Human Rights and Global Democracy

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Over the past dozen years or so democratic theorists and activists have become increasingly worried about globalization's adverse effects on democracy. Their concerns include: (1) *democratic deficits*, or the lack of democratic control over existing intergovernmental and supranational governance structures such as the International Monetary Fund (IMF) or the European Union (EU); (2) *democratic disjunctures*, or the disparities in scope between such global political problems as climate change, economic development, and international terrorism, on the one hand, and instantiations of democratic authority in existing, state-level political institutions, on the other; and (3) *democratic asymmetries*, or the widening inequalities among states whereby the wealthiest and most powerful dominate international interactions.

In response, democratic theorists have advanced various proposals for global democracy, including cosmopolitan and discursive (or global civil society–based) schemes. Such proposals presume—whether explicitly or implicitly—that human rights form part of the basic political infrastructure of global democratic governance.[1] They thus leave the relationship between human rights and global democracy undertheorized, with two related negative results: first, there has been little discussion of the theoretical and practical role of human rights in global democracy[2]; second, this inattention has left important questions about the compatibility of democracy and human rights neglected or unnoticed. Meanwhile, numerous critics have questioned the compatibility of the core democratic principle of majoritarian rule and human rights at the *national* level, citing fears of

"illiberal democracy"[3]; and scholars from very different ideological and theoretical perspectives have expressed worries about the democratic accountability of supranational human rights regimes—notably, the potential for such regimes to undermine democracy within the state, or to become sources of domination themselves. Further, many scholars and practitioners harbor doubts about the potential effectiveness of supranational human rights mechanisms. Yet all these critiques remain strangely isolated from the debates on global *democracy*—which are, nonetheless, predicated in part on the assumption that no significant tensions between democracy and human rights obtain.

This article addresses these concerns, arguing that human rights are a necessary condition for global democracy. It aims to clarify the conceptual role of human rights in global democracy and democratization, to work out some institutional implications of this role, and to answer concerns about the democratic legitimacy and potential effectiveness of a supranational human rights regime. The article has five sections. The first briefly examines the main democratic responses to globalization, highlighting how various proposals for global democracy leave the role of human rights undertheorized. The second section presents the conceptual core of the argument. Working with a broad, normative understanding of democracy as a political commitment to freedom and equality for everyone, I show how this commitment can be conceptualized in terms of human rights. I then develop three conjectures about the necessity of human rights to global democracy and democratization: that they provide democratic constraints on power, enable meaningful supranational political participation, and promote state-level democracy and democratization. The third section addresses important institutional implications of this argument, outlining the core functions that a supranational human rights regime designed to promote and support global democracy would have to perform, and contrasting them with existing arrangements. The fourth section refutes *in principle* objections to the effectiveness of human rights institutions, and the final section answers concerns about the democratic legitimacy of a supranational human rights regime. Last, a brief conclusion recasts the core normative and conceptual claims more provocatively.

The Neglect of Human Rights

Globalization can be understood as a trend toward increasing social activity and interaction at the international, transnational, and global (as opposed to the

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local or national) levels; the term thus encompasses the creation of new forms of social activity and interaction *and* the expansion of established ones. Globalization also comprises the process(es) through which this trend operates. In the words of James Rosenau: "Any technological, psychological, social, economic, or political developments that foster the expansion of interests and practices beyond established boundaries are both sources and expressions of . . . globalization."[4] Globalization has triggered explosive growth in governance beyond traditional national structures, as states create international forums and intergovernmental organizations (IGOs) to adapt to and manage the increasingly complex global system.

These developments have fueled growing concerns about democracy as they exacerbate democratic deficits, disjunctures, and asymmetries. Democratic deficits, again, describe the insufficiently democratic character of intergovernmental or supranational governance. The most famous example is the EU, whose critics worry—for a variety of reasons—that its key institutions lack democratic legitimacy. (These criticisms arise despite the EU having an elected parliament, explicit authorization from member state governments, and comparatively high levels of transparency and indirect accountability.) Many powerful IGOs, such as the World Trade Organization (WTO), are opaque, unresponsive, and democratically unaccountable (except in the limited sense that their officials are appointed by heads of state, some of whom are democratically elected). Thus, many important decisions and policies are today made by actors and institutions that are only minimally, if at all, democratic. IMF loans, for example, have often been conditional upon recipient countries undertaking far-reaching structural adjustment programs (SAPs) over which they have little say, giving many governments a Hobson's choice between unpopular and burdensome reforms or financial collapse.

