

Global Democracy and its Difficulties

**Edited by
Anthony J. Langlois
and Karol Edward Soltan**

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4 Global democracy through transnational human rights

Michael Goodhart

Globalization¹ has prompted much hand-wringing about the fate of democracy (Goodhart 2001a), leading democratic theorists to reflect on the prospects for global or supranational democracy. Among these theorists there is a tendency to imagine supranational democracy as essentially like democracy at the national level, only bigger. Whether they propose a cosmopolitan constitutional order (Held 1995), a deliberative constitutionalism (Bohman 1999; Bohman 2004), a global discursive or public sphere (Dryzek 1999; Eriksen and Fossum 2002; Eriksen and Fossum 2000; Falk 2000; Smith 1998), or some form of transnational or multilevel federalism (Bellamy and Castiglione 1998; Føllesdal 1998; Howse and Nicolaidis 2001), contemporary writers remain wedded to theories of democracy that developed within the conceptual matrix of the modern sovereign state and Westphalian states system. While this scholarship has generated intriguing and innovative *institutional* models of democracy, it has for the most part clung to familiar *normative* models (although see Archibugi *et al.* 2000; Gould 2005; Kuper 2004; Seward 2000).

This essay has three aims. The first is to show *why* statist theories of democracy are inappropriate for meeting the complex challenge of democratizing emergent forms of supranational power and governance. I shall argue that changes in the configuration of rule associated with ongoing globalization undermine the empirical foundations of familiar normative models of democracy. The essay's second aim is to say something about *what* a different concept of supranational democracy, one that avoids the shortcomings of statist theories, might look like. I will outline an alternative approach that makes democracy's core principles of universal freedom and equality the foundation for a critical reconstruction of democracy in terms of human rights. The essay's third aim is to say something about *how* this alternative approach might work. I describe how a transnational human rights regime could provide an effective and legitimate foundation for supranational democracy and democratization, a necessary platform for democratizing emergent forms of supranational governance. The essay will be divided into three sections, addressing each of these issues in turn.

Why are statist conceptions of democracy inappropriate?

To grasp why statist conceptions of democracy are inappropriate for meeting the democratic challenges posed by globalization, one must first understand in what sense familiar conceptions of democracy are statist. Many theorists have observed that democratic theory takes the modern, sovereign state for granted (e.g., Beitz 1991; Dahl 1989; Held 1995; MacCormick 1999; Manent 1997). Many of these same theorists, however, regard the connection between democracy and (state) sovereignty as merely empirical and contingent. Some stress that democracy's ties with the sovereign state are primarily concerned with the scope and scale of democratic institutions, which are susceptible to being refitted to social activity and interactions of a different scope and scale (Decker 2002; Held 1995); others emphasize that sovereignty's territorial dimension is a historical artifact, (re)conceiving sovereignty as any justified (legal, political) authority and thus susceptible to being pooled, divided, parceled out, or otherwise reformulated in light of the changing demands for governance associated with globalization (e.g. Friedrichs 2001; Held *et al.* 1999: 9; Laughlin 2003; MacCormick 1999; Pauly and Grande 2005; Pogge 1992; Strange 1996; Walker 2003).

Neither of these views adequately captures the complex interdependence of democracy and sovereignty. Modern democracy was theorized within the conceptual matrix of sovereignty, which shaped not only its empirical contours but also its normative structure. The links are both historical and conceptual (Goodhart 2001b; Huysmans 2003). Sovereignty, in Hinsley's (1986: 1.26) classic formulation of it, is "final and absolute political authority within the political community" where no such authority exists elsewhere. Notice that in this formulation sovereignty denotes a type of authority (political) and its parameters (the political community); territory, in the form of a pre-defined, exclusive political community, is fused with the idea of rightful rule in the classic doctrine. Sovereignty thus concerns the interrelated empirical and normative dimensions of authority. The idea of an exclusive political community is both an empirical prerequisite and a normative requirement of sovereignty.

