Four authors and their theories play the most important role here: Habermas and his postnational idea of the constitutionalization of international law, Held with his concept of cosmopolitan democracy, Rawls' law of the peoples, and Nussbaum's idea of capabilities (section 4). At the foundation of every one of them is the protection of human rights in the international domain. We will look at how these approaches define human rights, what their status is in each of these theories, and what functions they fulfill. Next,

we will carry out an analysis of the relationship between human rights and the idea of global citizenship (section 5) before concluding with a summary indicating the problems with the idealist version of the role of human rights in their international dimension (section 6).

1. Political Idealism[1]

Modern political idealism as a theoretical approach in international relations emerged at the beginning of the twentieth century and was closely connected to the outbreak of World War I. It was a response to nineteenth-century nationalistic world views that had plunged the world into war. An early version of this ideology was proposed by President Woodrow Wilson, who called for a new international order that would create a world based on collective security and a balance of power. States would accept the principle that the security of a single given country was in the interest of all other countries. States would have limited military forces—just enough to ensure their internal safety. They should be evaluated using the same moral criteria as those applied to individuals, and it would be in their best national interest to adhere to the system of international law. Wilson appealed to states to give up secret diplomacy and to submit international covenants and agreements to public assessment. He called for a reduction of weaponry and removal of any remaining obstacles to free trade. More importantly, he promoted the idea of the self-determination of nations and proposed creating a universal union of states. This last proposal resulted in the creation of the League of Nations.

Wilson's idealism was, therefore, based on the conviction that, thanks to a rational and well-thought-out international

[1] This section is a modified version of an encyclopedia entry concerning political idealism (for more, see Wonicki [2011]).

organization, there could be an end to wars, and that it was possible to achieve a more permanent world peace. This idealism, in contrast to political realism, fostered the belief it was possible to restrain the actions of states and statesmen by making them subject to relevant international organizations and international law. In this way, the law of the dominant power and narrow political interests, previously implemented partially with the help of military force, could be curbed by the League of Nations. Idealism, so understood, was associated with opposition to force as the only effective way of achieving security both in internal state relations and in relations between states. At this stage, human rights were not yet as important as they became after World War II, and their interpretation was still closely related to the Enlightenment legacy of the French Revolution, where human rights and civil rights had merged to form an indistinguishable amalgam.[2]

The objective emerging from this description of political idealism was, and is, to depart from the static nationalist paradigm of international relations. This approach assumes that wars are no longer viable, not only because it is usually the aggressor who loses, but also because developing common economic interests will become significantly more advantageous than military conquests. Early twentieth-century political idealism was characterized by the fact that its adherents wanted to introduce an international morality, recognized by all countries as a standard for peaceful conduct, as well as to propagate international law and reshape it in order to make it more important than national law. The politics of power was to be replaced by the politics of compromise.

A good example of criticism of the nationalist paradigm from the idealist perspective is Ulrich Beck's critique. From his perspective, both liberalism and realism recognize that the state and the nation are natural forms in the modern world. This methodological

[2] See the *Universal Declaration of Human Rights*. Online at: http://www.un.org/en/documents/udhr/ (accessed on September 20th, 2015).

nationalism primarily emphasizes that society is subordinate to the state and that the nation-state constitutes an enclosed whole, only within the frameworks of which it is possible for society to exist (Beck [2003], p. 453–458). This assumption leads us to a description of a world divided into nations and the assertion that the most important actors in international relations are territorial states that have been granted sovereignty in international law. Another characteristic of this paradigm is the differentiation between that which belongs to the state and that which is international (Beck [2006], p. 28). Moreover, the principles of democratic legitimacy within nation-states cannot be transferred to the sphere of relations between states. States constitute separate enclaves, beyond the borders of which anarchy and the law of power rule. This means that values, even those commonly shared by many states, cannot be implemented and secured in the same way as within states, as the division into domestic and international domains is assumed and treated as pre-theoretical. However, the challenges of globalization undermine this division and demonstrate the need to modify the realist approach.

Beck calls for a change from the nationalist paradigm to the cosmopolitan paradigm in social sciences, which would enable a compromise between sovereignty and human rights, based on the assumption of interdependence between states and non-states. This approach gives rise to the question of the distribution of rights and resources in the international dimension, and is considered to be a theory of post-Westphalian peace—in other words, it is the recognition that the Westphalian order of autonomous and sovereign states should be transcended. The various answers given by idealists aim to demonstrate that we, as Westerners, are morally responsible for reducing world poverty, hunger, and disease, and that we should be developing mechanisms of redistribution on a global scale.

Unfortunately, the political idealism of the early twentieth-century did not lead to peaceful international cooperation. The

League of Nations proved helpless when confronted with the expansionist foreign policy of Germany, Italy, and Japan. Despite the fact that numerous countries signed the Kellogg-Briand Pact (1928) regarding renunciation of war (except for defensive actions, in accordance with just war theory), those three states withdrew from the League of Nations, ultimately triggering the outbreak of World War II. Just after World War II, and after the creation of the United Nations and the proclamation of the *Universal Declaration of Human Rights* (1948), idealists' hopes for progress in international relations were once again revived. The next phase of harmonizing world politics took place after the end of the Cold War (1991). Again, the idealistic dream of achieving perpetual peace was given a boost. A famous expression of such hopes appeared in an essay by Francis Fukuyama—the political thinker announced the "end of history", i.e. the triumph of liberalism over all other ideologies because, he claimed, liberal democracies were more stable internally and more peaceful in their external relations.

From the philosophical point of view, the main component of political idealism is the liberal theory of ethics and politics. It is based on the liberal concept of human nature. According to this, people are inherently reasonable and good. Thus, political idealists believe in the goodness of human nature (anthropological optimism). They also claim that people can live together peacefully and solve their problems through negotiations. So, whenever they use their reason in domestic and international relations, they are able to create organizations (national or international) to serve the public good. Moreover, from the perspective of political idealism, states are described as reasonable and just actors on the international scene. Political idealism is also characterized by the Enlightenment idea of the progress of the law and the belief in the development of gradually more harmonious interests among individuals and states on a supranational level (historical optimism). This means that, for idealists, relations between states are seen as fundamentally peaceful. They concentrate on finding the elements which

integrate states and on rejecting the elements which divide them, trying to reduce the possible conflicts of interest to a level which does not threaten their mutual security. For example, wars are not understood as an inherent feature of the global community. If conflicts happen, they are explained as aberrations. Hence, even if we occasionally experience wars or tense relations among states, idealists think that by creating just international laws and institutions, the probability of global conflicts will decrease. Thus, according to Alexander Wendt and contrary to the realist perspective, idealists recognize that anarchy in international relations is what states make of it.[3]

Furthermore, one feature which is characteristic of political idealism is the belief that free trade can contribute to a more peaceful world order, as it brings mutual benefits to all parties, regardless of their size, political power, and natural resources. After World War II, it was also believed that economic cooperation would lead to tightening political cooperation (e.g. the concept of European integration). Therefore, idealists approach political and diplomatic cooperation between states from the perspective of the international community and from an institutional level. It is also for this reason that, in practice, political idealists put an emphasis on the formation of international institutions. In particular, the creation and development of organizations for the prevention of aggression and conflict, such as the League of Nations, and later the UN, should be mentioned here. In the long-term perspective, some idealists aim for a radical change in the international system and for the creation of

[3] Referring to Plato's theory of the ideal state, one can claim that idealists recognize not only that values and ideas exist, but that they influence and shape our imagination concerning the social world and interpersonal relationships. Therefore, even if wars do exist, if there is a defined international legal system, this system can be changed and perfected. Today, human rights are the basic axiology of international law and it is in their name that the actions of states are evaluated, both on the national and international stages.

a world government (Held). Most of them, however, call for either federalization of international relations or constitutionalization of international law, which we will analyze later on.

In conclusion, we can list the most important theses that represent the approach which we identify as idealist:

1. Foreign policy should remain in agreement with the catalogue of moral values;
2. International law and its observance is the most effective instrument for achieving durable peace;
3. International organizations, along with international law and world public opinion, should be the main instruments of stabilization of global politics;
4. Human rights should be protected globally.

2. The Philosophical Foundations of the Idealist Approach —Classical Cosmopolitanism

Starting our reconstruction of the cosmopolitan concept as the fundamental and most extreme representation of idealist views on international relations, we must note that in the literature, we can find various typologies of cosmopolitanism, e.g. individual and institutional (Pogge [1992]), and political and economic (Kleingeld, Brown [2014]). All of these typologies are, however, characterized by the fact that decisions concerning the scope of responsibilities with respect to others are based on axiological assumptions related to a normative concept of man (man's dignity, as in Christianity, or rationality, as in Kant's theory). In relation to this, cosmopolitan theories either refer explicitly to human rights (Pogge [2002]) or their moral assumptions can be translated into human rights (as in the case of Nussbaum's theory of capabilities). Human rights are not understood in the idealist and cosmopolitan approaches only from a purely biological perspective (*zoe*) as rights of human-animals. They are understood in normative categories and, hence,

people are perceived as moral individuals, who have rights and obligations.

Reaching back to the beginnings of cosmopolitan theories, we should note that the political culture we find in Plato's and Aristotle's writings is not cosmopolitan. In this culture, an individual identifies and describes himself as a citizen of a specific *polis*, thanks to which, he emphasizes to which group he belongs and for which he is ready to sacrifice himself. Hence, in times of war, he can ask his fellow citizens for help in defending the *polis* and can himself be asked to give such help. Such a network of dependence supports judicial institutions within the framework of the *polis* and allows citizens to actively participate in the common good. In this way, the citizen's own good and his vision of the good life are inseparably bound to the group, to the fate of the city-state and his fellow citizens.

Looking only at the works of Plato or Aristotle, it would be wrong to conclude that Greek thought was solely anti-cosmopolitan. After all, that is where the very concept of cosmopolitanism was formed. The name "cosmopolitanism" etymologically originates from the Greek words *cosmos* (order) and *polis* (city-state). The classical Greek cosmos "included the *physis* (nature) of all beings, the *ethos* of social mores, the *nomos* of customs and laws, and most importantly, the *logos* or rational foundation of all that exists" (Douzinas [2007], p. 152). Thus, the *cosmos* was, for the Greeks, a harmonious, structured universe. On the other hand, the *polis* was related to living among other people. As Aristotle, and later Hannah Arendt, demonstrated, thanks to their involvement in the life of the *polis*, individuals could develop their moral character, which is why exile from the city-state was often treated as the worst punishment. It is sufficient at this moment to recall Socrates' choice when his friends and students proposed to help him escape (Plato [1999]). He chose death over escape to another city-state where he would not be granted the same rights and would not be a citizen. Therefore, it would be

more appropriate to call the classical Greek focus on the *polis* a-cosmopolitan.[4]

Cosmopolites were opposed to the differentiation between "us" and "strangers". For them, the moral kinship of all people, i.e. their common nature, in accordance to which they should behave, was important. Let us have a look at the theories of the Cynics and Skeptics who propose just such moral equalization of all people. "I am a citizen of the world [*kosmopolitês*]" (Diogenes Laertius, VI, par. 63) is said to have been the answer of the Cynic Diogenes of Sinope (c. 412–323 BCE) when asked where he was from. Introducing himself not as a citizen of Sinope, but as a citizen of the world, Diogenes negates the fact that he has any special obligations to his city and its inhabitants. Hence, "being a citizen of the world" in this case can be understood negatively. Nevertheless, the question arises of the positive content of this notion and the definition of world citizenship. At first glance, the most obvious suggestion would be that a citizen of the world should be obedient to a world state, helping in its realization, supporting its institutions, and participating in its common good. Historical sources do not, however, mention that Diogenes wanted to establish a world state. Moreover, these sources do not provide any positive interpretation of cosmopolitanism. In order to find a positive cosmopolitan project and reconstruct it, the best we can probably do is to acknowledge that Diogenes' entire life was an attempt to implement a certain cosmopolitan ideal: life according to the virtue of reason. This is, therefore, a project concerning moral, individual actions. In the classical understanding of the complementary relations between theory and practice, and between ethics and politics, these actions do not cause any tensions between the universal project of a virtuous life and a particular community.

[4] It could even be argued that Socrates was aware of the cosmopolitan aspect of human life. Inasmuch as Plato describes him, Socrates tried to avoid political involvement in order to be able to investigate the objective truth about men and the world, and about the ethical rules men should abide by.

The Cynics derived such an approach to human life from their assumptions concerning the principles on which people should base their actions. In their opinion, humans are nothing more than animals and, therefore, do not need to have their own place to which they can return.[5] According to the Cynics' ethics, the only true good and purpose of human life is virtue itself, and everything else should be considered completely irrelevant. This is because all that is not virtue pulls us away from achieving real virtue. Virtue is a state of perfect indifference. Therefore, there is no sense in worrying about where one's place is. A human being can live anywhere—he/she is a "citizen of the world". This is what, since the beginning of cosmopolitanism, has caused a split between place (*topos*) and laws (*nomos*). State laws are supposed to be subject to universal law and citizens' actions should be just, regardless of where their home is.

The cosmopolitan ideas of the Cynics were later developed by the Stoics, as the difference between the Greeks and barbarians was diminishing and the new political situation, i.e. the absorption of the Greek city-states by the Roman Empire, became the new frame of reference for philosophy. This was because the empire reached beyond its own borders and began to treat the rest of the world as an area of potential domination. This introduced, for the first time, a universalist political practice. Meanwhile, Stoic cosmopolitanism, with its ideal of world citizenship, came to the fore in Hellenic philosophy. Stoics, like the Cynics, did not pay much attention to the significance of political citizenship. According to their assumptions, every man was by nature a social being and, therefore, life in society was an imperative of reason (*logos*), which was common to all people. Even though people were different by nature, they all, nevertheless, participated in the same order of nature, by virtue of which they could get to know it.

[5] In the *Odyssey*, Homer describes Ulysses' yearning to return home using the term *nostimonimar* (el νόστιμονἦμαρ), which means *the day of sweet return home*.

On the other hand, according to later Roman Stoics, the basic instinct of humans—the instinct of self-preservation (*oikeiosis*)—should be extended to include other individuals, starting with the family, then friends, and then to all of humanity. This leads us to the moral claim that humans have obligations towards other people and should treat everyone in the same manner. As Copleston writes: "In other words, the ethical ideal is attained when we love all men as we love ourselves or when our self-love embraces all that is connected with the self, including humanity at large, with an equal intensity" (Copleston [1951], p. 400). The cosmopolitanism of the ancient Stoics puts particular emphasis on the human community and the treatment of the whole world as a *polis*.

The Stoics argue that *cosmos* is *polis*, as *cosmos* is constructed according to the rules of reason. At the same time, they acknowledge the negative implications of their own beliefs: the existing *poleis* do not deserve, strictly speaking, their name. They believe rather that goodness requires people to serve and sacrifice themselves for others as best as they can, and as equal service to everyone is impossible, the best form of sacrifice demands political commitment—activity in the *polis*. Of course, the Stoics admit that such political commitment is not possible for all, and, therefore, some people will be better able to help others as private teachers of virtue and not as politicians. However, on no account is there a question of limiting this political commitment only to a particular *polis*. The fundamental idea is, therefore, helping another human being as a human being, where sometimes the best way to provide such help is to share your moral or political knowledge in a *polis* other than the one you were born in (Aurelius [1997]). In this way, the Stoics give clear content to their metaphor of *cosmo-polis*: citizens of the world consider the possibility of moving from *polis* to *polis* to serve others, while non-cosmopolites do not take such a possibility into consideration.

When analyzing the content of the classical concept of cosmopolitanism described above, two possible interpretations can be

proposed. In the narrow sense, when someone considers where to emigrate to, they *prima facie* do not acknowledge any special reason to serve their fellow citizens more than they would citizens of any other *poleis*. In the broad sense, on the other hand, even if a given person does see a special reason to serve his/her fellow citizens, having taken all else into account, he/she might acknowledge that emigration is the best choice. There is no proof indicating which of these two interpretations was preferred by the early Stoics.

The situation gets complicated and appears somewhat different if we take into account some of the representatives of Stoicism from the Roman period. On the one hand, the ideal *cosmo-polis* became less desirable. While, for example, Chrysippus restricted the possibility of being a citizen of the *cosmos* only to those who actually lived in accordance with the *cosmos* and its laws, Roman Stoics expanded moral "citizenship" to include all people, because they all possessed the virtue of reason. On the other hand, local political citizenship became more desirable. In our opinion, there is no doubt that Cicero's and Seneca's Stoicism explicitly recognized their obligations to Rome. This is a broad interpretation of cosmopolitan Stoicism. The Roman Empire made this doctrine easily acceptable to many Roman citizens by equating the Roman state with the cosmopolitan principles of moral equality through the notion of *oikoumene*, that is, ruling the whole known world.

Engaged citizens of the world think about whom and how they can serve in the best possible way, having complete awareness of the fact that they cannot help all people in the same way. Their decision to help some people over others is justified by the cosmopolitan hope that this is the best that they can do to help people who have the same moral status as they do. It is, however, worth remembering that these people were considered citizens of Rome, and it was because of this that they were also considered citizens of the world. The moral ideal and the political domain of its implementation overlapped, even though in classical theories

there was a tension between citizenship (political order) and humanity (moral order), operationalized by the notion of *logos*, which dominated in Greece, that is, reason, which ruled the world.[6]

A cosmopolite, therefore, lives in two worlds—he/she is both a citizen of the *cosmos*, i.e. a "citizen" of the world, and a citizen of the *polis*, i.e. a citizen of the city and the state. The idea that lies at the foundation of all current varieties of cosmopolitanism is that all people, regardless of their political affiliation, belong to a larger community. Nevertheless, various branches of cosmopolitanism envision this community differently and define it in different ways, sometimes placing greater emphasis on the institutional and political aspects of the organization of such a community, and sometimes on the moral principles which should lie at its foundations. The cosmopolites' argumentation moves towards negating the nationalist, static, and communitarian paradigm—in other words, all those modern theories that assume that the frame of reference in international relations is the state or the national community.[7]

3. The Enlightenment Project of Perpetual Peace—Immanuel Kant

The Enlightenment marks the second most important stage in the development of cosmopolitan thinking. Kant's thought in particular, which is interpreted by idealists in a liberal spirit, is

[6] For more, see E. Brown, P. Kleingeld, „Cosmopolitanism", in *The Stanford Encyclopedia of Philosophy* (http://plato.stanford.edu/entries/cosmopolitanism/). Modern day cosmopolites such as Rorty, Derrida, and Nussbaum refer to this classical, ethical, and political Stoicism and try to develop it without prescribing specific institutional solutions. However, political cosmopolitanism, which is liberal and democratic (Held), does, and is accused of universalism and imperialism.

[7] The primacy of obligations towards the state are differently legitimized in these theories, but even Rawls, who leans towards supporting the idea of human rights in international law, describes justice as concerning primarily the relationships between citizens of the community.

essential to modern idealism in political relations because of his concept of autonomy. Kant assumes that all the evil that a state faces is related to waging war or preparing for one. In *Toward Perpetual Peace* (Kant [2006]), he formulates an answer to the question of permanent peace. According to Kant, nature, understood as principles of universal law, is the guarantee of perpetual peace. He was convinced that the experience of coexistence of people (their unsocial sociability (Kant [1963])) would lead them to understand the advantages of peace. Kant does not place cosmopolitanism at the center of his considerations, but his project of perpetual peace constitutes the foundation on which modern adherents of political and moral cosmopolitanism, such as Held or Habermas, build their theories, which will be reconstructed later in this chapter.

Of course, Kant does not advocate human rights in their modern understanding. Nevertheless, his idea of an autonomous and rational individual, and his thoughts concerning the state of law and the federal relations of states, have made him a source of inspiration for many modern liberal thinkers. It is also relatively easy to derive fundamental human rights from his thought. Therefore, let us have a closer look at these elements of his system; this will allow us, later on, to better understand the idealist concepts of the liberal theory of global justice based on human rights, with reference to the moral and political thoughts of the Stoics and of Kant.

Kant acknowledges that only states that are well-organized internally, i.e. those with a republican regime, fulfill the necessary conditions for coexistence, which are dictated by practical reason and may, at the same time, be a guarantee of perpetual peace. States that are poorly organized will always be eager to incite war, even if they are bound by peace treaties. Kant also writes that domestic affairs are not without influence on international affairs. Therefore, if we wish to introduce universal and permanent peace, it is necessary to first introduce conditions in the state itself which will guarantee this peace. The necessity of introducing a republican regime in

each state is the crucial First Definitive Article of Kant's program for perpetual peace.

The aim of the republican constitution is to ensure freedom and equality to all citizens as reasonable subjects of the law. Kant's theory of a republican state of law as a necessary assumption of practical reason is based on the concept of a social contract between free and equal individuals who should be guided by the principle that the freedom of one individual should be compatible with the freedom of all others. This is because the state should have such laws and such a regime that could be established by the collective reasonable will of all concerned. This means that in a republic, the citizens are both the authors and the recipients of the law and that if the people cannot pass a law against themselves, then neither can the legislative authority. More importantly, from the viewpoint of practical reason, in order to incite war in this regime, the consent of all citizens is required, and because they are aware of the weight this will put on their shoulders, they will give the matter serious consideration before giving their approval. This is a kind of safeguard that republicanism imposes on itself.[8]

The Second Definitive Article reads: "the law of nations shall be based on the federalism of free states" (Kant [2006], p. 78). Kant writes "(...) for this reason a special sort of federation must be

[8] In a republic, the people rule; therefore, there is no division between the governing and the governed. The act of association establishes a moral and political body, which constitutes the will of the people expressed by the law. By limiting the legal privileges of the authorities, the will of the people, therefore, resolves the conflict concerning the inequality between the legislative ability of the authorities (only a few have authority) and the general principle of equality. That is why, for the people (the society) as well as for the highest authorities (the representatives of the people), the law becomes the supreme power, and revolution should be replaced by public criticism. If it is possible for a nation to consent to a law, then we are obliged to acknowledge it as just (even if, in this situation, the nation does not agree). This is because the legislature cannot be wrong as to conformity of a law with the concept of law (it has the original contract at hand as a yardstick), and even if the sovereign does violate the original contract, he/she is not entitled to resist force with force.

created, which one might call a *pacific federation* (*foedus pacificum*). This federation would be distinct from a *peace treaty* (*pactum pacis*) in that it seeks to end not merely *one* war, as does the latter, but rather to end *all* wars forever" (Kant [2006], p. 80). It is significant that Kant is not an advocate of a world state. Such an alliance would ensure the freedom and sovereignty of each state, but also the possibility, in Aristotle's sense of the term, of the moral development of each human being within such a regime. According to Kant, this will be possible if the proposal for such an alliance comes from an enlightened state, a state "securing and maintaining the *freedom* of a state for itself and also the freedom of other confederated states without these states thereby being required, as are human beings in the state of nature, to subject themselves to public laws and coercion under such laws" (Kant [2006], p. 80).

There is no other solution for the maintenance of perpetual peace between states, since every alternative form of cooperation between them increases, according to Kant, the risk of war (i.e. if the states are not republican) or limits the right of nations to self-determination (i.e. if there is a world republic).[9] Admittedly, states often pursue their rights through war—for Kant, however, victory does not determine who is right, but only who has a better army. Without an agreement between nations, it is, therefore, impossible to establish peace. The best solution would, in this case, be a peaceful alliance (*foedus pacificum*) whose objective would be to end all wars. Kant understood this alliance as a confederation of states or a league of nations.

In the Third Definitive Article of his treaty, Kant mentions a cosmopolitan law which should be "limited to conditions of universal hospitality" (Kant [2006], p. 82). He emphasizes that the

[9] When Kant mentions the similarity in the conditions and the laws of reason that occurs between the agreement to establish a state and the agreement to establish a federation of states, one could assume that he is referring to the establishment of one world state. This, however, is not the case. Kant excludes such a possibility. (Kant [2006], p. 81.)

conditions of universal hospitality are to be the law, and not just wishful thinking or "philanthropy". This concerns the right to hospitality or visits that all people are entitled to—i.e. the right of a visitor to visit a foreign land. During their stay, they should be treated in the same way as citizens of the state where they are staying. This law results from the fact that "[s]ince it is the surface of a sphere, they cannot scatter themselves on it without limit, but they must rather ultimately tolerate one another as neighbors, and originally no one has more of a right to be at a given place on earth than anyone else" (Kant [2006], p. 82). The objective is to establish relationships with people who inhabit the different corners of the globe and, by doing so, to achieve mutual interpersonal trust. For Kant, universal hospitality does not simply mean caring for people. In our opinion, in this formulation, Kant means that foreigners should not be treated as enemies merely because they find themselves on foreign territory and are citizens subject to another lawgiver. They should be treated in accordance with the categorical imperative in its practical form, that is, always as an end in themselves and never merely as a means (Kant [1990], p. 46).

Cosmopolitan law (*ius cosmopoliticum*), thus defined, is an essential element of perpetual peace. This condition is a necessary complement to the other two articles. Without it, a federation of republics could never permanently exist. We could say that cosmopolitan law, as an independent branch of universal law, constitutes the moral foundation of the legal code of states and international legal codes. Cosmopolitan law establishes relationships between reasonable beings, who are subjects of universal law, just as public law establishes the relationships between citizens (*ius civitas*) and international law between states (*ius gentium*). Thus, this law transcends the particular demands of nations and states, expanding them to apply to a universal human community.[10] As demonstrated

[10] It is possible to say that from the viewpoint of cosmopolitan law, morality and politics are identical. Politics is a way of implementing moral law. Morality, however, is a practice guided by the universal law (the ideal of a moral politician).

above, Kant's definition of cosmopolitanism comes down to universal hospitality. But how are we to understand this hospitality? Above all, it means respect for public laws and deference for the traditions of others. The universal law of hospitality, therefore, includes the following elements: (a) acceptance of others' autonomy—if we do not respect the autonomy of others, we do not treat them as reasonable beings, (b) confirmation of the mutual acknowledgement of internal and external freedoms, and (c) respect for public law. Cosmopolitan law makes it possible to implement the idea of perpetual peace and makes us reasonably acknowledge that people are free and equal not only as citizens of a given country, but also as citizens of the world. As rational beings we will do everything not to cause a war—for moral reasons (we act according to the universal law) or for selfish reasons (cooperation brings us greater benefits). We can, therefore, state that the law of world citizens is mainly based on the rejection of war.[11]

Summarizing Kant's thoughts described above concerning the idea of perpetual peace and the objectives of citizens of the world and cosmopolitan law, we can say that Kant places the task of establishing peace in the hands of citizens. This is the significance of both the rights of state citizens as well as the rights of world citizens. The contribution of citizens to peace is based on refusing to give their consent to war (our practical reason does, after all, tell us that wars should not exist, and that the means for the implementation of peace in the legal domain is the rule of open borders). Citizens of the world, on the other hand, are morally

[11] The last five paragraphs were taken from Wonicki [2009], pp. 272–274, and Wonicki [2013], pp. 182–185. It is worth remembering that Kant rejects the idea of Pax Romanum, as he wants to exclude war from the realm of law. At the same time, he calls for the liquidation of armies, because their existence makes the maintenance of peace more costly than a short-term war. He assumes that in the project of perpetual peace there will be no hegemon that possesses military power. Peace between republics would not, therefore, be a result of the will of sovereign state authorities, but of cosmopolitan law (*ius cosmopoliticum*).

obliged to act in accordance with the laws of reason (their duty is the construction of a social world based on these laws). If all of these conditions are fulfilled, the idea of world citizenship will cease to be just a dream and can become a political reality.

Such an optimistic interpretation of justice in Kant's international relations encounters certain difficulties, which contemporary theories referring to his interpretation of liberal cosmopolitanism have to deal with, e.g. Habermas' and Held's theories. The major difficulty today is the idea of historiosophic progress in human history that was assumed by Kant. In order to avoid it, Habermas and Held start out with certain Kantian intuitions concerning the concepts of human being, autonomy, and laws, and demonstrate that, after a few modifications, these concepts can be applied to legitimize a certain desired course of action in international relations.

4. Contemporary Cosmopolitan Liberalism

The objective here is to illustrate the new conditions for conducting politics on a global scale within the framework of the processes of globalization, which the concept of an international system created by nation-states is incompatible with, and to demonstrate the relationship between human rights and sovereignty from the viewpoint of idealism and cosmopolitanism. We will first present two theories that refer to Kant's concept of world order, based on the cosmopolitan understanding of human rights, which legitimizes a certain institutional structure in the supranational domain. These will be Habermas' theory of post-national constellations and Held's concept of cosmopolitan democracy. Next, we will reconstruct two theories that regard human rights as the axiological frame of reference: Rawls' law of peoples, which is, as Jon Mandle called it, a weak cosmopolitan theory, and Nussbaum's theory of capabilities, which polemicizes with Rawls' contractarian method, being a strong cosmopolitan theory. We will do so in order

to demonstrate how the securing of human rights varies, depending on the individual or group ontology that has been assumed.

4.1. Habermas' Idea of Post-National Constellations and the Two Faces of Human Rights

Habermas claims that rights are not natural endowments that people possess prior to their citizenship status, but rather that rights are relations that individuals mutually recognize when they agree to regulate their common political life through the medium of positive law. Thus, according to Habermas, there is a connection between public and private autonomy, that is, between the idea of equality under the law and individual liberty, which, as Beynes writes, suggests that "insofar as individuals undertake to regulate their common life through the legal form they must do so in a way that grants to each member an equal right to liberty" (Beynes [2002], p. 20).[12] People are the authors of the law, and as autonomous individuals they have equal opportunities "to participate in processes of opinion- and will-formation in which citizens exercise their political autonomy and through which they generate legitimate law" (Habermas [1996], p. 123). Moreover, the rights which they create are not derived from a concept of moral autonomy. Due to this approach, rights cannot be imposed on citizens from outside. Hence, Habermas leaves the content of rights open, as they can only be specified in particular discourses. Because of this, the system of rights is declared by a legislative assembly, which follows the procedures of discourse ethics (Habermas [1996], pp. 99–102). The assembly specifies no particular moral norms that should be

[12] Habermas also describes the main categories of rights, which can be deduced from the legal code in conjunction with the principle of discourse: (1) equal freedoms for all citizens, (2) rights that regulate membership in an association of citizens, enabling members to be distinguished from non-members, and (3) the possibility for people who feel that their rights have been infringed to invoke those rights. These three categories of basic rights guarantee citizens the status of recipients and creators of the law.

followed, but only general rules to help us decide what we ought to do (Gilabert [2005], pp. 185–210).

Because basic rights are legitimate only if they have been confirmed by citizens in a discursive process open to all, it must always be possible to submit these issues to an actual deliberative procedure. We therefore need an accepted democratic procedure to examine the laws and to justify them. In order to have such a procedure, Habermas postulates an internal relationship between rights and democracy (Habermas [1998], pp. 253–265). This relationship is described in terms of his theory of communicative actions based on the idea of communicative rationality. Societal actors legitimize the social order through ethico-political discourses. They have the capacity to intersubjectively recognize the validity of the different claims they raise during the communication process involved in democratic will formation.[13] Habermas' discourse theory aligns different types of validity claims with different types of discourses. From our perspective, two kinds of discourse are important: moral and ethico-political. They are deduced from the universal principle of discourse, which states that "a rule of action or choice is justified, and thus valid, only if all those affected by the rule or choice could accept it in a reasonable discourse" (Habermas [1990], p. 66). The participants of the moral discourse justify norms of action that combine due concern and respect for people in general, whereas participants of the ethico-political discourse focus on the question of a common way of life. Thus, moral rightness should be accepted by a universal audience, and moral and political claims should be addressed to those who share a particular history (Habermas [1998], pp. 280–283). Habermas also transfers these discourses onto the supranational level as a mechanism of collective decision-making without building a global state.

[13] Habermas proposes a multi-dimensional concept of validity claims: claims to truth referring to the empirical world, claims to rightness concerning the treatment we owe each other, and claims as to the sincerity of our feelings.

Habermas' approach to rights and democracy on the domestic and supranational levels is also related to the protection of human rights provided for by laws. However, by claiming that human rights are based on actual discourses, he has difficulties explaining how there can be universal human rights in the absence of a global democratic mechanism (Karlsson Schaffer [2015], p. 106). The problem appears when arguing that democracy and human rights are mutually dependent because they are based on a common foundation of human freedom and autonomy. Habermas anchors his thesis concerning the co-originality of rights and democracy in the legal domain of the modern state in order to explain their normative interrelation. According to this view, civil liberties and human rights are interchangeable terms. Being a citizen of a democratic state is a necessary condition for having basic rights as a human being. As Habermas argues:

> (...) human rights belong structurally to a positive and coercive legal order which founds actionable individual claims. To this extent, it is part of the meaning of human rights that they claim the status of basic rights which are implemented within the context of *some* existing legal order, be it national, international, or global (Habermas [1998B], p. 192).

The erroneous conflation of human rights with morality is suggested by the fact that, in spite of their claim to universal validity, human rights have thus far managed to achieve an unambiguous positive form only within the national legal orders of democratic states. Moreover, they remain only a weak force in international law and still await institutionalization within the framework of a cosmopolitan order that is only now beginning to take shape (Habermas [1998B], p. 192). However, if individual rights are articulated and confirmed, as in Habermas' approach, through democratic deliberation, human rights cannot be established and enforced internationally without globally institutionalizing the democratic process of will formation. As Thomas McCarthy argues:

> Insisting, as Habermas does, on the internal connection between individual rights and democratic politics implies that there could be no adequate institutionalization of human rights on a global scale without a corresponding institutionalization of transnational forms of democratic participation and accountability (McCarthy [1999], p. 198).

Thus, if democracy and human rights are co-original, a system of human rights cannot be institutionalized internationally while democratic procedures remain national.

This exposes a problem with the way cosmopolitan liberals view human rights. If they believe in the universality of human rights, they need to think and show how human rights can be institutionalized globally. The difficulty often occurs at the level of implementation of human rights, either because they are perceived as an imperialistic Western tool of colonialism or because cultural pluralism and relativism show that human rights are not universally accepted by all peoples around the world. For example, communitarians such as Michael Walzer have claimed that human rights cannot be enforced outside political communities:

> Rights are only enforceable within political communities where they have been collectively recognized, and the process by which they come to be recognized is a political process which requires a political arena. The globe is not, or not yet, such an arena. Or rather, the only global community is pluralist in character, a community of nations, not of humanity, and the rights recognized within it have been minimal and largely negative, designed to protect the integrity of nations and to regulate their commercial and military transactions (Walzer [1980], pp. 226–7).

For cosmopolitan liberals, this "enforcement deficiency" of human rights on the international level has strong implications for theorizing on international justice. For without designating a sovereign who would be higher than the states, human rights are ineffectual when the states in question fail to provide them. Of course, Habermas wants to avoid this difficulty by distinguishing, on

the one hand, politics from law, and on the other, demonstrating that human rights are, at the same time, legal in form and moral in essence (Habermas [2011]). In order to do this, he borrows Kant's idea of perpetual peace and cosmopolitan rights as a regulative idea, which allows him to better understand the role of human rights in international law. However, in his theory he makes two important changes. Firstly, he rejects Kant's idea of building a federation of nations based on the republican system. We know that the United Nations, which to some extent realizes this idea, is not actually an association of republics. Secondly, he takes into consideration in his theory phenomena that Kant could not predict, such as strong ethnic nationalism or the significance of human rights after World War II and its consequences, i.e. the Universal *Declaration of Human Rights* (1948). As Habermas says:

> In all these aspects (...) the development of international law (...) radically goes beyond Kant's proposition concerning a federation of free nations—however, this is exactly the direction in which Kant points himself when formulating the idea of world citizenship (Habermas [2003], p. 149).[14]

Thus, this means that although reality has changed, Habermas generally accepts Kant's idea of cosmopolitan rights. Because of the different historical situation today, he can fill Kant's formal concept of law with other content. Habermas does this through such elements as the mutual recognition of differences. In other words, Habermas accepts the fact of pluralism, which is built on the experience of religious wars and on the attempt to prevent them in the future,

[14] See Habermas [2003], p. 149. He derives the idea of uncoerced communication from Kant's categorical imperative. He considers it a necessary condition for establishing the global public sphere. In such a sphere where the public use of reason is dialogical, critical, and reflexive, everybody is equal and has some degree of influence on global decisions. Thus, in the global public sphere, citizens, as citizens of the world, have equal access to decision-making processes.

and also on the sense of solidarity, which manifests itself in institutional compensation for economic, political, and social inequalities (Wonicki [2006], pp. 307–8]).[15]

Habermas' cosmopolitan theory is not as demanding as Held's model of cosmopolitan democracy, which will be analyzed next. It is more a model of global governance that aims to establish transnational policies without a world government. Habermas' model distinguishes global governance on three different levels: (a) the supranational level, where the UN governs, (b) the transnational level, where functional regimes regulate diverse issues of global domestic policy, and (c) the national level, which remains an important source of democratic legitimacy. These three levels provide support for a human rights regime (Habermas [2008], pp. 444–455; Karlsson Schaffer [2015], pp. 105–109). Human rights are a standard of values that could be accepted by many actors, for many reasons. Habermas believes that his idea of a post-national constellation could effectively protect human rights because of regional democratic politics,[16] which could regain democratic control over the dispersed processes of globalization. He also argues that an international system composed of these three elements would be more likely to succeed in controlling and steering the process of globalization than the more integrated cosmopolitan democracy proposed by Held (Held [1995]; Lupel [2005]). Hence, he creates an international system of governance which legitimizes political decisions in the name of human rights. He also shares with political cosmopolitans the idea that cosmopolitan law must carry the threat of sanctions in order to be effective. International law must be equipped with the coercive power to make states' decisions

[15] The two paragraphs above are a modified version of a fragment of an article by Wonicki.

[16] Regional democratic politics is an idea regarding supranational integration which transcends the borders of states in the name of strengthening effective governance in a globalized world.

conform to the protection of the human rights of all individuals as world citizens without reference to particular nationalities (Habermas [1998]; Lupel [2005]). However, he is not as optimistic as other cosmopolitans (e.g. Held) and does not call for the transformation of the global system into a world state.

This is because Habermas thinks that at the supranational level it would not be so easy to create an ethico-political identity and cosmopolitan solidarity. Moreover, he argues that democratic self-determination requires an enclosed rather than an unbounded community:

> Any political community that wants to understand itself as a democracy must at least distinguish between members and non-members. The self-referential concept of collective self-determination demarcates a logical space for democratically united citizens who are members of a particular community (Habermas [2001], p. 107).

However, Habermas believes that international law can gradually change into a binding legal order, supporting human rights through a mechanism of cosmopolitan global governance. The way to achieve this is through constitutionalization of international law without creating a global state. In this approach, Habermas proposes a new world organization (of which states are still the main members) that would be charged with two tasks: securing peace and implementing human rights globally. But it would not concern itself with issues such as economic redistribution or environmental problems, which are linked to legal regimes enforced at the international level (Schaffer [2015], p. 105).

Habermas suggests that what goes on at the supranational level (the UN) are legal rather than political matters. This also implies that international human rights regimes and the global legal framework are beyond the control of the member states that fall under these laws. Human rights, therefore, would be institutionalized differently in different democratic countries. The result would be parallel systems of rights, differently institutionalized

in each state. This would also lead to the growth of global legal regimes and the expansion of international organizations. They would represent a growing body of international law. Thus, for Habermas, through supranational institutions which protect human rights and through the expansion of international law, the process of establishing a global "constitutional" order has been initiated, which in time will create a global society based on legal principles.

Moreover, Habermas claims that the economic processes of globalization are bringing about a cosmopolitan society. Because of these processes, the nation-state will gradually start disappearing and national sovereignty will be limited by compliance with universal human rights. Nationalism will be replaced in a natural way by cosmopolitanism, which could be established on a supranational level through a mechanism of democratic legitimization. For Habermas, this means that policymaking on the international level should conform to the requirements of deliberative democracy, not through the standard mechanism of elections, but through the less formal processes of deliberative opinion formation within global civil society. This process of global governance can take a variety of forms, including the institutionalized participation of non-governmental organizations.

To sum up, we can say that Habermas builds a system where processes of democratic political will formation remain bound to national and regional experiences. The problem appears when we consider how cosmopolitan law would be able to gain democratic legitimacy without being able to create a sense of civic solidarity among global citizens. For Habermas, "constitutional patriotism" underpins the integrity of universal cosmopolitan rights, which includes the particularism of the constitutional laws of political communities. Thus, constitutional patriotism, as Habermas presents it, is either too strong or too weak to work on a global level. It either binds a political community around historically rooted constitutional rights at the cost of a cosmopolitan identification, or it

supports a cosmopolitan identification, but fails to create a citizens' identification on the domestic level, which is necessary for democratic legitimacy. (Fine, Smith [2003], pp. 484–486). Thus, the development of a cosmopolitan legal order in a post-Westphalian system of nation-states entails a more radical change than Habermas is willing to concede. Overall, democratic legitimacy depends on the cultivation of a common political culture. The historical tension between the ideal of universal citizenship and the particular contexts in which it is situated is only exacerbated when extended to the transnational domain. Finally, on the one hand, he states that the fundamental form of political activity on the transnational level is negotiation among states through a bargaining process; on the other hand, he calls for a global civil society (post-national democracy) which can share a common moral basis. Unfortunately, the stronger idea of democracy as self-determination is not applied outside the nation-state, where governance is left to negotiations and political alliances.

4.2. Held's Theory of Cosmopolitan Democracy

Held calls his theory "cosmopolitan democracy" and bases it on human rights, as well as on liberal values such as equality, justice, and freedom. In his approach, with reference to Kant's concept of autonomy, he radicalizes both Kant's and Habermas' perspectives on the issue of state sovereignty in order to solve the problems related to the side effects of globalization and to eliminate the disproportion between a globalized reality and the current capabilities of nation-states. For this purpose, he names eight fundamental cosmopolitan principles, which he considers to be the axiological foundation of his cosmopolitan project. These universal principles form the justification for political solutions on the regional, national, and supranational levels. They constitute an independent platform on which cosmopolitan law can be created and further developed.

The first principle—*equal worth and dignity*—means that due to the fact that they are human beings, every person is entitled to respect and recognition. Held understood this principle as a form of egalitarian individualism. This principle is reflected in the regime of human rights and in the United Nations Charter. The second principle—*active agency*—means the ability of people to act consciously and to make decisions independently. This principle assumes that people are self-aware, that they are capable of reflection, and that they can shape the political community in which they live. In this perspective, politics is understood not as management of the masses by the elite, but as engaging people in active politics. The first and second principles cannot be fully understood without supplementing them with the third principle—*personal responsibility and accountability*. This means that individuals must be responsible for their own actions, whether they are direct or indirect, intentional or unintentional. Such responsibility should accompany all our actions in the public arena and help us to limit prohibited interference with the actions of other citizens. We should be careful not only not to restrict the scope of activities of other citizens, but also that they do not restrict our own.[17] The fourth principle—*consent*—states that people must take into consideration the opinions of all others who are affected by a given process. This principle establishes the foundation for non-coercive collective agreement and governance (Held [2005], p. 13). Legal arrangements, therefore, should be prepared with the participation of all concerned and through public debate. The opinions of interested parties should be considered while looking for a compromise. This also means that legislative procedures should be as transparent as possible and that politicians should not give in to pressure from narrow interest groups. This is also why the fifth principle—*reflective deliberation and collective*

[17] From Held's deliberations, we can conclude that individual freedom should be restricted when its actions bring suffering to another human being, but not necessarily when it violates the laws of a given country.

decision—states that decisions should be made through voting procedures. The sixth principle—*inclusiveness and subsidiarity*—means that those who are in some way affected by a political decision have the right to influence and change it. This principle refers to public debate and, consequently, to co-determination of the future of the political community by all those who are subject to its laws, especially minorities. Subsidiarity concerns political decision-making on an appropriate level and the help given to lower levels when these are not able to solve a problem. The seventh principle—*avoidance of serious harm and the amelioration of urgent needs*—means giving priority to the most fundamental issues and, inasmuch as it is possible, setting aside less pressing matters until all people are covered by the previous six principles. And before we engage in a certain activity, it is necessary to realize its potential consequences; this is what the eighth principle is based on—*sustainability*.