Part of what made sovereignty appealing historically was its solution to the problems of multiple, conflicting loyalties and overlapping jurisdictions that pervaded medieval Europe. This particular solution had an "internal" and an "external" dimension: the existence of sovereignty entails an "inside," the political community where that authority obtains; it also implies an "outside" composed of at least one and perhaps very many other similarly constituted political communities characterized by sovereignty (Walker 1993). Sovereignty implies international anarchy, and anarchy implies sovereignty (Waltz 1986). Sovereign authority thus constitutes both political entities characterized by supreme, exclusive territorial authority and a system comprising such entities and the relations among them.²

Many scholars have shown that sovereignty and the contained social relations it implied never existed in anything like a pure form (Krasner 1999; Mann 1986; Taylor 1996). Yet sovereignty never purported to provide an accurate *description* of the world. It was rather always a *prescriptive* account, though certainly, as we have seen, one with empirical implications. It has – until recently – mattered less

that the world is messier in fact than a literal reading of sovereignty would imply than that sovereignty has been recognizable as plausible and useful abstraction about the world. One of the primary uses to which the doctrine of sovereignty has been put over the past several centuries is the democratization of the state. Modern democracy is a theory of sovereignty, one in which the people possess sovereignty jointly; their collective will is sovereign within the political community.

"Popular sovereignty" is nearly synonymous with democracy in the modern lexicon. The popularized version of sovereignty substituted the rights and interests of the citizens for those of the prince—Locke cites Cicero's "salus populi suprema lex" in §158 of the *Second Treatise* as "so just and fundamental a rule" that one can scarcely err in following it (some editions make this phrase the epigraph for the *Second Treatise*). It was Hobbes who first clearly articulated the doctrine of natural freedom and equality among men and showed that among such men consent is the basis for legitimate obligation and authority. Locke, however, set the doctrine in a more democratic trajectory by elevating freedom and equality from brute facts of nature to tenets of nature's law. And so, by making universal freedom and equality *normative* rather than *empirical* propositions, Locke established the basis for popular sovereignty and the terrain on which subsequent democratic struggles would play out.

Numerous theorists have recently observed that popular sovereignty papers over an irreducible circularity: the people are supposed to constitute the polity, but who count as the relevant people in this respect is antecedently determined by the boundaries of the political community that they are supposed to constitute (see Näsström 2003; Roemund 2003; Walker 2003; Yack 2001). This conceptual circularity no doubt exists, but the conclusion that is often drawn from it, that popular sovereignty therefore has an inescapable normative hole, tension, or violence at its core, is misleading. For early theorists of (popular) sovereignty there was never any difficulty to do with circularity because the boundaries of the political community could be taken for granted. Moves to establish *popular* sovereignty took place within territories where sovereignty itself was already constituted. Freedom and equality do not establish popular sovereignty; they do justify the transfer of sovereignty from the prince to the people. Popular sovereignty only exists where sovereignty exists; freedom and equality dictate sovereignty's location in the people.

The conceptual circularity that has worried recent critics did not worry their predecessors in the same way because for those earlier theorists the circle had, as it were, already been drawn. They were less concerned with how its circumference had been plotted than with what went on inside it. Put differently, they took sovereignty for granted as the main organizing principle of politics and the central fact about the political world. Early on this factual assumption was dubious, with various rivals and exceptions to the Westphalian system of sovereign states persisting for a long time (see Spruyt 1994). For a variety of reasons far too complex to engage with here, facts on the ground for some time moved in a direction that diminished the size of the early factual and conceptual leap that sovereignty required. So long as the empirical regularities of politics conformed broadly with sovereignty's central

political fiction, that the state was a natural and appropriate container of politics, (popular) sovereignty remained *conceptually* unproblematic.

Recently the acceleration of globalization has begun to alter those regularities significantly, chipping away at sovereignty's plausibility and thus at its ideal of rightful territorial rule. The increasing shift of all sorts of social activity and interaction to the supranational level marks a significant secular change in the organization of social life. It is not that supranational activity is new or unprecedented; as critics frequently remind us, certain aspects of economic globalization have only recently reached their pre-World War I levels (Hirst and Thompson 1996). It is rather that social activity and interaction of all kinds now transpires increasingly at the supranational level, facilitated by information and communication technologies. Perhaps just as importantly, these technologies have contributed to a heightened awareness of global interdependence. Perhaps the most significant upshot of these trends is the explosive growth in global governance arrangements: everything from international financial institutions (IFIs) like the IMF, WTO, and World Bank to the UN, NATO, the International Criminal Court (ICC), and a range of other supranational governance authorities (SGAs), including treaty-based and intergovernmental forums where important policy and regulatory decisions are made on an ongoing basis. Other important forms of supranational governance are carried out by transnational corporations (TNCs) and various non-state actors.