Principles (1) to (3) define "the fundamental organizational features of the cosmopolitan moral universe" (Held [2005], p. 15), while principles (4) to (6) establish the conditions which need to be fulfilled if public authority is to be recognized as valid in all areas of life, and principles (7) and (8) establish the cosmopolitan moral framework.[18] These eight principles constitute the normative foundations for democratic cosmopolitan laws. The laws that Held has proposed cover many rights, from civil and political to cultural and reproductive. This broad spectrum of rights should, according to Held, be constitutionalized. If one of these rights is not recognized, then the fundamental value, which is the autonomy of the individual, will not be fully protected. Based on this, Held

[18] Held's cosmopolitanism attempts to be morally neutral, which means that, within its framework, no way of life can be privileged with respect to other ways of life. However, this assumes neutrality and does not mean that different ways of life are considered equal from the ethical perspective. Held is just claiming that a free space should be left, so that everybody has the possibility of pursuing their own views, as long as these do not hurt others. Because of this, his theory is not ethically neutral, but simply liberal.

introduces seven categories of rights into his cosmopolitan project, each corresponding to a different type of authority which is supposed to be protected by the system of cosmopolitan democracy. These categories are health, social, cultural, civil, economic, peace, and political rights. They correspond to the following scopes of authority: the human body, the realm of social relations (e.g. education, upbringing, and childcare), culture (freedom of speech and tolerance), associations within a society (participation in organizations), economy (minimum income), relations of coercion and violence (peaceful coexistence), and legal institutions and regulations (equality before the law) (Held [1995], pp. 192–4).

In his book, *Democracy and the Global Order* (Held [1995]), Held sets out the short- and long-term objectives which the cosmopolitan model of democracy needs to pursue in order to secure these rights. The short-term changes, in his opinion, include reforming existing international organizations and seting up new ones in order to have the tools for resolving controversial problems (even those between allied states). Among Held's proposals one can find: reforms of the UN Security Council, the establishment of a second chamber of the UN, and the founding of an International Tribunal of Human Rights. These institutions would better deal with the most important global matters. Intermediary institutions would function between them and governments, providing reports on given issues of global significance. States and international decision-making institutions would be able to make use of their services. Held calls them *global issue networks* (GIN).[19] The last important proposal regarding short-term objectives is the organization of effective armed forces that are independent of the states. The reforms mentioned

[19] GINs would deal with global problems such as climate change that require a global management system. They would not include representatives of all the states, but only "representatives of governments concerned by and experienced with the issues at hand, as well as knowledgeable people from business and international NGOs" (Held [2005B], pp. 255–256). However, GINs would not have executive power, but merely an advisory role.

above would democratize the main international political institution, i.e. the UN, and, moreover, would facilitate the introduction of long-term changes.

With regard to these long-term reforms, Held recognizes that it is necessary, above all, to introduce a central system for the management of important international institutions, assign non-overlapping areas of activity, and establish clear principles of interference in the politics of sovereign states. He also proposes the drafting of a new Charter of Rights and Obligations of Political, Social, and Economic Power in the spirit of cosmopolitanism. His next proposal is the creation of a legal system which would not result from an expansion of international agreements, but consist of independent criminal and civil codes. This new global law is not meant to replace the legal systems of nation-states, just to create a framework for them.

Furthermore, Held wants to establish a new political body—an assembly of democratic nations. This would be the result of collaboration between many institutions and organizations. As he writes:

> (...) if its operating roles could be agreed—preferably, in an international constitutional convention involving states, IGOs [intergovernmental organizations], INGOs [international non-governmental organizations], citizen groups, and social movements—the new assembly could become an authoritative international center for the examination of (...) pressing global problems (...) (Held [1995], p. 274).

This is a project for an independent political organization, which would be governed by national representatives. The assembly would function similarly to national parliaments; therefore, decisions taken within its framework would be made on the basis of democratic voting. At the same time, with regard to respect for human rights, Held also proposes that supranational economic organizations be responsible to parliaments and assemblies on both

the regional and global levels; thus, they would become subject to supranational global law. This suggests that Held would be inclined to strengthen political control over the market, as is occurring in some areas of the European Union. An interesting element of this project, connected with economic affairs, is a proposal to introduce new forms of ownership and property: "(...) cooperative forms of ownership, involving the collective possession of enterprises by work groups, are, in principle, attractive" (Held [1995], p. 264). Unfortunately, Held does not elaborate on this idea—he only mentions that it would be a step towards the democratization of the economy and the final shape of a new form of ownership, and would have to be created based on social experiments. He recognizes that the protection of all categories of human rights can be achieved only through a system of democratic self-determination, which should be created on a supranational level. At the same time, he believes that the proper implementation of these rights requires political decision-making mechanisms of the type described in Habermas' theory.

Held also calls for the creation of aid funds on the international level. Their purpose would not only be to help people or states in need; they could also be used to fund international organizations that deal with health, the environment, etc. This would increase their independence:

> (...) the raising of such funds could also be the basis for a critical step in the realization of political cosmopolitanism: the creation of an independent flow of economic resources to fund regional and global governance, a vital move in reducing the latter's dependence on leading politicians and the most powerful countries (Held [2002], p. 36).

Only the introduction of global taxes would prevent the strongest nations and most influential states from implementing their own interests. As can be seen in these ideas, the source axiology based on human rights not only takes the form of global governance in practice, but also faces the inevitable problem of its implementation

in a global context. This inescapably leads to tensions between the various decision-making levels and between the competencies of the authorities, as well as to a collision with state sovereignty, which cannot be simply removed through verbal assurances concerning subsidiarity and harmony. The federalization of the international order, if it is to be effective, must assume the form of mechanisms that can efficiently protect private autonomy (human rights) and, therefore, transform into public autonomy—democratic decision-making and its legal implementation on both the national and supranational levels.

The activities of this new political organization (cosmopolitan democracy) would, therefore, share some similarities with state activities, as it would have at its disposal taxation established on the supranational level (e.g. ecological taxes, capital transaction taxes) as well as an army. It would deal with policies on a global scale, but also with "domestic" policies, i.e. it would define the scope of state actions. Held recognizes that his theory may trigger a defense of state sovereignty. The idea of the modern state must, therefore, be revised in terms of cosmopolitan democratic law so as to show that states, to some extent, would maintain their sovereignty of decision-making; as in a federation, they would maintain their autonomy in selected state matters as constituents of the federation.

The fact that states have obligations on various levels—local, state, regional, and international—means that they must reach beyond their own borders. "The idea of a political community of fate—of a self-determining collectivity—can no longer be meaningfully located within the boundaries of a single nation-state alone, as it could more reasonably be when nation-states were being forged. Some of the most fundamental forces and processes that determine the nature of life chances within and across political communities are now beyond the reach of individual nation-states" (Held [2000], p. 399). Thus, "(...) in essence, the cosmopolitan project attempts to specify the principles and the institutional arrangements for

making accountable those sites and forms of power which presently operate beyond the scope of democratic control" (Held [2000], p. 402). Held's theory of cosmopolitan democracy is, therefore, eclectic. It not only attempts to maintain central power exercised by reformed global institutions, but also to ensure citizens greater self-governance. Greater self-governance on the local level and a more effective centralism on the global level would contribute to the creation of a system of government that would be able to deal with the various problems of the modern world. In this regard, cosmopolitan democracy is a two-sided process, and this is what differentiates it from other proposals for global governance.[20]

To summarize, Held's cosmopolitan democracy in theory has the task of adapting the governance methods, the law, and the obligations of political institutions to contemporary problems. These include the degradation of the environment, poverty and inequality, and the lack of political security. As Held writes:

> (...) the cosmopolitan model would seek the creation of an effective transnational legislative and executive, at regional and global levels, bound by and operating within the terms of the basic democratic law (Held [1995], p. 272).

According to him, in the existing conditions of globalization it is necessary to create a global legal system which would stand above nation-state legal systems, but which would also not be an international system. It would be created by independent supranational organizations and would mainly concern individuals and not collectivities, such as nations. This new law "demands the subordination of regional, national, and local 'sovereignties' to an overarching legal framework, but within this framework, associations may be self-governing at diverse levels" (Held [2002], p. 32).

[20] For example, institutionalism, transnationalism, and hegemonism, see (Sinclair [2012]).

Rawls' *Law of Peoples* theory takes a gentler route in a different direction. An international system based on human rights is an indispensable element of international relations, but it does not require such strong institutional integration as Held wishes for. Rawls, therefore, moves in the direction of the global governance solutions developed by Habermas, however his idea is even more similar to the approaches of institutional liberalism and statism than the Habermas project.

4.3. Rawls' Human Rights in International Relations and the Law of Peoples

Rawls shares with Kant, Habermas, and Held the same belief in reason, rational argumentation, and liberal values. He also refers to human rights, although his approach is more static than the Habermasian and Heldian ones and not quite so optimistic as to the construction of supranational or global institutional mechanisms of control. However, many similarities can be found in the assumptions made by these thinkers, and although Rawls supports the static approach to international relations, his theory has cosmopolitan insight, which we will show in our reconstruction of his idea of international justice. In order to establish a law of peoples accepted by a legal framework of international cooperation, Rawls uses his method of *original position*. According to him, a just law of peoples is one that would be accepted by representatives of well-ordered societies from behind an international veil of ignorance where these representatives have limited knowledge about their place in international society. First we will analyze the conditions of the original position and their effects, and then we will examine the role of human rights in Rawls' international theory of justice, showing its weak and strong elements.

In his *Theory of Justice*, Rawls says that parties in the original position are equal because all of them have limited knowledge about their real social position, wealth, health, etc. (so they are

behind a veil of ignorance). They all have the same rights in the procedure for choosing principles. Each can make proposals and submit reasons for their acceptance (Rawls [2000], p. 17). The objective of these conditions is to create equality between human beings as moral persons. In the original position, representatives are equal in that each of them has "certain minimum capacities required for pursuing personal goals and assessing the fairness of social arrangements" (Chartier [2014], p. 14). Thus, it seems that all people should be considered morally equal and capable of being representatives in the second—i.e. the international—original position. However, Rawls rejects this view and argues that only individuals living in well-ordered societies can be considered equal according to the law of peoples, and other individuals, who are members of non-liberal peoples, are excluded from the contract (Chartier [2004]). Thus, he rejects the more cosmopolitan idea of the law of peoples supported by Beitz and Pogge, claiming that it violates the self-respect of non-liberal peoples. He also uses Kant's argument that the cosmopolitan idea of a world state would end up in despotism. The assumption concerning the lack of binding relations between states on the international level also becomes a justification for rejecting the difference principle (legitimizing redistribution) that applies on the national level.

What is significant is that Rawls is concerned with peoples and not individuals. Thus, he refers to group ontology. Moreover, he claims that peoples are not states. A state is an entity ruled by a sovereign, whereas *peoples* are societies that lack this characteristic (Rawls [1999], p. 24). In addition, because states are characterized by Rawls primarily as being driven by self-interest, they cannot "accept (...) and act (...) upon a just Law of Peoples" (Rawls [1999], p. 29). Hence only "peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals" (Rawls [1999], p. 35). Thus, behind a veil of ignorance, in the second original position, we have representatives of well-ordered peoples (liberal states) whose representatives, as reasonable and

moral individuals, choose the principles that should govern their actions in international relations. The principles they choose are as follows:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples;
2. Peoples are to observe treaties and undertakings;
3. Peoples are equal and are parties to the agreements that bind them;
4. Peoples are to observe the duty of non-intervention;
5. Peoples have the right to self-defense, but no right to instigate war for reasons other than self-defense;
6. Peoples are to honor human rights;
7. Peoples are to observe certain specified restrictions in the conduct of war;
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. (Rawls [1999], p. 37)

Before we discuss the status of human rights, it is important to stress that not all peoples agree on these laws. This situation underlies the division between ideal and non-ideal theories, which mostly means that liberal states need to know what kind of duties and rights they have vis-à-vis other types of states. Rawls identifies five kinds of collective entities which are revealed once the veil of ignorance is lifted. Apart from liberal democracies, we have non-liberal decent peoples. These two groups together constitute a group of well-ordered peoples and become part of the ideal theory. Then we have the outlaw states, burdened societies, and benevolent absolutisms which are part of the non-ideal theory. The main question is: what kind of human rights could all peoples agree on and how could these rights be protected if violated? The next part is dedicated to answering this question.

According to Rawls, the violation of human rights is a strong justification for military intervention as a last resort (Rawls [1999], pp. 36, 93). Only societies that honor the human rights of their

members and are not militarily aggressive can be safe from the threat of sanctions and international intervention. In *The Law of Peoples*, Rawls describes human rights as a "necessary, though not sufficient, standard for the decency of domestic political and social institutions" (Rawls [1999], p. 80). They are universal rights in that "they are binding on all peoples and societies, including outlaw states" (Rawls [1999], pp. 80–81). Hence, human rights are a necessary condition for fair cooperation within and among states. They are also characterized by Rawls as urgent rights (Rawls [1999], p. 79).[21]

However, he presents different sets of human rights in *A Theory of Justice* and in *The Law of Peoples*, which causes a problem of coherence. In the former they are treated as constitutional rights, while in the latter as universally valid moral rights, which raises the question of consistency between the first and second original positions. The claim that human rights in international law are universal moral rights means that some values, such as life, liberty, and security are so important for human beings that, in normal situations, no one can be reasonably denied their protection. Due to the universal value of these rights, individuals can claim that they have the right to adhere to them, as they are perceived by them as something fundamentally good. Therefore, because Rawls describes human rights in *The Law of Peoples* only in agreement with his first principle of justice in *A Theory of Justice*, their scope is different from the scope of basic liberal rights in the domestic area.

It is worth stressing, from our perspective, that according to Rawls, decent hierarchical societies do not have to protect all basic human rights on a global scale as liberal states do with respect to their citizens, although he applies the same method of original

[21] Rawls lists the following rights: the right to life, to liberty, to property, and to formal equality. The right to equal political participation and the right to unconstrained freedom of conscience are absent from this list (Rawls [1999], p. 74).

position. If the argument for human rights in *The Law of Peoples* and the argument for basic liberties in *A Theory of Justice* and *Justice as Fairness* are closely related, then it is hard to explain how the same method can justify two different kinds of moral standards: the minimal human rights standard of decency in international relations and the maximal standard of liberal rights in well-ordered societies. Moreover, as Fernando Tesón says, "the range and kind of human rights that are now recognized by international law considerably exceed the modest requirements of legitimacy proposed by Rawls" (Tesón [1998], p. 115), which means that Rawls presents a narrower list of human rights compared to the list we have in international law today. The reason for this is his narrow understanding of the role of human rights in international relations. He assumes a basic structure of cooperation within states, which is more stringent and which generates the duty of justice, and he rejects stronger legal and political interactions on the international level, claiming that, on this level, only moral obligations (the duty of humanity) can possibly be accepted by all. Following Rawls in *The Law of Peoples*, human rights limit a government's internal power and its external behavior among other states. Thus, every society is obliged to respect the human rights regime—even non-well-ordered societies, such as burden societies or outlaw states, are obliged to follow the law of peoples. The duty to honor human rights is "prior to those [duties] arising from the social contract that peoples make with one another" (Eckert [2005], p. 173). The issue of the treatment of outlaw states by liberal democratic states is nevertheless easier than that of the relations between liberal and decent societies, because the international community has standards of a just war theory. With regard to these relations, we only have Rawls' proposal of what an international community of well-ordered societies should do. Thus, according to Rawls' description, a non-liberal society qualifies as decent if it is not aggressive and if its legal order protects basic human rights. In decent societies,

individuals are involved in politics as members of various societal groups and can preserve the common good by means of a decent consultation hierarchy. However, decent societies differ from liberal societies in the case of those human rights which are important from the perspective of Rawls' domestic theory of justice, such as equal political participation. Apart from these differences, he suggests that liberal societies should tolerate decent non-liberal societies. This again sounds like a double standard in the application of liberal values: one internal and one external. By denying their members full social and legal equality and rejecting democratic decision-making procedures, such societies fail to meet the demands of liberal justice within the state.[22] As a consequence, full equality of citizens regardless of gender and religion would not be guaranteed under the law of peoples, because it contains a more limited human rights protection mechanism.

Moreover, rights such as the freedom of expression and the freedom to participate in the governance of one's own country "directly or through freely chosen representatives" (Rawls [1999], p. 114), set out in Articles 19 through 21 of the *Universal Declaration of Human Rights*, are absent from Rawls' list of basic rights. Of course, some peoples do not have to be democratic, but their political structures could still be seen as worth preserving. At this point, the question Rawls must answer is: why should liberal societies classify decent peoples as well-ordered societies and

[22] Judging non-liberal peoples to be unjust would have negative consequences for their self-respect. Thus, we should be against a cosmopolitan law of peoples and opt for its minimal Rawlsian version. Rawls also rejects the strong cosmopolitan perspective, because he believes that a cosmopolitan law of peoples would require a world government. Rawls claims that "a world government would be either an oppressive global despotism or a fragile empire torn by frequent civil wars, as separate regions and cultures tried to win their political autonomy. A just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political (domestic) regime" (Rawls [2001], p. 13).

diminish their own standards of human rights? They could help decent peoples without retreating from a domestic standard of human rights. However, Rawls softens his own moral standards because representatives of decent societies would not agree to democratic participation, as a norm of global justice, being applied worldwide, since their societies do not protect these rights and do not wish to do so. Thus, a possible criticism of Rawls's theory arises. We have cosmopolitans (Pogge, Beitz) who wish to make *A Theory of Justice* and *The Law of Peoples* more coherent, claiming that Rawls is not consistent in using and applying his own method of original position, which, according to them, causes his difference principle not to work at the international level (Beitz [2009], Pogge [2008]). They also claim that the Rawlsian solution treats human rights instrumentally and underdetermines human rights standards, because we do not know which of them (the narrow domestic scope or broad international scope) should be protected. Furthermore, Rawls distinguishes between "human rights", on the one hand, and "constitutional rights" or "the rights of liberal democratic citizenship", on the other (Rawls [1999], pp. 79–80). Nevertheless, he does not define the criteria for this division, which means that we do not know on what basis some rights are classified as human and others as civil. This vague distinction serves as a marker that indicates which peoples are well-ordered and which are not and, thus, plays a key role in determining which peoples liberal societies should tolerate. At the same time, disrespect for human rights justifies military intervention against outlaw states. So even Rawls' theory cannot avoid tension between the moral description of human rights and their legal and political implementation. However, Rawls also demonstrates that the necessity and possibility of a weak protection of human rights exists, without political security through citizenship and without some form of constitutionalization of international law (Habermas) or politicization of international institutions (Held).

4.4. Nussbaum's Theory of Capabilities[23]

Nussbaum is a representative of moral cosmopolitanism, as opposed to the above-presented representatives of institutional cosmopolitanism (Habermas, Held) and of moderate liberal cosmopolitanism (Rawls). Like these authors, Nussbaum draws inspiration for her works from Kant, but even much more from Aristotle and the Stoics. It is important from the perspective of this book to attempt to go beyond the human rights discourse for the sake of the values that human rights carry. This will allow us, in the conclusion of this chapter, to present the model of global citizenship to which, in various forms, most idealists refer, placing on it high hopes for the avoidance of wars and the harmonization of international relations. Nussbaum bases her approach on two basic assumptions, namely the belief that people recognize each other as human beings, and that, fundamentally, they are capable of defining the conditions for human existence without which human life could not exist. These two assumptions, according to her, make it possible to achieve a universal consensus concerning basic capabilities. Nussbaum, following in the footsteps of Aristotle, divides human capabilities into two levels: the first refers to the world of biological necessity and, therefore, to the needs that serve the maintenance of biological life, while the second refers to human capabilities, related to the issue of the good life.

Here is a list of basic human capabilities, as Nussbaum formulates them:

1. Being able to live to the end of a complete human life, as far as is possible; not dying prematurely, or before one's life is so reduced as to be not worth living.

[23] The following section has been developed partly based on a chapter from M. Gawin's doctoral thesis titled *Nowoczesny paradygmat filozofii polityki a prawa człowieka* [*The Modern Paradigm of Political Philosophy and Human Rights*], pp. 188–209.

2. Being able to have good health; to be adequately nourished; to have adequate shelter; having opportunities for sexual satisfaction; being able to move from place to place.
3. Being able to avoid unnecessary and non-beneficial pain and to have pleasurable experiences.
4. Being able to use the five senses; being able to imagine, to think, and to reason.
5. Being able to have attachments to things and persons outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to feel longing and gratitude.
6. Being able to form a concept of good and to engage in critical reflection about the planning of one's own life.
7. Being able to live for and with others, to recognize and show concern for other human beings, to engage in various forms of familial and social interactions.
8. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. Being able to laugh, to play, to enjoy recreational activities.
10. Being able to live one's own life and nobody else's; being able to live one's own life in one's very own surroundings and context (Nussbaum [1992], p. 222).[24]

[24] Nussbaum calls her theory a "thick vague theory of the good". This title has been used by Nussbaum in order to, first, emphasize her normative position and, second, however, to indicate her polemics with Rawls, who is the author of the "thin theory of the good". In it, Rawls defines a static list of "primary goods", which constitute the basis of all other, broader theories of good, which are the subject of negotiations in the "original position". In contrast with this model, Nussbaum defines her theory of good as being *thick*, as, she claims, "my Aristotelian conception is concerned with *ends* and with the overall shape and content of the human form of life" (Nussbaum [1992], p. 215). At the same time, this theory is of "undefined thickness", as it is based on broad and open studies and discussions. The list of fundamental needs and capabilities which she proposes is open to modification.

From the above list of human needs and capabilities, Nussbaum draws practical conclusions of a political nature. She first presents a set of general human entitlements, closely related to the presented list. These entitlements constitute the actual core of her model of justice, which represents a distinct change in comparison with the contractarian model (such as the Rawlsian one). A contractarian model is based on defined procedures. There is the "entrance", which is the original position, the procedure (choice of rights), and the "exit" in the form of principles of political justice. Nussbaum, however, presents a set of inviolable human capabilities, making the application of certain policies obligatory, in order to efficiently assure the protection of these capabilities. What policies these will be is a matter of selecting the appropriate means. In any case, they are not subject to modification under any procedure. Furthermore, they include all people in the scope of their normativity, regardless of age, level of intelligence, or physical abilities. Also, they are of a moral and political nature, as they define the obligations people have to one another, including those concerning political relations. Nussbaum connects these to the concept of justice, as they establish a general framework for the state's normativity.

Nussbaum's model can be treated as one of the many theories concerning human rights, as Freeman does in his work on the subject of human rights (Freeman [2004]). What these rights and Nussbaum's project have in common is the way the normative foundations of states and societies are described as being based on certain inherent and inviolable human entitlements. Moreover, the fact that in both cases the question of the method of implementation of human rights and freedoms is, to some degree, a secondary issue, in the sense that different types of state policies that could serve this purpose can be imagined, also makes Nussbaum's perspective akin to that of human rights doctrine. However, we notice differences in the content of the rights in the *Universal Declaration of Human Rights* and the rights resulting from Nussbaum's model.

The list of rights contained in the *Declaration* is broader, more concrete, and couched in legal terms. On the other hand, Nussbaum's capabilities have a decidedly much more general character and are of a descriptive nature. However, despite the apparent differences between them, these two sets of rights are complementary. This is because it is possible to infer all human rights from the above-listed capabilities. Furthermore, this theory is more holistic by nature, meaning that it evolves from certain methodological and normative assumptions, forming a comprehensive set of human capabilities in order to then present certain propositions for their implementation on the global level.

The theory developed by Nussbaum can serve as a justification for human rights. It maintains the universal character of human rights and includes representatives of other cultures in its considerations concerning the foundations (including normative) of human existence. Moreover, it does not include any reference to religion, which means it is potentially acceptable by all, regardless of creed. In this sense, this theory, as an ethical theory, not only legitimizes human rights and the worldwide obligations resulting from them, but can also be understood as promoting behavior which fits within the scope of global citizenship.

Nussbaum develops the idea of a world order that would create a chance to alleviate poverty, as well as social and economic inequality, around the world. She criticizes the fundamental assumptions of the contractarian theory, which leads her to definitively reject this way of thinking about the political order in favor of a theory that radically redefines the political and the nature of obligations people have to one another and to political actors. The main assumption she criticizes concerns the idea that a contract is drawn up by and between parties that are mutually equal. This assumption is especially difficult to accept when applied at the level of transnational relations, as it makes it difficult to provide a real diagnosis of the world around us, together with appropriate corrective measures. As she writes:

> The assumption of the fixity and finality of states makes the second-stage bargain assume a very thin and restricted form, precluding any serious consideration of economic redistribution from richer to poorer nations. Indeed, Rawls waves that problem away from the start by his contractarian assumption of a rough equality between the parties: no one is supposed to be able to dominate the others. Of course, in our world, these conditions are not fulfilled: one probably can dominate all the others. (...) To assume a rough equality between parties is to assume something so grossly false of the world as to make the resulting theory unable to address the world's most urgent problems (Nussbaum [2002], pp. 462–463).

According to her, the assumption of initial equality between the states entering into an agreement is unrealistic. This scheme lacks a satisfying solution to the problem that state sovereignty is not rooted in the will of the people. As many states operate without legitimization from their citizens, these states would, de facto, be excluded from the contract-making process. Furthermore, Nussbaum criticizes Rawls' proposed scheme for lacking room to give real help to societies if they wanted to overthrow authoritarian regimes. In *The Law of Peoples*, although the contents of global principles of cooperation are defined by people, the proposed global politics specifically relates to the actions of states, and not societies, non-governmental organizations, corporations, or private individuals. In this, Nussbaum's approach is closer to that of Habermas than that of Rawls.

Another problem with Rawls' model is, in her opinion, the wrong answer the model gives to such issues as hunger or political violence, because according to it, the expansion of a liberal democratic state model to a global scale, or at least to a substantial part of the globe, is sufficient to make many of the current pressing political problems just disappear. At the same time, "[a]bsent from his list, however, is one of the greatest causes of immigration: economic inequality—along with malnutrition, ill health, and lack of education, which so often accompany poverty" (Nussbaum [2002], p. 463). We can, therefore, see that with the help of a general

assumption concerning the promotion of a certain type of political system, Rawls "solves" some of the pressing problems of our times, while other just as important issues are simply ignored—he does not include them in the scope of his global idea of justice. The author of *Political Liberalism*, referring to the problem of economic inequality between states, assumes that they are a result of their political culture, e.g. their being unfavorable to getting rich, and completely sidesteps the issue of the influence that the global free market has on the creation of these inequalities.

The last important criticism made by Nussbaum concerning Rawls' theory is that, having noticed the importance of promoting human rights, he limits them to only the most fundamental human entitlements. The remaining human rights—namely the second and third categories of rights (according to our division, see Chapter I)—are not reflected in the content of the law of peoples. Due to this, the issue of (economic) justice is not undertaken adequately either—it is, in fact, not dealt with at all.

By questioning the model of supranational relations proposed by Rawls, Nussbaum recommends that changes be made to it, based on the theory of capabilities that she has developed. Her approach to the arena of global relations entails the primacy of individual capabilities over state and national entitlements. At the same time, this theory suggests that, basically, we all have a duty to promote respect for human rights. However, this broad normative duty does not mean that every human being is obliged to get engaged in the process, if this were to limit the possibility of him/her achieving personal fulfillment. The relevance of this argument is particularly evident when taking into consideration that we are speaking here of global phenomena. While it is possible, and even necessary, to require citizens to get involved in the problems occurring in their own country, it is difficult to expect them to get directly involved in helping people on the other side of the world. Furthermore, some global problems require collective, well-organized action, which can only be undertaken by institutions. Because of

this, in her theory, Nussbaum emphasizes the important role of the different types of institutions which should take these duties upon themselves. In this respect, she is not so different from the representatives of the statist theory (Rawls) or the liberal nationalist theory (Miller). In other words, from the perspective of communitarian or realist theories of international justice, international institutions also have definite duties to help, although they are usually secondary to state duties.[25] In principle, the whole discussion here concerns the prioritization of obligations. Do we, in the name of human rights, have the duty to help non-citizens before citizens, or do we first, in the name of citizens' rights, have the duty to help our fellow citizens? Rawls would rather support the second solution, whereas Nussbaum the first. Held's and Habermas' theories, on the other hand, seek to legitimize these duties (towards both citizens and non-citizens) so as to show that they complement each other, rather than clash with each other.

The theory of global justice that emerges from Nussbaum's perspective is based on both the recognition of the necessity of guaranteeing all human beings the fulfillment of their basic needs and the possibility of realizing their potential. Every agent operating in the national and supranational arenas is obligated to guarantee people fulfillment of their needs and development of their capabilities. Justice can be measured by the degree of implementation of the defined goals. Even though Nussbaum does not present a full vision of a world order, she does define a set of principles which, according to her, should govern global order.

1. Referring to the term *overdetermination*, the roots of which reach into Freud's psychoanalysis, Nussbaum expresses the opinion that various phenomena on a global level can have many causes, therefore, making it difficult to precisely reconstruct the reasons for the occurrence of a given phenomenon. Because of this, it is not

[25] In Rawls' theory, it is a duty to assist the countries that he calls "burden societies".

possible to fully control the course of events on the global level. This certainly does not mean removing the weight of *responsibility* from global political actors. On the contrary, states and nations should especially care for global justice, but to such an extent that they can influence it. In other words, every political agent should do everything they can—e.g. for the reduction of global economic inequality—in the hope that the joint effort of all nations will bring the desired results.

2. The *global market* should work in a just way and should be favorable to poor and developing countries. A free market does not have to be a neutral arena for the exchange of goods. Nussbaum, based on the conviction shared by many economists (e.g. Stiglitz), claims that the global market and global financial institutions themselves contribute to the increasing inequality between nations. Therefore, she calls for the modification of world market structures so that they do not favor the stronger players at the expense of the weaker ones, but rather aim to support poor and developing countries in this global game.

3. *Supranational corporations* have *the duty* to promote peoples' capabilities in areas where they operate. Nussbaum argues that, "The new global order must have a clear public understanding that part of doing business decently in a region is to devote a substantial amount of one's profits to promoting education and good environmental conditions" (Nussbaum [2002], p. 479). Therefore, corporations should not only be set on making profits, but rather, while making them, take responsibility for the place and the environment (people and nature) in which they operate, including through active promotion of moral models of economic activity.

4. Nussbaum also proposes that there be certain *basic institutions of global governance*, such as: an international criminal court, which would deal with cases of human rights violations; institutions for the protection of the natural environment; institutions that would collect and redistribute taxes to benefit poor and developing

countries; a set of regulations outlining the way that the world market should function, which would support the normative dimension of the exchange of goods; institutions that would aim to satisfy basic human needs and capabilities; a set of standards concerning labor rights, including sanctions for their violation; as well as a set of international treaties which would gradually be incorporated into the jurisdiction of individual states.

5. All people and institutions have duty to support *education*, which is essential when it comes to eliminating the problems of those who are less fortunate. Nussbaum claims that "Education is the key to all human capabilities" (Nussbaum [2002], p. 481). Not only the governments of states, but also corporations, non-governmental organizations, and private individuals should be actively involved in the process of public education.

6. *All institutions and individuals* should give heed to the problems of the less fortunate (the sick, elderly, and disabled) in given countries and regions. Discriminated-against individuals and groups, both social and economic, can be found in a wide range of countries, even in the developed world. All world citizens and all institutions should consider it their duty to come to their aid.

Nussbaum's theory, nevertheless, is not free from difficulties and internal tensions. Above all, the relationship between the theory of fundamental human capabilities and human rights, which are, after all, an actual set of entitlements, is not entirely clear. But certainly, her vision does not at any point contradict the *Universal Declaration of Human Rights* and can be treated as an interpretation and justification of human rights.

There is also another problem with her theory. Nussbaum assumes that every human being can make rational decisions concerning his/her own life. Due to this, the development of critical thinking and the guaranteeing of conditions for personal development become values. The basis is the human being, who happens to live in a certain community and who, even though he/she has certain obligations towards this community, also has a cosmopolitan

awareness. Therefore, there is a kind of citizen responsibility for the world as a whole. This vision is strongly essentialist. One of the criticisms it faces is that it fails to prove that the individual's development of a cosmopolitan sensitivity is a value rather than, for example, being subordinate to tradition and the community. Moreover, it is possible to question the description of a human being, who, in the normative order, precedes the community. The problem of whether the individual should be recognized as the basic element of the state and the global order, or whether the identity and significance of the individual are secondary to the community, is a problem which is still widely debated.[26]

5. Human Rights and Global Citizenship

We will now present the theory of world citizenship, to which all the authors mentioned above, except for Rawls, refer to a greater or lesser degree. Idealists see cosmopolitan awareness, the recognition of human rights, and acting to promote them, as fundamental conditions for overcoming the state-centric perspective and for the propagation of more harmonious relations between peoples and states on a global scale. In order to better understand the idea of global citizenship, we will discuss the characteristic features of this concept (5.1) and show how, according to idealists, it goes beyond the Westphalian system (5.2).

5.1. Global Citizenship

We have already talked about global citizenship in the context of cosmopolitan history at the beginning of this chapter. We now want to show how contemporary idealist theories draw on

[26] For more on the criticism of Nussbaum's theory and the polemic with Rawls's conception, see Miklaszewska [2015], pp. 78–106.

the thoughts of the Stoics in order to develop the idea of a world citizen today. According to the Stoics, people belong to two orders—the order of a given political community (*polis*) and the order of the world (*cosmos*). The Stoic idea assumes a specific relationship between man and the universe. This is a natural, pre-cultural relationship, constituting the basis for the bonds between people. The Stoics regarded identities built on given political communities as artificial and established by human will. Furthermore, according to them, since being born into a given political community was contingent, birth did not influence the definition of human nature. Such an understanding of citizenship, as exterritorial citizenship of the world, finds followers even today. Although currently global citizenship can be expressed in different forms, such as global civil society, the core of global citizenship remains the same—it is based on moral obligations related to natural law, human rights, Kant's idea of dignity, or some other universal ethics.

These ancient assumptions, which are the foundation of modern thinking about global citizenship, need to be supplemented by a declaration of being open to contact with others and of being open to different cultural experiences (Waldron [2000], p. 227). The possible distance from one's own locality associated with this approach allows for critical thought concerning one's own culture and for comparing the values of various cultures. This self-criticism becomes a feature of global citizenship, which, in practice, not only exists as a sensitivity, restraining one from hurting others, but also as a reminder to be careful not to impose one's own values on other cultures (Rorty [1998], pp. 167–185). Adherents of global citizenship, therefore, aim to promote an attitude of openness (based on a defined set of values such as human rights), but, at the same time, do not want to impose one model on the whole world. They treat citizenship metaphorically as "dwelling in" the world. This moral cosmopolitanism could, in practice, take the form of either positive toleration or universal hospitality (Wonicki [2012], pp. 165–178).

On the one hand, therefore, in the global citizenship approach, there is room for pluralism and tolerance of diverse social and political practices, as well as for dialogue serving to solve problems that are impossible to solve on the local level, e.g. armed conflicts, global terrorism, and environmental problems, the solving of which, through practical cooperation, would not only be justified by particular interests, but also by commonly shared values (Appiah [2006]). On the other hand, global citizenship understood this way aims to curtail activities that most of the Western world considers inadmissible, such as mass murder or genocide based on race or religion, even if justified in the minds of the perpetrators by the most noble of moral motives. Global citizens, as citizens of both the world and of states, want to legally define the principles for the protection of people as people. In particular, they refer to human rights as the least controversial and most acceptable legal and moral method of protecting people.

At the same time, in order for people to become global citizens, they themselves must first recognize and accept the obligations entailed by such citizenship. To do this, it is necessary to awaken one's "cosmopolitan awareness"—the awareness of being part of the human community. The problem is that, for many authors, citizenship is not possible outside of a political community, due to the political and legal understanding of the notion. However, without a moral community, there is no ideological or moral identification, which causes the concept of global citizenship to either necessitate a world state, or to mislead us by using a name that refers to some part of politics to describe an area of moral relations. Alasdair MacIntyre and other communitarians claim, for example, that global citizens are deprived of roots, as only certain communal practices can provide us, as citizens, with an identity. In reality, we are not global citizens as long as citizenship is restricted to membership in a political community. An argument opposing the above belief states that by accepting global citizenship we will not be left without roots unless we renounce other levels on the basis of which we

construct our community identity. Such sacrifices, however, are not mandatory when accepting global citizenship.

Another argument claims that critics of global citizenship, who assign individuals a national or state identity, are themselves making a mistake. This is because current political communities are too wide for individuals to be able to realistically identify with their fellow citizens. They would rather build their attachments based on their engagement in smaller organizations and communities which are a part of this political community, and their identification depends, as stated by Benedict Anderson, on their awareness of being part of the imagined community. A similar thing also happens in the case of global citizenship. Most global activities are in a large part manifested through participation in local groups and organizations dedicated to certain issues. These initiatives of local groups are usually of a global nature, as they point to problems that cannot be solved on a national level (Dower [2002], pp. 146–149). Every person who considers himself or herself a global citizen has a vision of moral human obligations towards others and towards the world. They accept their obligations to people all over the world, such as helping to alleviate poverty, working for international peace, supporting anti-violence organizations, and acting to decrease global warming. People who participate in all these domains are global citizens inasmuch as they have a concept of what is good for the world and act accordingly, as well as encourage others to do the same. However, groups that engage in such activities differ from one another as to the acceptable means of action.

All global citizens, therefore, have some set of moral values that they consider to be of the greatest importance and which, in their opinion, should be promoted, but some of these values may differ, even to the extent that mutual agreement will not be possible, as in the case of adherents of neoliberalism versus adherents of the welfare state. However, as Nigel Dower demonstrates, for most idealists, the moral foundation of global citizenship is based on recognition of a certain set of common values. This is because,

according to him, all these global ethics must contain some common elements which would allow for the creation and acceptance of a set of rules for one global ethical system. In Dower's opinion, this common part is built up of the following elements:

1. Global responsibility—the feeling that one wishes to act with respect for human rights for the good of the global community;
2. Loyalty towards the local community—loyalty to specific values of the community we live in. This is significant, as the activities undertaken by societies are often of global significance;
3. Acknowledgment of the equal moral status of all human beings—having obligations towards others, which we can express in terms such as: do not kill, do not steal, treat others justly (Dower [2002], pp. 149–152).

5.2. Global Citizenship and the Westphalian System

The idea of global citizenship[27] presented above undermines the existing order, which is based on a nationalistic paradigm.[28] Thus, on the one hand, in opposition to this paradigm, we have a concept of global citizenship that rejects the definitions of nation, state, sovereignty, and democracy that function within its framework. In this new global perspective, sovereignty, which until now has been understood as the *economic and political independence of states*, means that each state will play a more limited role in controlling these matters.

Global citizenship, in its institutional dimension, also means promotion of active political rights, such as voting and democratic control in the supranational sphere, as is taking place in the European Union. Democratic control and participation, therefore, are

[27] The idea of global citizenship often goes beyond human rights and encompasses calls for common supranational actions as well, e.g. in the name of environmental protection.

[28] For more on this type of order, see Chapter II of this monograph.

seen by idealists as the methods that best protect human rights—that is why democracy is recommended as the best regime for states in the global order (Held, Nussbaum). Although it assumes a pluralism of world views, and, therefore, also a pluralism concerning the choice of regime, the idea of global citizenship, by granting the right to choose political representatives and to control them, supports democratic mechanisms in the supranational dimension. Thus, the notion of democracy in the context of global citizenship is described as a legitimization mechanism which does not require the existence of a *demos* as the basis for its identity.

On the other hand, the interpretation of the terms *nation* and *state* by opponents of the Westphalian system draw attention to the fact that they are related to the narrow interests of an ethnic, historical, and cultural group, united by kinship, language, and religion. The resulting territorial limitations serve as a justification for restricting the rights of people from outside this group. In order to avoid referring to national interests which would impede the building of global integration, cooperation, and the achievement of global objectives, idealists claim that global citizenship must be based on categories other than those which the territorial state is based on—these categories are usually the protection of people, the natural environment, the alleviation of poverty, and the reduction of wars.

The proposal for global citizenship requires, therefore, a commonly shared moral foundation. This is why idealists, such as Nussbaum and Dower, present theories of global ethics, defending a defined set of rights and duties, valid for the whole world. The moral community they propose is founded on the responsibility of humanity for the world and on a pluralistic solidarity. Thus understood, the idea of global citizenship based on human rights is related to considerations concerning the international system and its shape. Therefore, not only the moral aspect, which aims to convince us that a given set of values and norms is essential for coexistence in a globalized world, emerges in this discourse, but

also the legal and institutional perspective, which shows the possibilities of protecting these values on a global scale. Some authors, like Andreas Follesdal, have even called for the institutionalization of global citizenship, since we are already facing the dissolution of borders between states due to the transnational economy. More and more frequently, our decisions affect people living outside the borders of our state, which necessitates that supranational solutions be under the democratic control of citizens from all over the world (Follesdal [2002], pp. 73–80). Global citizenship, therefore, requires legal and procedural mechanisms which enable the protection of people in order to efficiently fulfill its protective function, but it encounters an obstacle in the form of cultural pluralism.

Theories favoring global citizenship fall under the cosmopolitan and idealist visions of politics. They postulate universal moral foundations common to all, to be followed by universal legislative solutions, obligatory for all and in force everywhere. At the same time, they proclaim a pluralism of world views, the freedom of opinion and belief, treating all positions as coequal and all people as coequal moral agents in the ethical, political, and economic spheres. Idealists combine human rights with the language of civil rights and the assumption of supranational obligations. In this way, there is often talk of global or world citizenship based on human rights. These rights are understood as fundamental rules of coexistence that can be recognized as universal moral principles to be incorporated into a body of positive laws.

The most important issue that idealists must solve concerns the question of the sense in which it is possible to speak of global citizens, and whether it is somehow fundamentally different from acknowledging the entitlements of human beings as such. At first glance, the difference is significant. In the case of human rights, we reach back to the pre-political and pre-universal order. It is not without reason that human rights are often compared with natural rights, or, in the case of the Christian perspective, with natural law. On the other hand, the concept of citizenship is associated with

a strictly political order, where we deal with rights and obligations within the framework of a given political community. However, by design, cosmopolitanism transcends state borders. Due to this, the concept of citizenship in this context takes on a global significance.

6. The Internal Tensions within the Idealist Theory

From the idealist theories presented above, it is possible to extract a few common points that indicate important and difficult tensions that need to be overcome within this approach to international relations. The fundamental problem is the assumption that a given set of moral norms (usually human rights), and the legal norms based on them, can be shared by all parties on a global scale. Thus, idealists not only idealize the given moral norms as universally obligatory, but also tear them apart from their cultural and geographical context, stretching them over the whole world. However, this is difficult (if not to say impossible), as values and legal norms are always formed culturally, socially, or politically. Furthermore, the latter are conventions that have the effect of norm creation only within defined metaphysical, symbolic, and practical contexts.

Another tension within the idealist theories that we have discussed in this chapter is based on the description of the cosmopolitan perspective as being politically neutral, or simply as being a post-political mechanism of global governance in times of globalization (Held). Such a technical approach is confusing, as the proposed solutions are political—they have political consequences in the form of changes to international law or changes in the understanding of state sovereignty. This tension reveals itself as a discrepancy between the post-political idealist perspective and its political consequences. Of course, idealists are sensitive to the democratic dimension of the legitimization of power, and, therefore, do not call for a world state, but at most, a federation (Held) or the constitutionalization of international law (Habermas), or even a minimum

set of human rights in international law to be respected by all (Rawls). However, they fail to notice that the possible hegemonic dimension of their project lies precisely in its universalization.

A further tension appears between state citizens and global citizens. The shift from the notion of state citizenship to global citizenship is not clear if, simultaneously, the idea of a world state is rejected. Global citizenship is a moral idea of specific behavior which assumes acceptance of these same norms for its evaluation. It is a moral and a political idea because the moral consequences concealed in this notion and tied to the classical Greek understanding of world citizenship as a basis for rejecting the particularity of the *polis* are often neglected by modern political idealists. This occurs because they are looking for new methods of supranational citizen participation in the process of making political decisions.

Often, representatives of this approach also call for the creation of a global cosmopolitan community which would be liberal and democratic and which would, through various types of mechanisms, harmonize decision-making on various levels—from local to global. This approach once again faces serious difficulties and tensions. This is because the following issues still need to be tackled: Who would decide which states were democratic? What should be done with non-democratic and non-liberal states? How can the tensions which inevitably arise between the local (state) and the global (supranational) levels be resolved? Idealists do not provide problem-free and obvious answers. At the same time, the solutions they offer on the legal or institutional levels are often inconsistent. In the next chapter we will, therefore, examine the proposals offered by realists and idealists from the philosophical perspective, looking for answers concerning their origin and trying to find out to what extent they can be neutralized.