This expansion of global governance is both a response to globalization and an important instance of it. Its significance, in light of the claims I have so far advanced about sovereignty, is that it marks a change in the configuration of rule. In the Westphalian paradigm, authority originates and is exercised legitimately only within states; the ongoing expansion of supranational governance arrangements contradicts this paradigm, as more and more important decisions are taken by authorities other than states. These and related developments involving the flow of people, products, money, microbes, ideas, and pollutants make the ideal of a sovereign state seem less and less plausible and correspondingly less useful for making sense of the world around us. It explains, also, why efforts to detach sovereignty from the state, re-conceptualize it, or simply move beyond it are so appealing to contemporary scholars. The problem with such efforts, again from the perspective developed here, is that they ignore or underestimate the extent to which the meaning and functioning of democracy depend conceptually on this Westphalian state ideal. The idea of popular control within a political community is common to all modern notions of democracy, whether deliberative, participatory, or representative. Deliberation is about, participation is in, and representation is for making collectively binding decisions. The legitimacy of these decisions in most democratic theories hinges in part on how they are made and in part on who has made them. It is this latter dimension that reconciles democracy's core principles of freedom and equality with political obligation in the modern state. When sovereign authority is taken for granted, popularizing it makes each citizen the author of the laws, whether in the Lockean, Rousseauian, or Kantian sense, preserving each citizen's freedom and equality. This is not some abstract intellectual claim: whether in the person of Ralph Nader leading the charge against trade agreements that in

his view undermine democratically-enacted environmental safeguards (Nader and Wallach 1996) or of John Bolton (2000) insisting that the ICC violates the right of the American citizens to make their own laws, popular sovereignty is regularly invoked in contemporary political debates over the sources of legitimate authority in the age of globalization.

There is simply no way to globalize a concept of democracy – parliamentary, deliberative, discursive, participatory – premised on the idea that rightful rule consists in the collective autonomy of the sovereign citizens of a particular territory.³ Thus, only by replicating the conceptual matrix of sovereignty on a global scale could modern democratic theory be extended globally. Ongoing debates about democracy in the European Union (EU) illustrate this point: whether and how it might be possible to imagine and construct democracy in the absence of a single demos, a shared sense of political values and solidarity, is the key point at issue in those debates. It is clear how to make the EU a state, but unclear whether it would be desirable to do so. And, furthermore, it is unclear how to make the EU democratic without making it a state, even if many would find it very desirable to do so.⁴

Some scholars have recently tried to rework this dimension of popular sovereignty into an “all-affected” principle, one that revives the medieval notion that all those touched by a decision should have a say in making it (e.g. Held 1995; cf. Gould 2005). The difficulty with such attempts is that they encounter the same conundrum when confronted with the question of who decides what constitutes being “relevantly affected” in a given case.⁵ The all-affected principle assumes that global democracy must look essentially like democracy within the state: that it must consist in equal – and it should be noted in the modern context, equally infinitesimal – influence in the making of collectively binding decisions. (Even more depressingly, many scholars argue that democracy requires only that citizens enjoy the equal *opportunity* to exercise their equally infinitesimal influence over the making of collectively binding decisions.)

There are fundamental doubts about the appeal and value of any account of democracy explained and justified in terms of a person’s role as self-governing “author” of collectively-binding decisions – doubts that apply as much to the modern nation-state as to schemes for global government (see Dunn 1998; Pateman 1970). Leaving those doubts aside for the moment, it is clear that the all-affected principle, even if it could be realized, preserves one key dimension of sovereignty – supreme will – even while disavowing its territorial underpinnings. Like other accounts of modern democracy, the all-affected ideal mistakes the form of democracy in the modern state for the essence of it. That is, it treats popular control over sovereignty as essential to democracy when in fact the *democratic* element of popular sovereignty lies rather in the arguments for why it should be *popular* – in the notion that everyone is, in a normative sense, free and equal, or ought to be treated as free and equal as a matter of right. It is this idea, intimately linked with the pursuit of a dignified existence and a better life, that is the stuff of democracy. It is also this idea that points beyond sovereignty toward a more promising model of global democracy.

What might global democracy look like?