Chapter IV

Human and Civil Rights as the Philosophical Context of the Process of Globalization

The use of "human and civil rights" as the basis of practical domestic and international politics, as we have attempted to demonstrate, gives rise to many controversies and results in various theoretical attempts to overcome them. However, it should be borne in mind that the present form of these policies has been defined by the very acceptance of the norms entailed by "human and civil rights" as the basis for political action on various levels. Furthermore, the philosophical assumptions they comprise have greatly contributed to the development of a new form of political thinking, which is modern globalization. However, as the *Universal Declaration of Human Rights* does not represent coherent and homogeneous philosophical assumptions, both its supporters and opponents can refer to its content. Regardless of whether it is viewed as heralding a new world order or as a threat, the process of globalization is analyzed and described using a range of categories from different perspectives and versions of human rights.

The category of space can most certainly be considered the most philosophically significant feature of the modern process of globalization. Emphasis is placed, above all, on the cognitive dissonance that globalization leads to by violating the existing experience of space, by causing its compression and densification.

There are constant attempts to explain and understand the new perception related to this experience, which would enable one to understand what social and political consequences might result from acting within a reflectively organized (and, therefore, increasingly virtual) post-traditional world in which power is shifting towards depersonalized regulations and procedures. It is for this reason that we propose to supplement the discussion concerning the significance of "human and civil rights" in a globalized world with an analysis of their spatial dimension, which we treat as an opportunity to reveal their modern philosophical dimension.

This relationship cannot be revealed and analyzed if only different concepts of natural law are taken into account as the philosophical foundations of human and civil rights. In order to reveal it, it is necessary to discover the political significance of the human experience of space, which, among other things, involves making use of the perspective developed within the framework of existential and phenomenological philosophy. As we have assumed that human and civil rights constitute the foundations of modern political reality, their spatial dimension must also define the modern political space.

On the other hand, globalizational interdependence is causing the fading of political borders within which human and civil rights can be effectively implemented. Therefore, not only are human rights undergoing centralization in states, but also civil rights are being extended across state borders. Furthermore the notion of "human" refers to the enlightened moral concept that people, because of their most essential features, should be treated with due dignity. However, humanity can only be understood that way within a defined metaphysical and ethical doctrine. Looking from the perspective of the natural sciences and biology, being human means belonging to one of the many species inhabiting the Earth, which does not allow the foundation of any kind of normative theory related to human rights.

Let us, therefore, attempt to analyze these two issues (the spatial and biological dimensions of globalization) by considering the following topics in the context of human and civil rights: (1) the relationship of human and civil rights to space and place; (2) the role of borders, including the role of state borders, in the protection of human and civil rights in a globalized world; (3) the changes in the understanding of political space in the context of the legitimization of biologically and axiologically understood human rights; and (4) the changing relationship between sovereignty and human rights.

1. The Category of Space and Human and Civil Rights

In all the legal documents setting out human and civil rights, human rights are placed first and precede civil rights.[1] Already, just by referring to "every human being", therefore to man as a species, these rights seem to be rooted in nature and to refer to natural laws. This is because human rights are considered to be fundamental and universal, whereas civil rights, from this perspective, seem merely a variation on them, located in a certain time and place. In this perspective, spatial conditioning is generally treated as important only for civil rights, as they are tied to the geographical location of a given state, its regime, and its laws. However, it is worth noting that human rights do not function outside space either. We will attempt to demonstrate this with reference to various phrases formulated in the *Universal Declaration of Human Rights*.

[1] See Chapter I for more on the genesis and history of subsequent versions of human and civil rights.

1.1. Space as a Place

When considering how to define the spatial dimension of human rights, it is especially worth paying attention to the second article of the UDHR, in which we read:

> no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs [underlining B.M.[2]], whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (UDHR).

At this point, we are not interested in the declarative part of the first paragraph of this article, which affirms the egalitarian nature of human rights. In the article quoted above, an important indication can be found concerning the relationship between human beings (people) and places (territories) as it has been envisaged in this document. In the underlined phrase above, there is mention of a person "belonging" to a "country or territory". The word "belonging" has two basic dictionary definitions. The first commonly used definition expresses the relations between a person and an organization, institution, community, or association—in other words, "being a member". In this sense, *belonging* is a type of subjective relationship—it is a way of creating ties between different people within the framework of a given institution. This also concerns belonging to a state or nation. However, in the quoted fragment of the second article of the UDHR, people are attached neither to an institution nor to other persons, but to a territory or country. In this way, the second definition of belonging comes to the fore, with its legal meaning referring to "appurtenances", i.e. to the movables that are not elements of other things, but are "needed to make use of another thing (the principal thing) in accordance with its purpose, if they have an actual connection

[2] B. M.—Barbara Markiewicz.

with it corresponding to that purpose" (*Kodeks cywilny. The Civil Code* [2011], Art. 51 §1).[3]

It can, therefore, be presumed that the country/territory—a given place—defines the belonging of a given person, which is necessary if one wants to make use of human rights, regardless of the legal structure or political system which exists in that place, or its present political situation. Thus, it seems, from the perspective of the UDHR, that every human being is related to a place on Earth, and it is precisely this attachment to that place which is the primary and necessary condition of their rights, and not, as is usually believed, being a member of a state.

However, the spatial localization of "human rights" has posed numerous difficulties since the time they were articulated and declared. We thus come across an issue that constitutes a fundamental paradox of the historically formed construction of human and civil rights, and is primarily associated with the possibility of asserting human rights which require some kind of application and embodiment, as it were, within the statutory law being in force in a given area (territory).

Let us have a look at what could form the basis of this attachment between humans and a place in space, as well as at its philosophical significance. In Kant's philosophical thinking about space, it is primarily described as a concept of cognition. In accordance

[3] According to the Polish Civil Code:

Art. 51 §1. Appurtenances are movables needed to make use of another thing (the principal thing) in accordance with its purpose, if they have an actual connection with it corresponding to that purpose.

§ 2. A thing which does not belong to the owner of the principal thing cannot be an appurtenance.

§ 3. An appurtenance does not lose its character by being temporarily deprived of the actual connection with the principal thing.

Art. 52. A legal act whose object is the principal thing also has legal effects on the appurtenance unless it follows otherwise from the substance of the legal act or from specific regulations.

See The Civil Code of 23 April 1964, J. L., no. 16, item 93 as amended (*Kodeks cywilny. The Civil Code* [2011]).

with this, space itself, as a condition of all experience, cannot be perceived and, therefore, cannot really be known. Although we know its geometrical model, it is not itself an object of experience, as it is something which is imagined. However, in the fragment of the UDHR being analyzed by us, the indicated relationship of a person to space, namely, his/her status of belonging, does not fall within the realm of cognition—unless it concerns "getting to know oneself", i.e. the problem of identity. Yet even in this case we are dealing with a certain kind of experience that goes beyond the rational cognitive act and comes closer to "having experiences". We may still speak of experience here, as the notion has been stretched by modern philosophy to encompass other areas, including the area of being as it is understood by existentialists.

According to adherents of existentialism, the experience of space is, above all, an experience of being somewhere, in some place. This is an experience which Heidegger includes in the form of human existence itself, understood as *Da-sein* (being-here). This finally brought him to the conclusion that a human being becomes human because of his/her specific place in space (Heidegger [1993], p. 356). Heidegger states that our Being is always rooted somewhere and has a spatial structure. Space, in reference to human beings, is not something abstract, something which is "on the other side". Neither is it, as Heidegger claims, an external object or an internal experience. Men are one with the space within which they move, which they traverse and, above all, inhabit.[4] It is through the space, or rather the place, that a man inhabits, that his being gains

[4] Proof of this association may be provided by one of the first attempts to determine the meaning of the verb "to be" [Pl. *być*] by Jakub Parkoszowic of Żórawice, the creator of Polish orthography, who characterized it unequivocally in the following way: "*Bith id est habitatio*" (to be is to inhabit, to reside somewhere permanently). These two aspects of existence mentioned above—being and possessing—will be distinguished from each other much later on, and thanks to twentieth-century personalists (Marcel) and Marxists (Fromm), they take on the form of a challenge: "to be or to have?".

significance: becomes tangible and real. This tangibility and realness of being is realized mainly by one specific place in space, the boundaries of which are defined by our corporality. As Kant has written, it is precisely in the spatial context that we become particularly aware of our own corporality. As Merleau-Ponty puts it, "I am not in space and time, nor do I conceive space and time; I belong to them, my body combines with them and includes them" (Merleau-Ponty [2005], p. 162). Similarly to Heidegger, he is also convinced that space and time are not given to us as external objects and cannot be sensibly considered in isolation from human beings. Merleau-Ponty describes the experience related to objective space, in which our bodies always occupy some place, as follows:

> far from my body's being for me no more than a fragment of space, there would be no space at all for me if I had no body (Merleau-Ponty [2005], p. 117).

On the basis of this "original space", which fills our bodies, men are embedded in space, causing them, as Heidegger stated, to become capable of dwelling and building within it. At the same time, the space they inhabit becomes rebuilt; men transform it into an abode or residence, farmland, a town, and finally a political space. The human capability of transforming a given place on Earth, of building over it, means that men are capable of giving visible shape to the place they inhabit, of making it tangible, of making it a phenomenon, and only then, as Hannah Arendt points out, can it become the subject of cognition. This does not, however, concern only the way people shape their houses or towns.

Building over space also takes on the form of a given order, an order which builds interpersonal space. Meanwhile, space, considered as an experience of an individual being, i.e. from the existentialist perspective, takes on the significance of a common experience. From the subjective relations resulting from awareness of the place and of the boundaries between the inside and outside of our bodies, the awareness of a common space arises, regulated

by categories of closeness and distance. It is on these categories that the institutions that are built in this space, such as family and various forms of communities, especially including the political community, are based. It is just such a notional structure of space that allows it to be assimilated and causes people to treat a given place as their own, to feel at home in it.[5]

Hegel has described the nature of this process well—the development of a given place on Earth into one's own. He appreciates it, recognizing this transformation as a special characteristic of European culture from its beginnings, that is, tracing it back to Greek culture. According to him, the Greeks made their place of habitation their homeland by describing it in general categories, constructing it conceptually (Hegel [2001], p. 243).[6] The precondition for this, as Hegel demonstrates, was the unique way the Greeks referred to their land, to nature: they would find themselves in it. According to Hegel, they described their relationship with nature as ideas and transformed them into "representations", which in turn became the basis of their understanding of freedom. In this way, they were able to free themselves, he claims, from direct dependence on nature. Hegel seeks testimony of this departure from nature, which he treats as a victory over the natural, tribal way of understanding one's own community, in myths (e.g. the myth about the Sphinx). The Greek spirit, as Hegel writes "appears in the sensuous, actual world, as Incarnate Spirit and Spiritualized Sense—in a Unity which owed its origin to Spirit" (Hegel [2001], p. 243).

It was, after all, the Greeks who, according to him, through their bond with space and their way of traversing it (sailing), discovered the specific significance of having one's own place and,

[5] We should bear in mind that based on this natural experience of space as place, a conceptual, abstract understanding of it was created, which was developed by science. See Husserl [1965].

[6] For more on this subject, see Markiewicz [1994], p. 30 ff.

thus, formed the foundation on which they could understand themselves, and in this generality, in this way of thinking, learned to "feel at home". Hegel claims that it was only through this experience that the European character became receptive to freedom and was able to be free (Hegel [2001], p. 120). A very important notion arises here from the viewpoint of the philosophical approach to human rights: it is the association of space with the concept of freedom.

1.2. Space as a Condition of Freedom of Movement

There are many definitions and descriptions of freedom. It is divided into ancient and modern liberties; it is bound to the legal system and human nature. However, in common consciousness, freedom is, above all, the freedom of movement in space. It also appears in this form in the *Universal Declaration of Human Rights*. In the first point of Article 13 we read:

> 1. Everyone has the right to freedom of movement and residence within the borders of each state (UDHR).

However, from this article it is not clear whether men may move freely and choose their place of residence within one state only, or if they may choose any state for this purpose. In any case, freedom of movement has been included as a fundamental human right which should be legally protected. In this way, the freedom of our movements becomes an expression of freedom in opposition to state (civil) and ideological limitations. But the freedom of movement must already presuppose a basic orientation in space. This is a particular capability which is manifested as the ability to generate direction, which, as Kant noted, is egocentric by necessity:

> Since we know nothing external to us through the senses, except in so far as it stands in relation to ourselves, it is no wonder that we derive from the relation of these intersecting surfaces to our body the ultimate foundation of generating the concept of regions in space (Kant [1968], p. 38).

This is how a network of terms connecting us to the external world is created, such as "left–right", "bottom–top" and "front–back". The category of space plays a significant role in the construction of this network, which Kant treats not only as a necessary condition for cognition, but also as a necessary *a priori* form of sensible intuition, constituting the foundation of all visible external data. Space as a subjective condition of sensibility constitutes, as does the category of time, a form of internal sense. However, it is to the category of space that Kant assigns the specific role on which our sense of reality is based of providing our connection to the world that surrounds us. In this way, Kant generates the thought which would ultimately be used by George Edward Moore to construct his proof of the existence of an external world (Moore [1993], pp. 147–170). This proof can be verified in a situation in which external objects are identified with "objects found in space", and in which we—and therefore our bodies—are referred to as being among the objects occupying space.

If, however, we can only get to know that which exists externally to us insomuch as it refers to ourselves, then, in a certain way, orientation in space becomes an important element of our self-knowledge, which includes our ability to assess the situation in which we find ourselves. This assessment may be one of the strongest impulses that stimulate in us the need to change place and find a new one. People most often search for better living conditions, or escape from natural disasters, war, or hunger, as can be seen in the contemporary emigration movements from Asia and Africa towards Europe.[7]

Regardless of the motives that lie behind them, such migrations must also be tied to a choice of direction, the specification of

[7] Of course, people change place for numerous reasons, among which the so-called "tourist industry" has currently become a very significant factor—the need for rest and recreation. Zygmunt Bauman has written about this, bringing our attention to the fact that "[t]he globalized world is a hospitable and friendly place for tourists, but inhospitable and hostile to vagabonds". See Bauman [2002], p. 84.

a place where one wants to go. The first great migration of peoples in prehistoric times moved from East to West, from Asia to Europe (St. Augustine [1998], book XVI). It is worth noting how these neutral descriptions of directions in space have, in time, taken on an evaluative connotation, differentiating levels of civilization.

They have also attained symbolic and metaphorical meanings which enable descriptions of the political constellation of the world. Obviously, the political division between the East and the West does not exactly coincide with the cardinal directions, which we define according to our location. The significance of this division changes both geographically and historically. It had only become important for ancient Rome, where the geographical division of the empire—the Eastern and Western Empires—was connected to the political division. Due to Christianity, this division took on a religious significance. In the works of St. Jerome and St. Ambrose, the concept had appeared of a post-Flood division of the world between the three sons of Noah: Shem, to whom Asia was allocated; Ham, who got Africa; and Japheth, for whom Europe was left.[8] According to St. Augustine, Japheth is the ancestor of the peoples of the West, and Shem of the East. The descendants of Shem are free people, and those of Japheth are brave, whereas the descendants of Ham are slaves. The conviction about the superiority of Western civilization was built on this mythological foundation. It was this same conviction that became the justification for exploiting people from other parts of the world and for plundering the wealth of their lands, and later, in the nineteenth century, became the justification for colonialism.

On the other hand, the East (mainly Asian countries, most importantly China and Japan), through opposition, also received its own identity in this confrontation. In large part, this was also a creation of the West: the expeditions and travels undertaken by

[8] The belief that the Europeans were descendants of Japheth already appeared during the Enlightenment.

Westerners, other than for the purposes of trade and piracy, actually played a crucial role in forming awareness of the world as a whole (Hazard [1974], part I; Gruzinski [2012]). Yielding to a fascination with Eastern culture, Europeans acknowledged that, in contrast to the materialism of the West, the East represented spirituality and a sublime sense of taste. Ultimately, these differences were acknowledged by the West on a cultural level, which Samuel Huntington combines with the differences between great religions and calls a "clash of civilizations" (Huntington [1996]).

The human right to the freedom of movement and residence in a place of choice takes on real significance in conditions in which this law is limited or even invalidated. On the one hand, by recognizing that these are the rights of every human being, the *Universal Declaration of Human Rights* accepts that men, by nature, have a need for freedom which is expressed in this way, and, on the other hand, that they inhabit a world divided into states, which, by establishing and protecting their borders, block this human freedom of movement.

2. Political Borders and Compliance with Human and Civil Rights

The recognition of the fact that space, as a defined place, is fundamental to being human also means that occupying that place, filling it with one's body, makes one become a human epicenter—the center of one's own world, which is always "here".[9] Only by starting from "here" can one show that which is "there"; this allows us to find our bearings in the world, i.e. to get to know it and to traverse it. Space becomes a particular dimension once we are

[9] In Ancient and Modern Greek, the words χῶρος (*chôros*, meaning *space*), χώρα (*chóra*, meaning *country*) and χωράω (*choráo*, meaning *to fit/contain*) are closely related.

capable of grasping it with our minds: of facing it and finding a way to measure it. This would not be possible if we did not find, or define by ourselves, a certain frame of reference that would enable such a measurement—in other words, if we did not limit space itself. Since ancient times, borders, as a means of finding one's orientation in space, have been considered a condition of cognition, constituting a basis for reflection. This was the function of the Greek term *peras* (border/the extent of a finite object), which appears in opposition to the term *apeiron* (infinite)—the first abstract notion created by philosophy.[10] It was only in conjunction with the notion of borders in human life that order, structure, measure, law, and justice could appear. According to Arendt, it is thanks to the Greeks' ability to establish impassable boundaries between various types of activities, spheres of reality, and types of existence that the space identified as the *polis* could be created. It was not, however, until the establishment of nation-states that political space became identified with geographical space and political borders with territorial borders.

The conflict, found in the text of the *Universal Declaration of Human Rights*, between freedom, understood as a norm connected with the freedom of movement, and the restrictions imposed by the establishment of political borders has led to calls to lower the rank of the latter. However, the value and necessity of protecting borders, understood as ethnic or cultural differences, is still visible. According to the second point of Article 13 of the UDHR, state borders should at least be passable:

> Everyone has the right to leave any country, including his own, and to return to his country.

Michael Walzer, in his thoughts on the topic of aggression, attempts to explain what results from the recognition of an area on the planet

[10] See Kubok [1998].

Earth, defined by borders, as one's "own country" or "own territory", and what it is based on. At the same time, he rejects the analogy with property rights that European law has developed in relation to the individual. Walzer claims that this law can be more convincingly justified through its connection with the difficulties of the survival of the nation and its political independence:

> And these two seem by themselves to generate territorial rights that have little to do with ownership in the strict sense (Walzer [1977], p. 55).

This kind of justification of the right to a given territory refers to the political order which emerged in the nineteenth century, based on nation-states and their territorial borders. This is also when the model of a state, which, according to common conviction, was to constitute national unity, sovereign power, and territory started to take effect. This unity was to be protected by these state borders, which would, at the same time, secure the right to a given area of the Earth, to be treated as the property of a given nation. The state, so understood, along with its borders, are, however, a historical creation.

In Ancient Greece, unlike today, borders were not explicitly associated with the allocation of a given area of the Earth and its protection. As Solon says: "A city [*polis*] in our conception is not the buildings (...) it is in the citizens that we find the root of the matter" (Gomme [2013], p. 344). In the classical Greek approach, borders are not a manifestation of an agreement or a convention; they are of a divine nature. Borders were established by Zeus as the political god, that is as Zeus Herkeios, and, as the protector of borders, he had the duty to take care of them. The most important border for Greek political space, according to Arendt, turned out to be that which separated the political sphere (*polis*) from the private sphere, the household (*oikos*) (Arendt [1988]). Only in a public (political) world does space, understood as distance, which conditions freedom and allows for the demarcation and experience of the political

structure of the *polis*, take on importance. In a world of households, closeness arranged into a hierarchy—an order of dependence—is very important. As Arendt states:

> Not the interior of this realm, which remains hidden and of no public significance, but its exterior appearance is important for the city as well, and it appears in the realm of the city through the boundaries between one household and the other. The law originally was identified with this boundary line, which in ancient times was still actually a space, a kind of no man's land between the private and the public, sheltering them from each other (Arendt [1998], p. 63).[11]

Private life divides people and splits up families. The family, the home (*oikoia*), and the private world generated by it are characterized as a world lacking an objective bond between people: the Latin word *privatio* means absence. The home itself is isolated in space, physically separated from other homes by fences. In the vision of Greek politics proposed by Arendt, property, *my space* separated by borders, is an element belonging to the private domain, to the household—it is in opposition to the law, which makes people equal. The Greek *nomos* meant *the law*, meaning *something which was common*, whereas possessing (el *nemein*) meant *possessing something which was separate*, also meaning *inhabited*.

Above all, the external borders of the *polis* were demarcated by the legal order in force there. That was why someone would be considered a stranger if they came from a different legal order. This did not, however, mean that strangers were outside the law. As Plato claimed, the stranger was accompanied by a spirit and

[11] This division of the whole collective being into a public world (*koinon*) and private world (*idion*) is even older than the *polis* itself. The household (*oikos*) and the family (*oikia*) face the difficulties of life. Only those who freed themselves from their bodily needs had the right to a common, public, open life. They freed themselves from the necessities of life for the sake of the freedom of the world, but only a property owner, the head of a household, the master, could achieve this. Therefore, only the governor (*archon*) could act autonomously (*archein*). The *polis* is, therefore, a world of symmetry and the *oikos* a world of asymmetry.

a god (Zeus), therefore citizens were cautious not to provoke the vengeance of that spirit or of Zeus. This is why agreements entered into with foreign citizens were most revered. As Plato says: "And of offences committed, whether against strangers or fellow countrymen, that against suppliants is the greatest" (Plato [1892], p. 301).

The god Zeus guarded those borders which demarcated the legal orders of various Greek *poleis*. The barbarians, on the other hand, functioned entirely outside the legal order, which is why the Greeks treated them in a similar way to the natural environment. They did not cease to pose a threat and had to be continuously opposed. The borders, therefore, separated the Greek world from a world that was completely strange culturally. Being a stranger (*a-polites*) also meant inequality and constraints. Strangers did not have political rights and therefore could not participate in decisions concerning the community; they were threatened existentially, as they could not decide about their own fate and status.