One way to begin thinking about what democracy might look like without sovereignty – i.e. without the restrictive assumptions about its form and meaning that sovereignty entails – is to work out what its core principles of freedom and equality would require in an era of globalization.⁶ Historically and conceptually, the innovation that inaugurated the modern democratic era was the idea that all people are, or should be, morally free and equal. Together, as thinkers like Hobbes and Locke saw, these two principles establish the foundation of legitimate authority in consent (cf. Pateman 1988: 39ff.) In practice, the early theorists of popular sovereignty used a variety of arguments to deny to many the freedom and equality that the theory both promised and required. The democratic implications of freedom and equality were often avoided through bogus arguments about individuals consenting to their own subjection – whether through labor or sexual contracts (Marx and Engels 1978; Pateman 1988).⁷ This supposed consent rendered workers and women “dependent”, a status used to disqualify them from citizenship. Yet over time the logic and appeal of universal freedom and equality proved irrefragable, providing the excluded with powerful weapons in their struggle to achieve full citizenship. As these critics quickly pointed out, the argument for freedom and equality only works, it only abolishes all claims to natural authority, if freedom and equality are genuinely universal. Once that universality is admitted in theory, democratic practice becomes a struggle for its full realization against entrenched prejudices; democratization signifies the progressive elimination of the various systems of domination and oppression in and through which those prejudices are maintained.

One way that people have thought *politically* about how to achieve greater freedom and equality for previously excluded or marginalized groups is in terms of human rights. Human rights are inherently *political* because they have direct institutional implications, both negatively with respect to what various actors cannot do and with the institutions needed to protect against such actions, and positively with respect to what rights enable actors to do and the institutions needed to facilitate those actions. Human rights are *democratic* when they aim at realizing freedom and equality (ending domination and oppression) for everyone. There is a long tradition within democratic theory in which human rights provided the conceptual vocabulary of democratic empowerment. What I have called “emancipatory democracy”, historically aimed at something like the elimination of domination and unwarranted interference (oppression) in social and political structures.⁸ This aim was commonly expressed through demands for (equal) human rights and for institutionalized guarantees protecting individuals from the vagaries of arbitrary rule. Thinkers as diverse as Paine, Wollstonecraft, the Chartist, the younger Mill (in his better moments), Douglass, Stanton and many other nineteenth-century abolitionists and feminists, some democratic socialists, and numerous twentieth-century leaders and theorists of progressive social movements around the world have all embraced human rights as central to the meaning and importance of democracy.

A democratic political strategy built around human rights recognizes that what often distinguishes citizens from others is the set of rights that citizens

enjoy – including guarantees of core civil rights and affirmative rights to political participation, to various social guarantees, and to fair, open, and transparent legal and administrative treatment. Efforts to secure these rights by outsiders or those marginalized within society are thus part and parcel of struggles for citizenship. Moreover, human rights can extend democracy – extend protection against domination and oppression – into new domains of life, as in Marshall's (1992) classic account of the three “waves” of rights: civil, political, and social. The (ongoing) struggle for social rights extends security against domination and oppression into the economic sphere, an area long regarded by liberals as a private domain immune from the claims of democracy.⁹ It promises to expand democracy still further into the “private” spheres of domestic and social life, and into the nascent sphere of supranational governance, seeking to end domination and oppression in all of them.

While classical liberal and republican theory treated freedom, equality, and independence together as a status characteristic of citizens, many theorists of democratization instead regarded them as political *objectives*. This pursuit of political emancipation for previously oppressed, dominated, and excluded people has defined progressive political movements from abolition and civil rights to women's suffrage, homosexual rights, and anti-colonial and anti-authoritarian struggles. In all cases, the logic and normative force of arguments for inclusion is strikingly similar: the present treatment of this group or class of persons, or the existing structure of social and political life, is inconsistent with the democratic promise of freedom and equality for all. This view remains vital in contemporary democratic theory as well, in the revised republicanism of Pettit and Skinner, and especially in the democratic theories of Carole Pateman, Ian Shapiro, and Iris Young.

This emancipatory tradition of democratic theory and democratization suggests the outlines of a reinterpretation and reconstruction of democracy suited to the age of globalization. I have argued for a conception of *democracy as human rights* in which democracy is understood as *the political commitment to universal emancipation through securing the enjoyment of fundamental human rights for everyone* (Goodhart 2005: 135ff.). Thus democracy's core principles of universal freedom and equality are realized through human rights, including civil and political rights, rights to fairness and security, and social and economic rights. These classes or clusters of rights are *fundamental* in two related senses: each is necessary to emancipation (the elimination of domination and oppression from social relationships and interactions) and each is necessary to the secure enjoyment of the others (cf. Shue 1996). Securing these rights institutionally against standard threats (see Pogge 2000: 52) fulfills democracy's commitment to emancipation for all.

Two caveats are needed here: first, in defining fundamental rights as those needed to secure emancipation, I do not mean to imply a fixed or static account of politics. On the contrary, defining fundamental rights this way reflects that democracy as human rights serves a crucial/utopian purpose, pointing toward an ideal *political* concept of emancipation or freedom and equality for all. If all of the rights are realized and people still suffer domination or oppression, either their

rights are not actually secure or they have not been defined expansively enough to achieve their democratic objective. Democracy as human rights thus relies on a sort of reflective equilibrium to ensure that all of the fundamental rights are being adequately secured and that those rights do, taken together, emancipate – that is, eliminate domination and oppression. The list of rights must, as both a political and an epistemological matter, be left open to contestation and ongoing redefinition. The second caveat is that democracy as human rights does not aim to create a good or fulfilling life for anyone; it is utopian in its vision of a society free of domination and oppression but minimally demanding in terms of its substantive concept of the good life. Fundamental human rights as defined here provide the democratic basis upon which groups and individuals construct meaningful lives as they think best; rights provide the ground rules governing social relationships and interactions.

Much more could be said about the theoretical and conceptual dimensions of democracy as human rights – including about the definition of fundamental rights, about how to secure rights, about the normative and epistemological requirements of universality in a theory of this type, and so forth. But, for the moment, I want to focus on how this reinterpretation of democracy proves useful in thinking about the challenges posed by globalization. First, conceiving democracy in terms of the realization of fundamental human rights for everyone captures the promise and appeal of democracy much better than definitions that emphasize the institutional or procedural mechanisms of representative government.¹⁰ Indeed, it provides a more persuasive justification for existing political arrangements commonly recognized as democratic than do standard accounts based in popular sovereignty – autonomy, deliberation, collective control, etc. Democracy as human rights understands representative institutions as necessary for the enjoyment of fundamental rights: they provide the only feasible way to ensure rights of political participation for everyone, providing institutionalized channels through which individuals can contest decisions, challenge policies, and advocate for their rights. Participation is a fundamental right because only through participation can individuals and groups ensure that their rights are respected; we know of no way to design non-participatory mechanisms for securing rights (Shue 1996: 84).¹¹ The point is not to denigrate or diminish the centrality of representation to democracy; it is rather to reconceive its democratic value and function. Democracy as human rights abandons the implausible claim that representative government makes citizens individually or collectively self-governing. Instead it supplies a justification that explains the central role of representation as crucial to securing fundamental rights. Responsive and participatory institutions guarantee people's right to influence and contest decisions, and thus protect them from domination and oppression. The right of participation includes, but is not limited to, voting for representatives; it extends to all sorts of participation in all systems of governance. This suggests how democracy as human rights expands the scope and reach of democracy without simply duplicating its parliamentary form; it demands innovations through which the variety of governance arrangements (not just government) can be democratized – made responsive, participatory, and protective of fundamental rights.

This possibility lies directly to a second distinct advantage of democracy as

human rights in tackling the challenges of global governance: its rejection of sovereignty as a necessary element of democracy. Democracy as human rights is a reinterpretation and reconstruction of democratic theory that tries to work out the implications of freedom and equality. It begins with no assumptions about the proper locus or limits of political authority. This reconstructive approach clarifies that there is no principled, democratic reason why democracy should be restricted to governments; the theory focuses on the threats of domination and oppression wherever they occur. Thus it is concerned not only with governments but also with the threats posed by other forms of governance, including the supranational governance exercised by IFIs, TNCs and other SGAs, and by non-state actors; it is concerned with governance wherever it occurs. Institutionalized guarantees of fundamental human rights are both possible and plausible in our world today, can be achieved progressively, and do not require a world state or elaborate and improbable schemes. Democracy as human rights thus shows that significant supranational democratization can take place through means within our reach: it is no utopian retreat. It does require that sovereignty no longer be accepted as a justification for ignoring violations of fundamental human rights or as a pretext for resisting the creation of supranational democratic political authorities. And finally, it requires that we abandon the normative ideal that sovereignty embodies: that all legitimate political authority must be territorial in nature and in reach.