If this stranger was recognized as a barbarian, and, therefore, as being culturally different, without a language that could be understood and without a culture with which it was possible to cooperate, then they did not rise above the level of animal. Thus, we can see that protection through hospitality only applied to newcomers from "our world". In a situation where communication was not possible, all rules ceased to apply. There were no laws, so an area of force and lawlessness was created. This is how the three ways of understanding borders evolved: the border between that which was public and that which was private, the political border that defined one's belonging to the community, and the border that one could call civilizational, which closed the Greek world and cut it off from that which was absolutely strange, from the barbarians.

The borders which since the time of Ancient Greece had enabled demarcation of the political area and its separation from private space also changed historically, giving new meaning to the separated areas. The borders demarcating the political area in the Roman world distinguished primarily the space where Roman law

and Roman administration applied, separating it from the rest of the world, which was not yet under Roman domination—not yet within the borders of its empire. For Rome, areas that were not yet under its influence, i.e. the rest of the world, were considered strange. Roman law also defined "us" and "stranger", where the stranger was perceived in at least two ways: either as an enemy (*hostis*) or as a newcomer (*peregrini*). The borders did not really separate, but rather protected the Empire from lawlessness—they formed a line which, the strangeness beyond the borders notwithstanding, could be moved and transformed. Thus, the vision of the stranger as a barbarian disappeared—the world was treated as a potential area of further expansion and, in this way, familiarized, and the stranger received not only a legal status, but also became potentially "one of us" and a friend.

On the other hand, in the era of feudalism, as Zygmunt Bauman pointed out in his reflections on space and globalization, this border was no longer so clearly demarcated. It was hard to speak of a political area in the sense of civil participation, and economic activities, as well as all other human activities, remained under the control of a network of institutions that protected and defended moral norms, and, therefore, also the individual rights and obligations entwined within them.

The emergence of the modern state was tied to a new way of defining these areas, radically different from that of the ancient world. Through the emergence and development of capitalism, described by Max Weber as the "first modernization", economic activity was separated from the household. As Bauman remarks, entrepreneurs slipped out of the network of institutions built by feudalism and settled, as he puts it, "on no man's land", which also meant that they freed themselves from the restraints of norms and obligations that had been previously imposed on them. Referring to economic practices, primarily driven by the pursuit of wealth, they started to set the norms and rules by themselves. Karl Polanyi, while studying this process, called it "the great

separation", as a result of which the first "exterritorial territory" in European history was created, i.e. an area where, through the emancipation of the world of economic interests, the existing regulations ceased to apply and the institutions that could have restored the binding force of certain rules did not function (Bauman [2004], p. 57; Polanyi [2001]). The modern state has led to the liquidation of this "exterritorial" space within its territory by encompassing it with social legislation, including the protection of employees and tenants, the prohibition of child labor, and the restriction of working hours. As Bauman writes, this has led to the creation of a state that "accepts responsibility for the welfare of its subjects, raised to the rank of citizens" (Bauman [2004], p. 58, cit. trans. A. M.[12]).

The political community, especially in Roman times, was also consolidated by the material benefits of its geographical location, the shape and natural riches of the terrain inhabited by its population. The Roman people owned some areas of the city, such as public squares and parks. The unambiguous connection between land ownership and power, especially economic, which was established through feudalism, redefined the connection between the place inhabited by a certain people and their forms of ownership. Inhabitants were deprived of land ownership, as it was integrated and centralized by the feudal authorities, who became the source of benevolence and privileges. The issue of belonging took on a new meaning: it was not the land that belonged to the inhabitants, but the inhabitants who belonged to the land, and to whoever became its owner. Modern political theories, searching for a newer legal basis of political authority than feudalism, referred to a social contract, thus transferring the issue of land ownership into the sphere of civil law. Meanwhile, the concept of land understood as a common good, as "our country", took on an abstract form, with mostly symbolic and emotional content.

[12] A. M.—Ania Morrison.

Ownership is always tied to a certain form of power, which is based on the capability to do as one wishes with the things that one owns. Understood this way, ownership is significantly connected with the notion of freedom. However, it is hard, as Walzer points out, to apply this connection to land. The more specific understanding of the notion of *being* (*Dasein*) does indeed establish, as we have attempted to demonstrate, a relationship of possession, in the sense of belonging, between a place ("here") and the form of existence in which it happens. This, however, gets complicated if we wish to treat this kind of existence as a way of legitimizing ownership of "here", expanding it to a given territory, some area of the Earth. Philosophers such as Locke, when seeking to justify the act of seizing and taking possession of fragments of the globe, pointed to the labor put into the land. In this way, it was not the fact of being itself, but the effort needed in the process of the transformation and development of a given space that constituted the moral justification for its seizure and legitimized its possession.[13] If the possession of a given space is a necessary condition of existence—not only human, which we are presently becoming more aware of—it is still only human beings, through their capability to conceptually focus their efforts on transformation, development, and the axiological assessment of a given territory, who can turn their relationship with a given space into a feeling of belonging, of being assigned to the Earth (Burke [1993]). If this lasted for generations and was extended over a larger population, identified by their kinship (a nation), then it became tradition and fulfilled the deepest sense of the concept of homeland. Only then do terms such as "my own country" take on a proper meaning and value, simultaneously becoming a condition making it possible to define one's own identity in the sense of "I am Polish", "I am German", etc.

[13] In Ancient Greece, this problem was not considered in terms of land ownership, as there was still a lot of available space and it was simply a matter of finding the most appropriate location for the establishment of a *polis*. See Aristotle [2013], Book VI.

It may, therefore, be concluded that the term "my own country" is associated primarily with a certain territory, a fragment of the globe demarcated on planet Earth by state borders. Let us leave aside considerations concerning locality and regionality, as they will eventually be presented as a differently demarcated fragment of a given territory. In this way, the space in which human beings operate is not a geographical space, but a political one, the structure of which is established by state laws and defined by the borders of specific states. It is, therefore, worth remembering that in the political reality that emerged in the nineteenth century, the borderlines demarcated on the globe and illustrated on maps came to be recognized as state borders. However, these lines not only concern a given surface of the globe, but also reach deep into the Earth (the ownership of ores) and rise as invisible barriers high up into the sky (control of air space). Borderlines tend to be demarcated by natural geographic features (mountains, sea, etc.), however, where there is no such possibility, they are simply marked along the ground by various types of warning signs. It is precisely this space, demarcated by such borders, along with the development of nation-states, which has been subject to ever-greater protection. Special state agencies have been established for their protection, whose task is to control the movement of people, goods, and services.

The very notion of identity also carries many meanings, merging the logical (A=A), philosophical (Cartesian subjectivity), and psychological (integrated personality) senses. In relation to distinguishing a place on Earth, yet another sense emerges, i.e. political identity. Its specificity is based on the legal conditioning of the reply to the question: Who are you? Due to the fact that the answer one generally gives to this question is based on state documents in which one's place of birth is given, this type of identity is usually related to citizenship. Searching for historical models of political identity, it is once again worth referring to antiquity, where one can discover two basic forms of it. The first is the model of

identity associated with Ancient Greece, a model which can best be characterized by the statement "being at home"—which has already been discussed above. The second model of identity was formed in Ancient Rome and is best described by the statement "being through others". It is the second model that has succeeded in the political arena. In place of a specific homeland—as a tradition which had arisen from the sense of being at home, as a community rooted in a given place and recognized as the common good—an abstract community emerges, a legal community mediated by the common good (*Res publica*). This brought a new approach to citizenship based on legal belonging and not on participation in a political community. It also enabled separation of citizenship from a specific culturally defined place and gave it an abstract dimension, which was related to the imperialistic policies of Rome, but which, in its general form, has remained up until the present day.

It may seem that processes connected to globalization, such as the increase in the exchange of information, the expansion in the modes of communication, and the incredible acceleration of the pace of life and travel that accompanies them, contribute to the separation of citizenship from a specific place. And yet, in spite of the ever-growing awareness of a common global space, borders, their demarcation and protection, still remain one of the most important attributes of political authority. This is demonstrated by the activities of the European Union, within which the process of integration simply means a shift of external borders and a better, more integrated system for protecting them. As the European Commission reminds us in its communication from May 7th, 2002 titled "Towards Integrated Management of the External Borders of the Member States of the European Union", the EU policy concerning its external borders is "to provide citizens with a high level of safety within an area of freedom, security and justice (...) through (...) closer cooperation between police forces, customs authorities and other

competent authorities in the Member States" (CELEX:52002DC0233, p. 14).[14]

For the protection of its own "space of freedom", the European Commission in another document has recommended the strengthening of borders through the establishment of a "Common Unit, (...) a specialized expert body (...) in the field of external border management" (CELEX:02004R2007-20070820, p. 2)[15] tasked with the management of operational cooperation at the external borders of the Member States. Therefore, it is not surprising that many inhabitants of other parts of the world plagued by poverty, injustice, and lack of freedom are flooding across the borders of this area of freedom, prosperity, and justice. The need for weakening this type of control over the movement of people is described in Art. 13, Pt. 2 of the UDHR.

Considered from the perspective of globalization, the provision of the UDHR regarding "the right to freedom of movement and residence within the borders of each State" that every person is entitled to largely undermines the national character of belonging to a given territory, and, therefore, also the national character of its ownership. This is possible if it is assumed that the right to a given place on Earth does not follow from being a member of a given nation, which, organized into a state, considers itself the owner of a certain territory, but is the right of each human being as a representative of a species, a representative of humanity, and an inhabitant of the planet Earth. Without a doubt, this is also one

[14] See Communication from the Commission to the Council and the European Parliament Towards Integrated Management of the External Borders of the Member States of the European Union (Brussels, May 7th, 2002, COM (2002) 233 final. Online at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0233 (accessed on May 14th, 2015).

[15] See Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Online at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004R2007-20070820 (accessed on May 15th, 2015).

of the fundamental philosophical assumptions adopted in various theoretical definitions of modern globalization. Consequently, in theories of globalization, the issue of borders will also be resolved in a similar way. There are calls to weaken them or even invalidate them, given that this has already occurred in various areas such as economic activities, technology, and media.[16]

Borders, as we have attempted to demonstrate, are a necessary condition of political space, although they may be variously understood. One of the most important factors enabling the demarcation and definition of this space is the law which applies in a given space, i.e. which is respected and efficiently implemented in that space. Therefore, the question arises, in what political space could "human and civil rights" become such law? By posing the question in this way, we once again take up the issue of the tension between human rights and civil rights. The detection and examination of this tension, its various forms and consequences, is, as we have previously demonstrated, an inseparable element of both the realist and idealist theories. This tension is the result of two factors. The first is that human rights and civil rights have a different theoretical status—the former are moral and unrelated to any given place, while the latter are political and thus related to a specific territory. This tension can, therefore, also be interpreted as an internal conflict between these rights, which results from the clash

[16] Still, not all borders are disappearing. Space has been cut up by them, e.g. cultural and axiological borders are quite notably anchored. Therefore, while human rights may transcend state borders in some places, in other places, a certain "politicization" of human rights may occur, as these rights are presented as an alternative to local values. Citizens in many places (Spain, Greece, Poland, Egypt, Turkey) are starting to organize themselves, demanding subjectification and greater influence on political decisions. Both phenomena, however, point to the same issue, namely the split between the scope of human rights and of civil rights that occurred at the time of the French Revolution, which today has led to the search for some way to mediate both these kinds of rights in international law or in various types of institutions in order to once again unify them and eliminate the tension between them.

between limited, defined space and global space without attributes. The second factor is that with the currently accelerating processes of globalization, which are causing political borders to fade, the clear scope of authority and jurisdiction is also obscured.

At the same time, looking at new ways of taking control over space in a globalized world and at the attempts to curb these processes through democratic mechanisms of power on a supranational level, it is necessary to distinguish the various spatial aspects of thinking about justice, which will allow us to demonstrate how globalizational processes influence these aspects. First of all, it must be said that thinking about justice as the observance of fundamental rights, including human rights, was always somehow localized. We can identify three fundamental spatial localizations where justice can be implemented:

1. A closed, limited space—a political and legal tradition from the *polis* to the nation-state;
2. Space as the scope of authority—the possibility of imposing one's own law, originating from the Roman Empire;
3. An ideal space—the philosophical idea of justice, Popper's vision of a "third world".

Globalization combines these three spaces, blurring the borders between them. The limited space in which national law applies is subject to pressure both "from the bottom up" and "from the top down". The space of state authority is squeezed "bottom up" by "privatization" and the domination of that which is private over what is public. The state is weakened "top down" by economic entities and by rivalry between communities. In this way, it loses its exclusiveness, as well as its economic, military, and cultural sovereignty. Ideal spaces also start to blend and overlap, breaking their ties with specific, territorially situated cultures. To counteract the loss of sovereignty, states have blurred the borders between the state and the citizen, crossing over into the private domain. An indistinct network of private (non-public) and secretive relationships has formed. The result of these processes is the loss of

both security and the sense of security. Security is tied to the private domain, protected by law that needs to be efficiently implemented. The sense of security comes not so much from the fact that law exists, but from the fact that it is enforced efficiently. Rights as such do not guarantee this kind of stability and security. It is their protection and implementation that allows people to settle in their own place. Meanwhile, territory, authority, and the public domain have lost their direct links, as a result of which people have lost the structure of classical institutions that previously supported them. Hence, calls for the observance of human rights and for the reporting of their violation, without the awareness of the relationship between rights, space, and authority, are of little avail.

As this loss of a sense of security and the tensions mentioned above have become the topic of several very interesting philosophical analyses, in which new approaches to political space have emerged, revealed through the biologizing of human and civil rights, we will attempt to present them here with the help of Hannah Arendt's, Giorgio Agamben's and Chantal Mouffe's theories.

3. Biologizing Human Rights and a New Approach to Political Space

In an indistinct world of overlapping spaces and disappearing borders, only laws that are universally recognized can be implemented. Searching for a new philosophical legitimization of human rights and, thus, a legitimization that transcends metaphysical justifications—which, on the one hand, illustrate that human dignity arises from the fact that humans are created in the image and likeness of God (*imago Dei*) and, on the other hand, that dignity arises from the fact of human reason—it is necessary to consider three fundamental problems related to the validation of human rights in their traditional sense:

First: Who, or what, is the subject of human rights? Civil rights are granted by authorities and couched in terms of civil equality; however, this is only a political artifact. This equality, therefore, cannot be transferred to the biological dimension (Arendt).

Second: Biological life does not have any protection, does not point to moral obligations, and loses its moral dimension (Agamben).

Third: It is necessary to consider whether the expansion and universal implementation of civil rights is not, by any chance, a necessary condition for the efficient protection of human rights. But how could a vision of universal citizenship be implemented in a pluralized world? (Mouffe).

3.1. Hannah Arendt: Displaced Persons and Human and Civil Rights

Globalization, which Arendt herself experienced in the form of World War II, carries with it a sense of world unity, while at the same time threatening an inalienable human value, namely belonging to a given place, familiarizing oneself with it, making it a home. The forced migrations and displacements that accompanied this war deprived specific groups of people of the place they had inhabited, of their sense of belonging to the land on which they had been born, of "their own country". This was not an exceptional situation in the history of humanity, nor was it completely new, but what did make this situation unprecedented was the fact that these people could no longer find another place for themselves:

> Suddenly, there was no place on earth where migrants could go without the severest restrictions, no country where they would be assimilated, no territory where they could found a new community of their own (Arendt [1962], p. 293).

In this way, they were harmed not only by the fact that they were expelled from their own homes and country. They were thrown

outside the reach of law and, hence, also deprived of legal protection. This did not just mean that they ceased to be equal before the law, but, primarily, as Arendt claimed, that there was no law for them.

This problem is well illustrated in Arendt's description of the situation of stateless persons—people without their own place (displaced persons) are people who, for various reasons, have been deprived of full legal protection resulting from being citizens of a given state and have been excluded from the political community, which since the nineteenth century has taken on the form of a national community. In the first half of the twentieth century, many of them were members of various national minorities that had existed in a given country for a long time. While only members of the majority nation were granted certain political rights, minority treaties were drawn up to aid in the political and legal integration of groups that had been refused civil rights. It should be kept in mind that minority treaties ratified after World War I within the framework of the League of Nations concerned Jewish minorities, among others, in various countries. This also sanctioned the situation in which certain groups (in this case, permanent residents of a given country) were categorized as strangers by birth, therefore, in terms of their origin and "blood". Meanwhile, migrations of peoples were already occurring, and the second half of the twentieth century even saw an increase in migrations. This was the case, for example, with refugees from the Soviet Union and the Third Reich.

For a state based on national belonging, large groups of stateless persons constitute a serious problem. A state of this type has only two solutions at its disposal for dealing with them: it can either attempt to assimilate them, or try to get rid of them, e.g. by deportation. A large number of stateless persons, however, makes assimilation and repatriation much more difficult, for practical reasons. There is not, and never has been, any tool for effective assimilation of entire groups, as can be seen when analyzing the problems

concerning the successive waves of immigrants flooding Europe. Moreover, stateless persons display sentiments for the country of their origin and for the traditions of their parents. Such an attitude also results from the fact that, at the beginning, they are stigmatized as newcomers and strangers. Therefore, stateless persons are often considered to be strangers and, at the same time, see themselves as strangers. Their deportation is also a large logistical and economic problem. It is not always possible for a given country to send people back to their place of origin. Strangers who are refused assimilation into the political domain identified with a given territory also lose, as Arendt points out, their human qualities. In the modern world, which is entirely organized, the "loss of home and political status" becomes, she claims, identical with expulsion from humanity altogether (Arendt [1962], p. 299).

Thus, stateless persons are strangers in the sense in which the ancient Greeks or Romans thought about them. Excluded from the state, from the reach of law, they become, similarly as the barbarians did in Greece, a part of the natural non-human environment. A human being who loses the Aristotelian characteristic of a "political being", has, above all, lost, as Arendt notes, his/her ability to speak up, to participate in the common *logos*, which is tantamount to breaking all relationships with other people, and leads to him/her being deprived of the "most fundamental features of human life". This is one of the results, previously observed by Arendt, of the processes of globalization:

> The danger is that a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages (Arendt [1962], p. 302).

For people "expelled from humanity" and deprived of their own place, thus also functioning outside the law, often the only way to attain legal status is by committing a crime. Only then does the judicial system become interested in them and, by making

them accountable, once again restores their legal status. Those who do not manage to obtain legal status, due to their numbers, create a problem for the state, and can be placed in refugee camps, where they are condemned to impermanence and subjected to unrestrained power. "Human and civil rights", as the antidote for this kind of situation, have not improved their situation at all.[17] As the author of *The Origins of Totalitarianism* remarks:

> No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as "inalienable" those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves. Their situation has deteriorated just as stubbornly, until the internment camp—prior to the Second World War the exception rather than the rule for the stateless—has become the routine solution for the problem of domicile of the "displaced persons" (Arendt [1962], p. 279).

Arendt states her objections concerning human rights on many different levels. However, they are essentially based on the following convictions: (1) making "bare life"[18] the subject of rights generates necessity instead of freedom, as it is in its essence outside the realm of politics and reduces humans to bare bodies, stripping them of their dignity as well; (2) in the framework of the currently dominant political order, human rights cannot be effectively implemented, as being a subject of the law results from belonging to a nation, and not just to the human race. Furthermore, there is no transnational agency which is entitled to interfere in the realm of sovereign states.

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[17] The four paragraphs above are a modified version of a chapter from M. Gawin's doctoral thesis titled *Nowoczesny paradygmat filozofii polityki a prawa człowieka* [*The Modern Paradigm of Political Philosophy and Human Rights*], pp. 264–266.

[18] Although the notion of "bare life" is strongly associated with the works of Georgio Agamben, we can also find elements in Arendt's theory that refer to this concept.

(1) In support of her objections, Arendt states, as we have already emphasized, that it is politics that creates the legal space within which a human being can be recognized as a person before the law. Outside politics, relations of force and violence dominate. In other words, a human being acquires the right to be recognized as someone who is capable of making decisions only by being a member of a political community—otherwise he is nobody. According to Arendt, a person can lose all of his so-called human rights and yet not lose his fundamental characteristic, his human dignity (e.g. being a slave); however, "only the loss of a polity itself expels him from humanity" (Arendt [1962], p. 297).

At the same time, it is important to bear in mind that the notion of humanity itself also undergoes biologizing and is reduced to the concept of bare life (*bios*). Such life gives rise, at most, to certain regularities which researchers of the natural world have attempted to describe, such as those observed in the natural world from a Darwinian perspective or from the viewpoint of modern sociobiology. However, the concept of law is of an entirely different character. This is because it is politics that creates the legal space in whose framework a human being can be considered to have legal personality. Only this constructed personality, abstracted from biological reality, can become the source of equality. Although from within the frameworks of metaphysical or religious systems it is possible to imagine other sources of power than political authority, these sources can still be questioned if the doctrines are not universally recognized. This is how the conflict appears between a human described as an integral element of nature, as someone who is subject to natural occurrences, and a human defined as a subject of the artificial public sphere, politically constructed, who is starting to take on attributes such as individuality, freedom, equality, and reason.

(2) Arendt's second objection concerns the fact that it is not possible to enforce human rights within a nation-state with respect to people who are not recognized as part of the nation. In such a case, it undermines one of the fundamental political axioms,

i.e. the conviction, originating in the tradition of Roman law, that the state creates the legal space which encompasses all people who find themselves within its borders. And yet there are groups of people who are excluded from the legal domain, such as displaced persons. The most vivid paradox resulting from the recognition of human rights by modern states is the fact that it is precisely stateless persons, constantly threatened by exclusion, that most fully represent the problem of human rights. This is because they illustrate the idea of "natural" human beings.

It is exactly for these reasons that the concept of human being understood as being a member of the human species encounters such difficulties. This immediately raises doubts as to the grounds for singling out the "human" species for protection. Moreover, humans, as purely biological beings and nothing more, lose the characteristics given to them by metaphysical or religious systems. This is one of the reasons why it is more difficult to destroy the legal personality of a criminal—that is, of a human being who has been held liable for his criminal actions, but remains a member of his political community—than of a man who has been refused political belonging, and, therefore, has been refused the right to be held accountable for his actions. By not being a part of some political order, one becomes only a part of nature, which is subject to norms only from a given metaphysical or religious perspective. There is no room for norms here from the scientific perspective. Yet it is such a human being who is the subject of human rights, a human abstracted from the community and polity.