How might democracy as human rights work globally?

So far I have sketched what democracy without sovereignty might look like, and how it might be global. It remains to consider how it might work.

Democracy as human rights has important implications for local and national politics. Its primary objective is to institutionalize secure guarantees for all fundamental human rights. This objective would entail the redesign of many existing electoral and social institutions as well as the creation of new ones; it would also require important changes in law and policy. Democracy as human rights is less concerned with the borders of particular jurisdictions than with secure guarantees for rights within and among them. Here, since our concern is with supranational democracy, I shall focus on one set of institutions crucial for ensuring rights related to supranational governance: a transnational human rights regime.¹²

Democracy as human rights envisions a central role for a transnational human rights regime in any attempt to achieve global democracy. In this it is quite distinctive from theories that aim to replicate the norms and institutions of sovereign democracy at the global level through parliaments, deliberative frameworks, or other mechanisms. Among the institutions proposed for securing fundamental human rights are a set of courts and commissions closely and consciously modeled on the European Court of Human Rights (ECtHR) and, to a lesser extent, the European Court of Justice (ECJ) and the Inter-American Court of Human Rights (IACHR). As these models suggest, these courts and associated commissions would be regional rather than global (which should help to reduce worries about culturally insensitive or imperialistic interpretations of human rights). These

courts and commissions would exercise "supranational" jurisdiction (see Helfer and Slaughter 1997: 277) and have three primary functions. First, they would hear individual complaints regarding the violation of fundamental human rights. Such complaints might arise against states, TNCs, IFIs, or other SGAs. The courts and commissions would also exercise "last resort" jurisdiction similar to that of the ICC. Second, the commissions and courts would oversee the development and implementation of human rights impact assessments required of all SGAs, and monitor their performance through retrospective human rights audits. Impact assessments would review, with popular participation, the likely human rights impact of major policies and initiatives undertaken by SGAs. Audits would monitor internal performance as well as compliance with and implementation of impact assessments, much on the model of social accounting or of the democratic audit of the UK (see Beetham 1994; Beetham 1999b; Klug *et al.* 1996). Finally, the courts would have independent investigative powers (similar to the powers of Spanish judges or UN rapporteurs) allowing them independently to initiate probes and prosecutions.

The courts and commissions would clearly exercise judicial authority, but this should not suggest a legalistic model for realizing human rights. These institutions would make efforts to mediate disputes and reach mutually acceptable resolution of difficult cases; they would also serve as participatory forums for deliberation about democratic human rights. Put differently, they should be social and political, not merely legal, institutions. That said, the remit of these courts and commissions would be strictly limited to the protection and promotion of fundamental human rights. It would not supplant the International Court of Justice (the World Court) or the ICC – though that is not to say that the former, in particular, is not in need of serious reform.

Skeptics might wonder about the democratic source of the authority these courts and commissions would exercise. Clearly they do *not* derive this authority from an electoral mandate (though they might have electoral procedures of a kind to promote accountability). Rather, these institutions are democratic because of their contribution to protecting and promoting fundamental rights. They are directly justified because they are necessary to securing fundamental rights against standard threats (though not sufficient to do so). They are directly justified, that is, by the concept of democracy itself – much as parliamentary rule is directly justified by popular sovereignty. This justification shows that the purview of these institutions must be strictly limited; should they step beyond their role in securing fundamental human rights, say by dictating law or policy in areas unconnected to these concerns, they would themselves become sources of domination. For this reason these courts and commissions must themselves be responsive and participatory and include features to ensure their openness and transparency. Democracy as human rights does not require global institutions for decision-making (though it is compatible with them); it does require that these decisions and processes by which they are made be consistent with fundamental democratic rights. A transnational human rights regime is necessary precisely because, in the absence of global government, there seems no other way to democratize supranational forms of governance.

I shall use the limited space remaining to explore how a transnational human rights regime along the lines of the one sketched above might contribute to global democracy and democratization. I shall argue that it would do so in three ways: by constraining the exercise of supranational power, by subordinating that power to democratic norms and priorities through providing a framework for supranational political agency, and by reinforcing democracy and promoting democratization within states. Together these three effects would significantly reduce the domination and oppression associated with supranational governance. Domination and oppression are undemocratic (anti-democratic) exercises of power, violations of freedom and equality. On the account of democracy advocated here, democracy seeks to control and regulate power through institutionalized guarantees of fundamental human rights. Such constraints within states are typically achieved through (democratic) government, which uses its authority and jurisdiction to limit the uses of power. Statist approaches to global democracy typically recommend replication of the familiar mechanisms of democratic government at the global level on the argument that since power must be constrained at this level government must be reproduced there as well. Yet while democracy as human rights does not rule out global government on the statist model, it does not require it, because it does not maintain the link between legitimate democratic authority and popular authorization typical of sovereign democracy. Rather, this approach recognizes the potential for a properly designed, effective transnational human rights regime to put meaningful constraints on the exercise of power supranationally.

For such a regime to be effective the cooperation, or at least the acquiescence, of states would be required; they would have to provide financial resources, political support, and enforcement capacity to such regimes for them to succeed.¹³ As this passage suggests, democracy as human rights relies on states' institutional capacities and it thus presumes a democratic political commitment from them. These capacities should not be confused with sovereignty as I have been using that term; sovereignty is a type of authority, but not all authority is sovereign. While some critics will object that this level of cooperation is unlikely to materialize, it is reasonable to respond by asking whether any other proposal for global democracy would achieve similar results while requiring less. Certainly global deliberative institutions, federal arrangements, or parliamentary government all demand much more from states than does a transnational human rights regime. Global civil society, according to its proponents, operates without – and sometimes against – states, but it unclear how it could deliver anything like secure, institutionalized guarantees of human rights.¹⁴ When compared to other schemes for global democracy and democratization, then, the robust and expansive transnational human rights regime envisioned by democracy as human rights is clearly the least demanding option. Moreover, institutions like the ICC and ECHR show that such cooperation is a real possibility.

To provide effective guarantees of fundamental human rights, this regime would have to subordinate both states and other actors – SGAs, TNCs – to its authority. This would mark a significant departure from and expansion of the existing human rights regime, which is piecemeal, has limited enforcement power, and typically has

jurisdiction only over states. The ECHR and IACHR provide models for how such authority might be institutionalized, though these models would need substantial improvements in their ability to deal with non-state actors. Consider first SGAs: most of these are creatures of states designed to facilitate coordination of interests and cooperation in realizing these interests. If states are their masters, there is no reason in principle why those masters could not direct them to make compliance with and protection and promotion of fundamental human rights priorities. Leaving aside the ethical and pragmatic arguments for doing so, there are dire practical objections about whether it could happen (though again, such objections seem less dire with respect to a transnational human rights regime than with other proposals for global democracy). The short answer – I cannot give a longer one here – is that persuading states to do so will require significant political will; cultivation of such will must become a priority for democrats around the world. Subordinating TNCs to human rights requirements is in many respects easier; corporations want to sell things, and states retain the authority to prevent them doing so within their jurisdictions if they do not comply.¹⁵ Again, the problem is finding the political will to use state authority to these ends.

The second way in which a transnational human rights regime would contribute to global democracy and democratization is by helping to subordinate supranational power to democratic norms and priorities through providing a framework for supranational political agency. Recall that in democracy as human rights, democracy is no longer understood in terms of sovereign control over the making of collectively binding decisions; it does, however, impose stringent demands on governance institutions, including openness, responsiveness, and institutionalized guarantees of participation and mechanisms enabling influence and contestation.¹⁶ A transnational human rights regime can promote openness, participation, influence, and contestation by protecting the political and “civil” rights of individuals in connection with political participation at the supranational level, and by providing the backbone of a meaningful form of supranational political agency that would allow people to make their participation count. Jacobson and Ruffer (2003) conceive of supranational political agency as *engagement*. On this view, electoral accountability gives way to a system in which agency is directly embedded in legal rights and restraints, and in which access to networks of judicially mediated legal rights becomes the central mechanism of self-determination (Jacobson and Ruffer 2003: 74–5). There is no reason, however, why this embeddedness of rights or the engagement it facilitates must be limited to legal rights and judicial institutions, as Jacobson and Ruffer indicate. Bohman (2004) and Bellamy and Castiglione (2003) have argued in the EU context that contestatory mechanisms can be integrated into bureaucratic agencies, legislative committees, and a range of other governance institutions.