Based on the analysis carried out above, it may therefore be concluded that Arendt's criticism of human rights is based on two lines of argumentation. The first refers to the present political order and is related to the existence of sovereign nation-states. This system has generated groups of people who have been refused the right to citizenship and legal status. This reduces them to the level of mere representatives of the human species and, as a consequence, exposes them to the serious danger of repatriation

and forced assimilation in conditions of social stigmatization. Such a danger is most potently revealed when they become disposable for society (which is identified with the nation), or when they are socially recognized as a threat, whether or not these beliefs are justified. Such people suddenly become a social problem. The rise to power of the Nazi Party in Germany brought about, among other things, social identification of a group of people who were disposable and threatening, which was how the Jews were regarded. As a result, they were first deprived of their rights, then an attempt was made to expel them by forcing them to emigrate, and finally, the Nazis resorted to the most radical solution, which was their biological annihilation.

For Arendt, the key issue here was the combining of a state with the concept of nation. In these conditions, the ratification of declarations of human rights, which refer specifically to excluded persons, seems to be justified and to have a deeper meaning. However, in practice, human rights do not have any anchorage in the prevailing model of political order, partially due to the fact "that no one seems able to define with any assurance what these general human rights, as distinguished from the rights of citizens, really are" (Arendt [1962], p. 293).

In essence, most human rights refer to civil rights. Naturally, these are the rights of human beings, which include the symptomatic right to possess legal personality. However, the problem lies in the fact that the entire international legal mechanism is based on establishing a relationship between having legal personality and being a member of a nation.

How, then, should human rights be understood in this context? If we agree with Arendt's argumentation, it is first necessary to note how ineffectual the declarations of human rights are, which, given the fact that it is precisely the weakest people who are supposed to be beneficiaries of these rights, seems to be a grim irony of fate. At the same time, she claims that there is a structural correlation between the existence of international law and

the appearance of stateless persons. On this assumption, the more global human rights become, the greater the probability of the appearance of an increasing number of stateless and displaced persons. Apart from the fact that these rights were ineffectual, Arendt was worried that the UDHR intended to encompass bare life. But since rights and laws could only be effective in reference to members of a political community, any attempt to make human rights apply to human beings as such, i.e. by their very definition devoid of ties to any kind of community, led to an insurmountable contradiction. Furthermore, such a move could be extremely dangerous, both for politics and for people's lives. Biology, after all, refers to the field of natural necessity, governed by the laws of nature. Transposition of these laws to politics, a field defined by opinion and the ability to act, can result in decisions made with absolute conviction about their rightness that follow from some arbitrary theoretical assumptions and can lead to dramatic consequences (Arendt [1967]).[19]

In order to prevent this scenario from coming true and to remove the aporia of human rights, the dominant political order has to change. The only way for all human beings to attain legal personality is for humanity to merge into a global political community under the rule of a world government. Still, we have no guarantee that such a vision can actually be realized, nor is it certain that such a world government would secure the rights of all people. This is because humanity as a whole has not formed a community based on real bonds, and it is hard to imagine that it ever will. Thus, it is not inconceivable that an abstract humanity under the leadership of a world government would make decisions which would discriminate against minorities, e.g. in the name of order or safety. It also does not seem possible that such a world government

[19] The four paragraphs above are a modified version of a chapter from M. Gawin's doctoral thesis titled *Nowoczesny paradygmat filozofii polityki a prawa człowieka* [*The Modern Paradigm of Political Philosophy and Human Rights*], pp. 266–268.

could guarantee people the right to inhabit any place on Earth they choose, because the best places have already been occupied for a long time. Moreover, the people who live there would defend them; in order to change this, it would be necessary to use force.[20] Arendt is adamant in stressing the importance of this relationship between human rights and a place on Earth. She claims:

> 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 (Arendt [1962], p. 296).

3.2. Giorgio Agamben: The Camp as a Space of Bare Life (*bios*)

Agamben presents an interesting attempt to criticize human and civil rights, based on biological legitimization in the political space of nation-states. Their formulation and ratification, according to him, despite the intentions of their authors and defenders, inscribes itself into a space whose hidden paradigm is the concentration camp. These rights, he claims, are not only a symptom of the fall of classical politics with its divisions, excluding that which is biological, from the realm of political power, but they even constitute part of the mechanism of biopower.[21] This is possible, as they not only represent bare natural biological life, but, moreover, stigmatize

[20] However, at this point, the problem of identity appears. Is it indeed possible to build a universal political identity? It is worth paying attention to the issues of political memory and political decisions. If we acknowledge that historical memory can be constructed through conflict, then reference to the same facts and events can be accompanied by different emotions depending on political belonging. Furthermore, collective decisions are made by a defined and somehow distinct collectivity which refers to itself as "we" or "us".

[21] The notion of biopower was introduced into political discourse by Michel Foucault. The most general way of understanding the term biopower is as a crucial element of the development of capitalism, which allows it to survive, because as Foucault writes, biopower helps adjust bodies to the productive apparatus of the market and adjust population phenomena to economic processes. (Foucault [2003]).

people, while at the same time, participating in an ongoing process of their own definition and differentiation. As Agamben states:

> One of the essential characteristics of modern biopolitics (which will continue to increase in our century) is its constant need to redefine the threshold in life that distinguishes and separates what is inside from what is outside. Once it crosses over the walls of the *oikos* and penetrates more and more deeply into the city, the foundation of sovereignty—non-political life—is immediately transformed into a line that must be constantly redrawn. Once *zoē* is politicized by declarations of rights, the distinctions and thresholds that make it possible to isolate a sacred life must be newly defined (Agamben [1998], p. 77).

According to Agamben, bare life, that is life as a purely biological fact, was not explicitly included in the legal order until the emergence of the nation-state. Because of this, the *Declaration of the Rights of Man and of the Citizen* (1789) only confirms and strengthens the political order based on the nation-state.[22] While analyzing the dynamics of the development of the nation-state, he refers to Arendt's views, presenting a criticism of human rights in his *homo sacer* project, although he approaches them through a different conceptual framework. This is because while Arendt refers to classically understood politics and applies its fundamental categories as a measure of modern political and social phenomena, Agamben describes the process of the development of politics, as well as its change in character. In other words, Arendt refers to a certain model of politics taken from the classical texts, while Agamben shows the mechanism of the development of politics, applying the genealogical method, implemented historically and philosophically through the "interpretation of rights based on the philological, by nature, method of presentation and analysis" (Jankowicz, Mościcki [2008],

[22] In this context, Agamben's main argument concerning human rights is the conviction that "[d]eclarations of rights represent the original figure of the inscription of natural life in the juridico-political order of the nation-state" (Agamben [1998], p. 75).

p. 137). Thus, in his criticism of human rights, Agamben refers to two essential and conflicting processes: the first concerns the valuation of life in the bosom of the state through the differentiation between authentic life (connected with belonging to a nation) and bare life, and the second constitutes an attempt to create a mechanism for the protection of bare life which would be independent from the state. In his opinion,

> The contradictory character of these processes is certainly one of the reasons for the failure of the attempts of the various committees and organizations by which states, the League of Nations, and, later, the United Nations confronted the problem of refugees and the protection of human rights (Agamben [1998], p. 78).

Like Arendt, he is also convinced that human rights inscribed into the political structure of a nation-state generate excluded persons. Agamben shares the opinions of the author of *The Origins of Totalitarianism* concerning refugees. He claims that they represent bare life; they reveal the gap which has appeared within the framework of the nation-state between the very fact of birth and its dependence on a given territory, the place of birth which determines ones nationality. He also shares Arendt's opinion that the inclusion of bare life in politics poses a great threat to humanity.

Agamben uses the politics of the Third Reich as an example. According to him, the internal politics of the Nazis was conducted in the name of the biological perfection of the Germanic race. In this way, biopower related to the concept of nation, which generated differences between citizens and people, resulting in a combustive reaction between healthy life and "threatening elements" for the population. Paradoxically, the process is additionally exemplified by numerous humanitarian organizations, showing people as beings stripped of everything outside of biology. According to Agamben, humanitarian movements are proof of the "extreme" separation of human rights and civil rights. These types of organizations make use of the image of sacred life, as they present pictures of human

bodies, helpless and representing only themselves, in their numerous campaigns.[23] He writes:

> The "imploring eyes" of the Rwandan child, whose photograph is shown to obtain money but who "is now becoming more and more difficult to find alive," may well be the most telling contemporary cipher of the bare life that humanitarian organizations, in perfect symmetry with state power, need. A humanitarianism separated from politics cannot fail to reproduce the isolation of sacred life at the basis of sovereignty, and the camp—which is to say, the pure space of exception—is the biopolitical paradigm that it cannot master (Agamben [1998], p. 78).

Humanitarianism, despite its intentions, supports the process of the separation of bare life, as it introduces the problem of bare life into public space, which leads to its separation from political rights. Humanitarian organizations often make use of the image of refugee camps, treating them as a tool of persuasion and pressure.

According to Agamben, human rights represent the reverse of the processes shifting sovereign power towards biopower. On the one hand, declarations of human rights are created in response to the cruelties of governments, and, in this sense, the intentions of the defenders of human rights are directed against the abuse of authority. Since these declarations are, by their nature, reactive, they emphasize precisely what constitutes the object of sovereign power, that is, bare and sacred life. This is also why refugees most fully represent the subject of human rights, persons stripped of any kind of legal status. Their example shows the helplessness of these rights. This is because the declarations are constructed within the framework of an order that itself creates and stigmatizes excluded persons. So also in this respect, Agamben is in agreement with Arendt. As long as this form of sovereign biopower applies, there is no place

[23] The two paragraphs above are a modified version of a chapter from M. Gawin's doctoral thesis titled *Nowoczesny paradygmat filozofii polityki a prawa człowieka* [*The Modern Paradigm of Political Philosophy and Human Rights*], pp. 274–275.

for the full implementation of the objective of protecting humanity from violence resulting from the mechanisms of power. This objective, most certainly, will not be implemented in a situation in which declarations of human rights are ratified by sovereign states within the framework of international law. This is where the aporia of human rights lies—their helplessness is not dictated by accidental factors, i.e. a given division of powers, but is a structural helplessness, which exists in the very concept of human rights.

This way, the philosophical problem of moral responsibility towards others is revealed. By biologizing the term "human", one is forced to see people not so much as individuals, but as individuals living within a certain defined collectivity. In the political paradigm, these collectivities are distinguished by political rules; in the biological paradigm, these communities can be reduced to natural collectivities. A tendency then appears to evaluate life according to the criteria of "ours" and "other". In this situation, the "other" life, in effect, ceases to be treated as human life or as life that is tied to any kind of moral requirements, as the normative dimension, which metaphysics, religion, or politics give to the concept of being human, has disappeared. In nature, no significant characteristic that would distinguish people as people exists. An example of this process is treating life within the framework of a community as real or authentic, unlike the bare life of the stranger, which is only a biological occurrence. At the same time, the only mechanism for "equalizing" the status of people can come from a certain type of balance, whereby all people, as biological entities, perceive an external threat in a similar way and hence they are able to agree on basic rules of coexistence. This, however, has a similar effect—only life that is backed by violence can be protected. We can acknowledge others to a certain degree, but only inasmuch as they possess the appropriate tools to guarantee the members of their own collectivity respect from strangers. This may, for example, lead to the recognition of specific minority rights, but only in cases where they are, in reality, backed by the strong position of

their country of origin. Life without such support loses all value and, as Agamben states, becomes completely "bare" and deprived of protection.

3.3. Chantal Mouffe: Political Space as a Battlefield

Mouffe identifies political space with the space in which political decisions are taken and which she terms, after Carl Schmitt, *the political*. The model of the political proposed by Mouffe is based on the assumption that pluralism typical of the human condition can be replaced by rational consensus. People are capable of making decisions and taking various actions. The essence of the political is the creation of new qualities through decisions taken within the framework of a given political community. The basis for decision-making is not, however, rational reflection and dialogue, but a clash of differences, of particular ways of reasoning. These particularistic points of view do not result from any impartial reflection, but are rather produced through formation of an "us vs. them" relationship, which is the recognition of others being "others" that creates "our" collective identity. This means that the identity of a given national, ethnic, or religious group results from and is maintained through division and conflict with "others". The identity of one collectivity, to a lesser or greater extent, collides with the identities of other collectivities.

According to the agonistic model, when several groups inhabit one area, one of them is always the hegemon; this is the main difference that sets this model apart from the consensual (deliberative) model. The consensual perspective assumes that a certain rationality exists (in this case communicational), which is typical of the human way of communicating and implies reciprocity. In the agonistic model, there is no place for reasonable and rational consensus within the framework of which the parties would give up on their demands to organize the common space as each of them sees fit and would cease to search for solutions which would not

be acceptable to all (mutuality). In other words, rational consensus is just one of the possible forms of hegemony (Mouffe [2005]).

Due to this, a pluralism of opinions could lead to conflicts of varying intensity, including wars and bloodshed. The political project presented by Mouffe, related to the agonistic model, also means considering the creation of such an order within specific states, which, by allowing for the existence of actual conflicts between various groups within a society, would prevent their escalation. In short, the whole point is for groups to view each other as opponents, and not as enemies. It is, therefore, necessary to organize a space for agonistic dispute, thanks to which a real antagonism of potentially catastrophic consequences will not occur (Mouffe [2005]).

In a broader perspective, the agonistic model entails that a human being, in order to be able to make any decisions, needs a particularistic approach that will direct his/her actions in opposition to others. This particularism plays a key role in the formation of human identity, which, as Mouffe claims in contrast to the viewpoint of liberalism, is not able to determine its life preferences separately from the community that it is a part of. From this point of view, any claims to universal validity are simply a manifestation of domination. This is the context in which the criticism of human rights that Chantal Mouffe has developed can be understood. According to the agonistic model, the tension between human rights and civil rights is not only irresolvable, but, moreover, the domination of human rights can pose a threat to political freedom. The differences between the two types of rights can be characterized in the following way:

> First, whereas human rights pertain to all human beings irrespective of membership in a political community, citizenship is accorded exclusively to the members of nationally and territorially delimited communities. Second, while human rights are conceived as universal, citizenship is particularistic because the rights and privileges it confers remain confined within particular nation-states. Third, and

> notwithstanding the political role that human rights often take on, they are, in principle, moral and legal rights. (...) Citizenship, by contrast, has (...) strictly political connotations. It is the primary political means embodying democratic self-determination. Fourth, while citizenship is exclusively granted by states, human rights override the capacity of states once protection is their prime function. Finally, whereas human rights are often viewed as passive rights, by virtue of their protective function, citizenship is viewed as a dynamic set of entitlements that could be exercised (Tambakaki [2010], p. 54).

It is also for this reason that the contrast between human rights and civil rights is so stark. The latter, in Mouffe's opinion, are not only limited to a certain territory and society, but also different by nature. Civil rights belong to the republican tradition, which stresses the political rights related to active participation in political life, while human rights are related to the liberal tradition, which mainly grants liberty rights to the individual. Thus, Mouffe recognizes human rights as a specific ideology, a hegemony claiming the right to universality. The threat resulting from this is related to the danger which it poses for the political, that is, for the process of decision-making through a given community. Since, according to Mouffe, what is relatively safely channeled by pluralism is the space of antagonistic dispute, domination of a certain particularism that additionally claims the right to universality can have very negative effects within specific states as well as in the international space. Attempts to suppress these disputes within societies may lead to an escalation of conflicts, proof of which is, for example, the increase in support for far-right parties and fundamentalist movements. On the international level, it may lead to threats of war and an escalation of international terrorism.

In effect, the agonistic model proposes a vision of an international order based on sovereign states which differ from each other in such a way that it is impossible to create a universal normative foundation for law or morality. However, certain common political practices are possible, which would define the conditions of how

disputes are conducted. Nonetheless, on the international level, this order, as Mouffe claims, will remain multipolar. A good illustration of this belief is the proposal to enhance Europe's version of human rights with understandings of them derived from other cultures, e.g. Métis. As Mouffe states:

> To acknowledge a plurality of formulations of the idea of human rights is to bring to the fore their political character. The debate about human rights cannot be envisaged as taking place in a neutral terrain where the imperatives of morality and rationality—as defined by the West—would represent the only legitimate criteria. It is a terrain shaped by power relations where a hegemonic struggle takes place, hence the importance of making room for a plurality of legitimate understandings (Mouffe [2005], p. 126).

The agonistic model does not give hope either for the establishment of a peaceful global political space, or for an international order based on relatively uniform legal and moral criteria. According to this model, human rights, with their claim to universal validity, move into the realm of morality and ideology and, therefore, cannot constitute a source of international law. Civil rights, which are determined territorially and, thus, also politically and culturally, should be brought to the fore.

4. The Space of Human Rights and the Idea of Sovereignty

The internal tension arising between human rights and civil rights, to which we have attempted to give a spatial dimension that is essential from the viewpoint of the process of globalization, has yet another dimension that is very important today. The universal character of human rights comes into conflict with the traditional understanding of the idea of sovereignty; hence, problems related to the implementation of human rights in the constitutional order of specific countries also appear. From the perspective of international relations, the main problem we still face, therefore, is the

establishment of such relations between sovereignty (politics) and human rights (morality) which would be acknowledged, at least in principle, by all agents in international life. The existing international connections between various spheres demonstrate the overlapping areas of authority and jurisdictions, which go beyond the realist and idealist descriptions. Such a state of affairs, of course, calls for a redefinition of the concept of sovereignty so as to include modern conditions of state interdependence and the regime of human rights that create new forms of coexistence between states and other organizations in the international arena.

It is worth remembering that the classical concept of sovereignty, the creator of which was Jean Bodin, referred primarily to power. Sovereign power has to be independent in the following areas: (1) legislation, (2) decision-making concerning war and peace, (3) the appointment of key officials, (4) adjudication at last instance, (5) the pardoning of convicts, (6) the administering of oaths of allegiance and liege homage, (7) coining, and (8) the enforcement of tributes and taxes. According to Bodin, these characteristics of sovereignty are untransferable and inalienable. They also give sovereign power a special kind of majesty which demands respect and obedience from its subjects. As Bodin writes: "He who contemns his sovereign prince, contemns God whose image he is" (Bodin [1955], p. 40).

Following the eighteenth-century revolutions, sovereignty started to be associated with the power of the people and the institution of the state. Meanwhile, as Bauman observes, each state strived to achieve the defined ideal of total and undivided sovereignty, supported by all the other states that affirmed this ideal. This was, however, a very difficult task, in which it was necessary to take into consideration financial independence, efficient border protection to keep one's enemy neighbors at bay, and cultural autonomy, because, according to Bauman, there were three pillars of sovereignty: economic, military, and cultural. Only a very few states would ever be able to get close to this ideal, especially

as two opposing tendencies have been increasing for a long time: the ever-greater concentration of capital and the fragmentation and weakening of states (Bauman [2004], p. 59).

The need to remove this concept from the political vocabulary has been apparent for quite some time, emphasizing its inadequacy in relation to the modern form of polity. Already in the 1920s, Hans Kelsen proclaimed that the concept of sovereignty must be entirely eliminated (Kelsen [1942], p. 12; Kelsen [1960], p. 3). Carl Schmitt, taking up this discussion, considers it to be a "borderline concept", meaning an unclear concept that in essence slips out from under the definitional processes, which in today's language of political philosophy could be identified by the term "essentially contested concept". Seeking a way to clarify the concept of sovereignty, Schmitt transfers it to a different level of political discourse (Schmitt [1988]). In contrast to the representatives of the then existing school of legal positivism, he concludes that it can only retain its meaning if we stop tying it to the legal form of the state. According to him, only the personal factor is entitled to sovereignty, i.e. the person who exercises power and constitutes a measure of that power. That is why a real sovereign can only be someone who has the highest authority manifested by the fact that he or she can declare a state of emergency. Jacques Maritain uses similar argumentation in his criticism of the concept of sovereignty made at the end of the 1940s (Maritain [1951], pp. 28–53).

In Maritain's opinion, we must get rid of the word as well as the concept of sovereignty because, he claims, it will always be associated with its proper original meaning. This association refers us to theology, from where this concept was taken and transferred into politics. The fundamental error of the theory of sovereignty is, according to Maritain, the will to free the ruling powers from all control and to prevent the possibility of individual opposition to it. This is because sovereignty places power above the law and above morality, giving it divine features. As Maritain claims, when one reaches for the concept of sovereignty, one "[i]s in danger of

forgetting that no human agency has by virtue of its own nature a right to govern men" (Maritain [1951], p. 43).

According to him, individuals and institutions have the right to govern as long as they themselves are part of a given political body. Maritain shows that this law comes from the fundamental right of the people "to govern themselves", and those in power are entitled to exercise it only to the extent that it is in the service of the common good. This does not mean, however, that it is the people who are the sovereign. They are only entitled to autonomy, and not to the highest and transcendent power necessarily associated with sovereignty. Unveiling the real political character of the concept of sovereignty, Maritain sends it back to the realm of metaphysics. In his opinion, only there can it maintain its proper meaning while, at the same time, losing its poisonous edge. For only God is the sovereign in relation to the world. If we eliminate the concept of sovereignty from political discourse, we should replace it with the concept of autonomy. The traditionally understood concept of sovereignty only conditions and opens up the space of power. In such a space, human rights, deprived of their own location, become just another expression of the ruling powers' "grace".

There have recently been attempts to challenge this model, contrasting it with a different relationship between the idea of sovereignty and human rights—a model in which the space of the sovereignty of a given state should be situated within the space of human and civil rights, and should be in agreement with it. This means breaking with the idea of sovereignty as the absolute autonomy of a given state; in the event that specific human and civil rights are violated, the new possibility arises of the international community suspending that sovereignty as a consequence. In this spirit, Edward Keene, in his work *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*, proposes a new interpretation of Grotius' concept, which paves the way for a heteronomous approach to the issue of sovereignty and international law (Keene [2004]). Keene points out that Grotius' theory addresses

two key issues located within the domain of international law, i.e. the issue of the jurisdiction of sovereign power and the property rights of individuals.

> The first is that the sovereign prerogatives of public authorities are divisible from one another, such that it would be possible for sovereignty to be divided between several institutions within a single political community. (...) The second proposition is that under certain conditions individuals have a right in the law of nations to appropriate unoccupied lands; furthermore, if no established political authority acts to protect their rights, the individuals themselves may conduct a "private war" in their defense and would be justified by the law of nations in so doing (Keene [2004], p. 3).

This theory recognizes that from the beginning, in the international space, it has been possible to distinguish at least two models and normative sources of international law. The first, based on the classical model of sovereignty and confirmed by the Westphalian system, refers to balance of power and tolerance, which implies the recognition of equality between states and the prohibition of interference in the internal affairs of specific countries. The second, which we have already mentioned while considering the issue of the right to land ownership, refers to the idea of civilizational superiority and became the foundation for sanctioning the right of Europeans to colonize the rest of the world.

On the conceptual level, however, international relations have been organized according to the model of sovereign states and, therefore, in accordance with divided areas of power. Such an approach to international politics acknowledges that sovereignty is a permanent feature of states. It is also considered to be an absolute principle. In this understanding, sovereignty requires a single political hierarchy headed by a "sovereign". Looking from the outside, sovereignty assumes that each state is independent; it does not recognize any power over it and is formally equal to all other sovereign states. From this perspective, sovereignty is something absolute. Today the conflict between this model and the transnational right

to private property, which extends beyond state borders and, as a carrier of individual sovereignty, forms the basis of the global market and the ongoing processes of globalization, is becoming more and more pronounced. The notion of implementing human and civil rights, although supposedly egalitarian and inclusive, is tied to the tradition of civilizing the world, which, from a historical viewpoint, means exploiting it. The imperialist character of human rights and their being conditioned by civilization has already been demonstrated many times—Chantal Mouffe has also written about this. She is worth mentioning here, as in this case she refers to arguments presented by Carl Schmitt.

Schmitt was convinced that the order of sovereign states did not appear independently of colonial and imperialist practices, but was closely connected with it. Along with geographical discoveries and the growth of the naval power of Christian countries such as Spain, Portugal, and later England, great imperial powers emerged in Europe, which defined the international order. This order was based, as Schmitt claims, on the division of the world according to the "friend-or-foe" criterion, where the borderline was demarcated on the basis of belonging to European civilization. Within this civilization, states were considered equal to one another in the international arena and with respect to the areas constituting their domains of power where they were to secure their individual freedom, which gave them license to do as they pleased and act without any restraints when it came to using violence.

> This freedom meant that the line set aside an area where force could be used freely and ruthlessly. It was understood, however, that only Christian-European princes and peoples could share in the land appropriations of the New World and be parties to such treaties. But the commonality of Christian princes and nations contained neither a common, concrete, and legitimating arbitrational authority, nor any principle of distribution other than the law of the stronger and, ultimately, of effective occupation. Everything that occurred "beyond the line" remained outside the legal, moral, and political values recognized on this side of the line (Schmitt [2003], p. 94).

In other words, although the order of sovereign states had a global character, it still did not mean that it was a homogenous and egalitarian order. It produced an area of fragile stability and equality between European sovereign states at the cost of throwing the remaining states into a brutal fight to occupy free space and enlarge their spheres of influence.[24]

If Schmitt's analyses correctly define the character of the international order based on balance of power, then it does not seem possible to unreservedly apply such an order to the modern international situation. In place of colonialism, whose main objective was to take control over territories and to extend the colonizer's power, new ways of rational conquest of space emerged. According to Bauman, the principle of the free exchange of goods through the abolition of customs barriers and import taxes is much more rational and cheaper than territorial conquests. In his opinion, contemporary independent states:

> increasingly resemble more territorially extensive, ennobled and heraldically decorated versions of police stations, occupied mainly with maintaining order, public peace and compliance with traffic regulations on the territories they govern (Bauman [2004], p. 62; cit. trans. A. M.).

In order to ensure the equality of states and the safety of their citizens, both the principle of the sovereignty of the people (indivisible territory) as well as human and civil rights have been included in international law. It is also difficult for one to agree with the identification of their universal character with civilizational imperialism.

[24] Therefore, from the point of view of these analyses, colonialism was not contingent in relation to the model of sovereign states; instead, it was its flip side, a practical application of the principle of the domination of one particular cultural model. This type of order is also referred to as the "imperialism of human rights", that is, the assertion that the cultural and legal model that refers to human rights is civilizationally more advanced and, for this reason, has the right to a kind of "inculturation" of other areas and, therefore, to subordination and domination not based on any rules.

Therefore, it is worth remembering that human and civil rights were created as a sign of protest against absolute power—sovereign power in the classical sense—that is, they were against imperialism, understood as completely unrestricted authority.

This does not mean that human and civil rights are universal. The authors who criticize them, treating them as an imperial manifestation of the ideology that dominates Western culture, generally make certain hidden assumptions concerning freedom. The main weakness in the anti-imperialist criticisms of liberal universalism is, therefore, the fact that they inconsistently oppose the universalization of freedom in the name of the universal right to freedom. In this approach, the following contradictions appear: cultural relativism enables the criticism and rejection of the universal character of human and civil rights, although this same cultural relativism is not able, due to its distinctness and localization, to present critical arguments against hegemonic cultures, oppressive towards their own members.[25]

It is not only the transformation of the concept of sovereignty in relation to the state that has led to a change in the form of international law, but also it is the individual who has gained sovereignty and, at the same time, has also become a subject in the arena of international law. As Niall Ferguson states:

[25] It is not difficult to imagine the full instrumentalization of human rights with the objective of implementing egoistic national interests. However, in a situation where global media exist, as well as the beginnings of world public opinion, it is not possible today for states to turn to war mode as indiscreetly as they once did. Every act of violence, if properly publicized, is met with global opposition. Even Russia is waging its war with Ukraine in a new way, claiming to be protecting the rights of the people living there. The rhetoric of human rights, democracy, and the right to the self-determination of nations is often a cover for the implementation of the particularistic interests of given countries. There is no easy solution to this problem. This is because human rights cannot be sufficiently protected if this protection is based solely on dialogue and reference to public opinion. In certain situations, a state will need to use actual military power, and, as idealists seem to forget, it will always be in danger of being accused by other players, who refer to human rights, of having malevolent intentions.

> The defining characteristic of our age is not a shift of power upward, to supranational institutions, but downward. With the end of states' monopoly on the means of violence and the collapse of their control over channels of communication, humanity has entered an era characterized as much by disintegration as by integration (Ferguson [2009], accessed on September 4th, 2015).

In the nineteenth century, international law was seen as the law that regulated relations between states. States were the subjects of this law, whereas their citizens were merely its objects. In the twentieth century, thanks to the establishment and actions of the League of Nations before World War II, national minorities gained a separate status and place in international law. Next, through the *Universal Declaration of Human Rights*, which was ratified by the UN in 1948, and the *International Covenant on Civil and Political Rights* of 1966,[26] it was acknowledged that the individual had moral rights and duties that took precedence over the legal system of a given state. Although this introduced a permanent tension between biological belonging to the human species and the formal and political concept of law, it imposed a model of legitimization of the law which had previously characterized Western cultural space. The individual, discursively, was somewhat removed from the subjective relations of states and attained international legal personality. The principle of absolute sovereignty was thus replaced by the concept of relative sovereignty, where the freedom of each state was limited by the freedom of other states, and their independence was subjected to international statutory law. The practical result of such a turn of events was that if the state was deprived of its status of international legal person, it ceased to be sovereign. Another consequence of this approach was that the concept of sovereignty was no longer in accord with the development of positive international law and, therefore, had to be modified to allow for the new international reality through a process of adjustment. Finally,

[26] See Chapter I of this book.

cosmopolitan theories of "the *common interest* and the *common good* entail that states are required to sacrifice their individual interests as well as certain aspects of their sovereignty in favor of the common interest and the common good either of a community of states or the community of all human beings" (Ferreira-Snyman [2006], p. 16). Consequently, a gap developed between the rights and obligations resulting from a certain form of citizenship related to the prevailing regime in a given country and the norms of international law concerning new forms of freedoms and obligations. Today, the principles of international law[27] are supposed to protect fundamental humanitarian values, even those that are in conflict with the laws of given states, especially with the principle of sovereignty, which has ceased to be understood in an absolutist way and has started to be defined through the people's right to self-determination within the framework of human rights.

Contemporary international law affirms the importance of higher legal orders than the legal orders of specific states, and defends the principle of holding states accountable for crimes against peace and humanity, even permitting armed humanitarian intervention. Considering the autonomy of the individual subject and the growing importance of human and civil rights, new rules have been created concerning political practices, which limit the principle of state sovereignty for the sake of upholding individual rights. Due to various types of pressure, including economic sanctions, the objective has been set to incorporate the norms of international law into state constitutions, which also means the legal implementation of human rights in the form of provisions protecting the citizens of these states. This objective is also accompanied by a concern for civil rights, related to the idea and practice of the democratization of state regimes. In this way, international law has begun to regulate not only relations between states themselves,

[27] See *The Responsibility to Protect*. Online at: http://www.un.org/en/preventgenocide/adviser/responsibility.shtml (accessed on June 3rd, 2015).

but also to determine the rules which should apply between states and their citizens.

In literature on this topic, this change concerning the form and significance of international law is referred to as the "constitutionalization" or globalization of human and civil rights, thanks to which a common axiological space shaping common practices in the international arena becomes possible. However, it is necessary to realize that such standardizing and norm-creating practices trigger a double, anti-democratic and anti-Western, reaction. This is because leaders of many states do not want to lose power, and neither do they want any interference in their internal affairs. Inasmuch as the Westphalian system served to liberate states from the power of empires, the message carried by the idea of human and civil rights is the liberation of the individual from the unrestricted power of states, and globalization is one of the factors contributing to this process, as fundamental human and civil rights have become its philosophical—or, more precisely, axiological—content. One incentive was Article 53 of the *Vienna Convention on the Law of Treaties* of 1969, which introduced the construction of *ius cogens* norms into international law, i.e. norms which are binding on all, forever. These norms protect the most fundamental rights and values on which international law is based, e.g. the prohibitions against genocide, slavery, and torture.

It may, therefore, be concluded that the necessity to embed political or state sovereignty within the space of human and civil rights, which thereby becomes the dominant area, signifies a new level of development in international law, by virtue of which the most fundamental human rights will no longer be subject to protection by treaties, but to imperative protection (Morawski [2011], pp. 13–26). Referring to our earlier discussion, it should also be noted that the idea of human and civil rights leads to questioning of the foundations of the doctrine of political realism by acknowledging that international relations should be based on universal norms resulting from human and civil rights, and not on the policies of

particular states. The fact that international law is increasingly allowing not only states, but also citizens and their organizations, to assert their rights and seek international protection can be seen as a manifestation of ongoing processes in international law, where human beings as such are being made the subjects of the law. This tendency is expressed, for instance, in the strengthening of the position of the individual in the proceedings of the European Court of Human Rights.

Conclusions

Based on the considerations we have presented, it may be concluded that despite numerous difficulties with the implementation of human and civil rights through practical political action, there has been great progress in this area, which is proven by the very process of globalization. To a large extent, it seems that the major objectives presented in the preamble of the *Universal Declaration of Human Rights* have been achieved:

> The General Assembly proclaims this *Universal Declaration of Human Rights* as a common standard (Fr. *l'ideal commun*) of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance both among the people of Member States themselves and among the peoples of territories under their jurisdiction.[1]

However, until this day, no common standard of national laws has been developed that would enable the provisions of the *Universal Declaration* to be complied with and enforced. Moreover, there is no one theory of justice that everyone could agree on, which is

[1] Online at: http://www.un.org/en/documents/udhr/ (accessed on June 3rd, 2015).

a necessary condition for such laws. As different forms of justice exist, human rights cannot apply everywhere with the same effectiveness.

The debate regarding the role of values in international relations and the relationship between human and civil rights has been transferred directly to decisions concerning the norms of international justice. Thus, the main objective of the creation of different theories of justice (either realist or idealist) on a global scale is to develop a diagnostic tool that would form the basis for the construction of institutions, thanks to which it would be possible to shape supranational relations so that they become just. The need for the creation of such theories follows, above all, from two basic factors: firstly, the growing interdependence connected with globalization and, secondly, the conviction that, due to problems generated by globalizational processes, the global space that forms as a result of these processes needs to be reorganized in accordance with the idea of justice.

Both the implementation and the protection of human and civil rights are dependent on the political authority within a given territory, which is today still considered a necessary condition for the existence of statehood. The state has command over its territory, which includes, on the one hand, the authority to perform, within this territory, all the actions and functions of a state, and, on the other hand, the authority to prevent other agents from carrying out similar actions. The consequence of this command is the subordination of everything that can be found on a given territory to the authority of the state. The globalization of human rights has, to a large degree, contributed to the modification of the relationship between three fundamental components of the state: its borders demarcating its territory, its population, and its sovereign authority. Despite this, states are still the most efficient force that can protect people's rights, and the international community has the right to intervene only in certain situations (e.g. genocide), given the absence of a world state.

Such interference, although it has already been accepted in international law, is still often impossible to carry out in practice for political reasons (the power of veto wielded by the permanent members of the UN Security Council) or due to ideological differences and differing views on the same situation from the axiological perspective. Cultural limitations are also an obstacle in the path to the total universalization of the human rights paradigm. Liberal democracy is not a universal ideal and is culturally conditioned (Parekh [1992]). The process of the unification of political systems and the acceptance of the same axiological foundations, even in the form of human rights, is, therefore, possible only to a certain extent, especially when considering the political and economic elements of human rights.[2]

Political agreements entered into at present concerning norms and values in international politics are based on the search for the lowest common denominator due to cultural, religious, or political differences. This partially results from historical experience, which makes interactions between states complicated and their consequences hard to foresee. Realists, being skeptics regarding international relations, are therefore right to doubt that politics is identical with morality. Morality cannot be efficiently secured in relations between states, as the international sphere does not have institutions that would be as effective as state institutions in ensuring

[2] The opportunity presented by the globalization of human rights, therefore, simultaneously entails a host of dangers. This is because globalization itself, to some extent, unifies certain states and regions and makes them dependent on one another. However, this process is neither uniform nor symmetrical. The opportunities that have appeared due to the process of globalization are being integrated and used unevenly in different regions of the world. The same applies to human rights. The set of political, cultural, social, and economic human rights is integrated in different ways by culturally, historically, and axiologically different societies. Globalization has also led to the appearance of new agents in the supranational arena, such as INGOs and multinational corporations. The unequal mobility of people and the high mobility of capital, which arise within its framework, constitute a disparity that creates many tensions.

order and sanctioning possible violations. In the opinion of realists, the international community cannot achieve the status of a state community.

This is also the reason why the problem of securing human rights on the international level appears: if not secured, these rights are just a fig leaf justifying the hegemonic use of power by the biggest players in the international arena. From this perspective, one can see that the political particularity that shapes human rights in different ways is being ameliorated by the human rights that are assumed to be universal, but are in fact based on biology. This biological perspective, once revealed, exposes the inequalities resulting from the very nature of people's biological existence. What is important is that the existence of human beings boils down to the simple fact of biological life, which, with all its inequalities, is natural for all people, and therefore it is impossible to base the claim that "all people are equal by nature" on this argument. At the most, by referring to initial inequality, one could attempt to defend the universal equality of the "constructed" subjects of human rights, where people are understood not only as biological beings, but also (in a strong sense) metaphysically, or (in a weaker sense) legally equal to each other and sharing the same status.

It is precisely in this way that idealists wish to show that not everything can be described in terms of political power games, as realists would have it, since even they have to take into account the political effects of human and civil rights. The doctrine of human rights in international law is almost universally recognized today. Concepts originating from the liberal tradition can be treated as supplementary to the realist approach to international politics. According to liberals, the existence of an international community that is based on defined principles and international institutions, which help to maintain state sovereignty, alleviating the state of anarchy between states and leading to the recognition of certain values, allows them to explain phenomena which, from the viewpoint of the power-and-subordination mechanism, are inexplicable.

Why do states provide humanitarian aid (whether it is effective is another matter) in order to help geopolitical regions of the world that are of little significance from the perspective of their interests? Faith in values and mutually accepted obligations can explain this enigma.

On the other hand, the most extreme versions of idealism, such as cosmopolitanism, are controversial when it comes to the issue of the universal status of the value of human rights in a pluriversal world of diverse cultures and values. As we saw previously, liberal cosmopolitans, such as Held, view international relations as relationships between individuals, and, according to them, state borders are not morally justified, as they mostly reinforce economic inequalities. Cosmopolitans refer to the existence of a world community and remind realists specifically about the distributive and economic aspects of international relations (the era of colonialism, globalization deepening the interdependence between states, and the domination of the North over the South). They claim that, morally, every human being is obligated to every other human being in the same way, regardless of the ties that bind them. Thus, they question the explanatory effectiveness of the realist paradigm, while proposing a new theory of justice which aims to replace the old one based on the nationalist paradigm.

The theory of global justice would, therefore, be expected to encompass the entire human world. However, the whole problem lies in the meaning that we assign to the term "justice". Are the appropriate subjects for our theory of justice states (realism) or individuals (idealism)? Either option carries with it the significant consequences and controversies described earlier. After all, the very notion of justice is ambiguous. As far as attempts to create a global theory of justice are concerned, the way global space is understood is also fundamental. If we acknowledge that we are dealing with a global community of people, then we must search for a form of justice on a global scale. If, however, we acknowledge that the world space is made up of states, then it is necessary to formulate

a theory of justice founded on international law, based on agreements between states. Due to the fact that in a globalized world we are dealing with a multitude of agents, whose relations are difficult to analyze, the decision concerning the subjects of the theory of justice depends mostly on the subjective preferences of the researcher. Of course, other ontologies also exist which are neither state nor individual. They may consist of several elements that are qualitatively different: states, individuals, supranational institutions, transnational corporations, and INGOs. All of this complicates even further the matter of creating one axiologically unified theory of justice on the international scale.

Thus, taking into consideration all our earlier reflections and analyses, we can present a few general conclusions that have arisen as a result of our work. Firstly, globalization has put before us the problem of creating a "global" theory of justice and, therefore, of establishing what legal norms should be obligatory for all agents of the international game. After World War II, human rights became a natural frame of reference and axiological foundation on which it was possible to build the principles of cooperation that were to be accepted by all. Unfortunately, this did not happen, as, secondly, realists and idealists, coming from different ontological axioms, could not find common theoretical ground as to the scope and role of human rights in the international sphere. By adopting the individualist perspective of human rights, the state-centered perspective is automatically weakened, and conversely, by endorsing the group perspective, the implementation of individual human rights is weakened. The assumption concerning the primacy of states, therefore, means that it is not possible to defend human rights on a supranational level in the same way as they are defended on a state level. Thirdly, it seems that in building their theories of justice, both perspectives should take into account other subjects (not only states or individuals) that currently play a large role in supranational relations, such as political, business, and social supranational organizations. Fourthly, it is necessary to reconsider

whether human rights can become the foundation of a theory of international justice, and if so, to what extent. Although they now form the axiological basis of international law, the problems related to their universalization and translation into many culturally different languages and values make them susceptible to accusations of being biased and hegemonic. On the other hand, the axiological rules that are recognized by many countries and that ameliorate or constitutionalize international law are often external to the doctrine of human rights (e.g. the prohibition against genocide or the prohibition against ethnic cleansing). These rights fall within the scope of group ontology, impacting the existence of entire groups, and are classified differently from the individual right to life, although, of course, it is easy to substitute these group rights with individual rights. Finally, human rights also serve as arguments for or against certain actions. This means that human rights are not natural or fundamental rights, nor are they definite guidelines for action; they are something in between. These observations explain why the theory of human rights should be minimalistic, and while these rights cannot be identical to civil rights, they do require such institutionalization as is necessary for the construction of the legal personality that is to be endowed with them.

The challenge that global theories of justice face is, therefore, also related to the creation of a mechanism that would decrease the tension between human rights and civil rights. This is because human rights result from certain historical conditions, and not from universal, rigidly defined moral ideals. What the theory of human rights could do in order to decrease the tension between moral ideals and political practices would be to clarify the role of human rights in global politics, to examine the different ways that they are conceptualized, and to scrutinize their content and application. The theory of human rights should also be a continuation of practice, and not something created independently of it. The criticism of human rights presented in this work serves to demonstrate both the necessity and the importance of maintaining the system of human

rights in the modern global order, not only by influencing the shape of institutions, but also through public discourse. Our analysis has also shown that the legitimization of human rights cannot occur without philosophical analysis of these rights and their relationship to civil rights and international relations. It is only from this perspective that we can see that in order for human rights to fulfill their role, at least two problems discussed above need to be solved. The first concerns the lack of a clear and satisfying solution to the problem of the relationship between two particularistic orders: the pre-political (biological and economic) and the political. The second is related to the split between human rights and civil rights which is occurring along with the blurring of borders resulting from globalization, and the tensions that this causes. These two issues become especially apparent in international relations during influxes of refugees and also in cases of ethnic cleansing or other actions which threaten human existence.

In the examples presented above, human rights do not provide ample protection of human life, despite the protective function they are supposed to perform. In order to strengthen this protection, a newly defined international theory of justice is required. Such a theory would not only take into account the awareness of world space, but would also entail certain specific obligations. In turn, these obligations, in order to become actions, would have to raise the issue of the legitimization of these very actions. From the philosophical perspective, it is precisely the issue of legitimizing the order that is taking shape before our very eyes and should develop in accordance with certain fundamental values that becomes crucial. From this viewpoint, the search for a way to harmonize the internal structures of human rights and civil rights is the first step towards finding a solution that could lead to a new, more secure world order. However, this will be increasingly dependent on the reflective merging of conflicting systems of values, objectives, and expectations, which is why world order cannot be an established state, but always only a process, an ongoing and unfinished project.

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The aim of this book is to describe human rights in philosophical categories and to compare their functions from the perspective of political realism and idealism. In this way we intend to show human rights (within the state as well as in the international relations), in conflict with civil rights and sovereignty of state. The conflict results from the universality and non-territoriality of human rights and territoriality of civil rights. The spatiality and finiteness of civil rights clash with postulated universalism and globalism of human rights.

"In contemporary public debate, the issue of human and civil rights plays a fundamental role. It has been a long time since the first declaration of these rights ware proclaimed, and today in Western culture, no one questions their weight and meaning. Nevertheless, this declarative agreement does not exclude disputes concerning their content and ways of interpreting them. However, what is most important and what still has not been properly examined is the tension between human rights and civil rights, whose status and degree of validity are fundamentally different. The book – and this is the basis of its novelty – enters into the heart of these disputes and makes this most important distinction the subject of philosophical, political science and legal thought. The authors carry out their considerations in a wider context of international order, which allows them to place the philosophical argument in a specific setting of political reality of today's world. The changes, which happened under the influence of globalization processes, also impinge on the understanding of classical concepts such as citizenship and sovereignty of the state, which in turn demands a profound reflection on human and civil rights, seen from a new perspective".

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