This type of agency seems particularly well-suited to addressing the growing diversity of supranational legal, administrative, and regulatory systems of governance (Jacobson and Ruffer 2003: 81–3). As Jacobson and Ruffer argue, this “enabling” conception treats human rights as necessary preconditions for effective agency. This clarifies the role of the transnational human rights regime

in anchoring such agency: it can guarantee some rights directly and promote the institutionalization of others through its jurisdiction over SGAs and other governance entities. The enabling conception of democracy illustrates the central role and importance of participation in the realization of democracy as human rights. Unlike sovereign models of democracy, which typically rely on some version of the "all-affected" principle, democracy as human rights justifies this participation not on the grounds of autonomy or sovereign authorization but rather as necessary to eradicating the domination and oppression that result from closed, unresponsive, and unaccountable systems of decision-making. It is both less demanding and more persuasive normatively and institutionally.

The third way that a transnational human rights regime would promote global democracy and democratization is by reinforcing democracy and promoting democratization within states. I have already mentioned the important role that states would have to play in any effective human rights regime. Democratic states are most likely to respect human rights at home (Hathaway 2002; Neumayer 2005), and their commitment to human rights norms can bolster the transnational regime politically (Mayerfeld 2001). Moreover, democratic states foster robust civil societies, which contribute to holding states and the transnational regime itself accountable (Neumayer 2005). It seems clear, then, that democratic states are pivotal to the success of the regime.

So to the extent that the transnational human rights regime stabilizes democracy and promotes democratization within states, it contributes to its own success. It stabilizes democracy through what Moravcsik (2000) describes as a democratic "lock-in" and what Mayerfeld (2001) calls "democratic insurance." In essence, states create supranational checks on domestic politics through participation in an effective transnational human rights regime, hedging against backsliding or against anti-democratic pressures through binding supranational commitments. The regime promotes democratization through its promulgation of human rights norms, which create a normative logic of appropriateness surrounding human rights compliance. It also can catalyze and support domestic civil society actors in pushing for liberalization and democratization within states (Risse and Sikkink 1999; Risse 2000; Thomas 2001). Global civil society can also play an important role here (Florini and Simmons 2000; Khagram *et al.* 2002; Kumar 2000). Finally, the regime could coordinate the development and implementation of a program of incentives and conditions that would entice states to democratize, including making positive steps toward human rights prerequisites for participation in various governance regimes (Hathaway 2004; Hathaway 2002) and changing the incentives that can encourage anti-democratic behavior (Pogge 2000; see also Pogge 2001).

Again, much more could be said concerning the democratic potential of an effective transnational human rights regime. I shall simply conclude this section by pointing out one additional advantage of democracy as human rights as an approach to global democracy and democratization. As the foregoing arguments make clear, this approach does not omit or neglect democracy at the state level when thinking about democracy supranationally. Statist arguments that conceive global democracy on sovereign models often ignore that in much of the world anything

like genuine democracy remains a distant hope. How a global democratic regime would operate given the lack of democracy at lower levels remains unclear. On the approach adopted here it is clear how global democracy and democratization could proceed incrementally, as more states became democratic and signed on to the regime. The regime itself would see a steady increase in its capacity, resources, and effectiveness as more and more states came into the fold. There would not need to be a founding convention or constitutional moment when the world agreed to become democratic. Rather, the growth of democracy as human rights would reflect what in the EU contexts is called multi-speed, variable-geometry development. It is thus possible to imagine how democracy as human rights might be implemented – which is not to say it would be easy or even likely. Even this possibility, however, proves a decisive advantage over rival accounts.

Conclusion

This essay has outlined some problems with familiar approaches to global democracy, suggested what an alternative account of global democracy might look like, and sketched an account of how that conception of democracy might be realized. It has argued that statist approaches to global democracy remain committed conceptually to sovereignty, that democracy's core principles of freedom and equality for all suggest a reinterpretation of democracy that takes its main objective as universal emancipation achieved through securing the enjoyment of fundamental human rights for everyone, and that this account of democracy as human rights might be achieved in part through an effective transnational human rights regime. Given the scope of this argument and the limited space in which to make it, the essay might well raise more questions than it answers.¹⁷ In so doing, I at least hope that it pushes the debate about global democracy in a productively provocative direction.