Disjunctures are described by David Held as occurring "between the idea of the state as in principle capable of determining its own future," on the one hand, and, on the other, "the world economy, international organizations, regional and global institutions, international law, and military alliances, which operate to shape and constrain the options of individual nation-states."[5] Put differently, global politics and state-based political institutions do not "match up." Disjunctures refer to the "governance gap" in areas where states have incomplete or inadequate political control, such as the environment, global financial regulation, or human trafficking. These disjunctures limit the effective reach of democratic

decision-making. Efforts to remedy them, however, typically entail the creation of new governance arrangements, which can then engender yet more democratic deficits. For example, the creation of the International Criminal Court (ICC) was in part a response to the inability of states to deter and punish war crimes and crimes against humanity; however, some critics now bemoan its lack of transparency and accountability.[6]

Asymmetries are apparent in a variety of contexts: in widening gaps in global wealth and health; in the preponderant influence of rich countries in IGOs—especially international financial institutions (IFIs) such as the IMF, WTO, and World Bank; in the concentration of military power that allows powerful states to act unilaterally; and in the differential capacities of states to address the myriad challenges they confront. Such asymmetries belie whatever modicum of democracy might be implied by the notional equality of sovereign states, and profoundly and arbitrarily condition the life chances of people everywhere. For example, WTO rules governing trade in agriculture and textiles—sectors that remain strongly protected in the developed economies—function to the detriment of developing states and their populations despite the formal equality of all states within the WTO framework.[7]

Proponents of greater global democracy have advanced a variety of proposals to address these concerns, which can be loosely grouped into cosmopolitan and discursive approaches.[8] Cosmopolitan democrats call for extending liberal constitutional democracy globally. Held, for instance, gives detailed prescriptions for a global constitutional framework comprising supranational parliaments at the regional and global levels and for a host of other reforms intended to mitigate democratic deficits and disjunctures.[9] Other cosmopolitan democrats advocate piecemeal reforms, including global parliaments or people's congresses, and the expansion of the UN framework.[10] Most cosmopolitans seem to subscribe to David Beetham's positive assessment that human rights share the universalist sensibility central to cosmopolitanism, are fairly democratic in substance and in practice (even if lacking in effective enforcement), and can contribute positively to democratic change.[11] Held has said more about human rights than perhaps any other cosmopolitan theorist, emphasizing what he calls "empowerment rights" as "intrinsic to the democratic process."[12] Establishing democratic processes regionally and globally thus entails reestablishing these rights.

Still, Held treats human rights primarily in a judicial framework, proposing supranational courts to monitor and enforce them. As a result, the conceptual

articulation between democracy and empowerment, or human rights, remains vague, and there is no consideration of whether and how supranational definition, monitoring, and enforcement of these rights jibes with democratic processes of governance at various levels. Other cosmopolitans do not take us much further, though many stress the global rule of law and the strengthening and institutionalization of international norms.[13] In short, while human rights and cosmopolitan democracy are seen as compatible, even mutually reinforcing, cosmopolitan democrats give little explicit consideration to the conceptual or empirical relationship between them.

Civil society–based approaches are even more diverse. They typically advocate for broad and various deliberative steering mechanisms, including public spheres and transnational social movement organizations, to exert democratic influence on global politics.[14] To proponents, the democratic effects of these mechanisms are many and mutually reinforcing: civil society groups create channels for information and dialogue; they seek influence and promote identity, in the process creating transnational networks and generating social capital. These networks also provide frameworks and opportunities for democratic participation in global politics, giving voice to those formally excluded from participation in international institutions. Some, therefore, see a representative function for transnational civil society (TCS) as well, as it expands the agenda and the range of policy options considered.[15] In John Dryzek's view, networks promoting transnational deliberation (and thus shaping transnational discourses) are "the most appropriate available institutional expression of a dispersed capacity to engage in deliberation" that promotes democratic legitimacy.[16]

Theorists of deliberative or discursive global democracy typically pay even less attention to human rights than their cosmopolitan counterparts, although there is an important empirical literature emphasizing how human rights norms and transnational human rights networks encourage democratization in authoritarian states and, to a more limited extent, in IGOs.[17] Many, like Dryzek, recognize human rights as a central discourse in global politics,[18] but rights figure into discursive theories primarily as a resource to be drawn upon by civil society actors in constructing frames for collective action and deliberative influence. There is little consideration of the conceptual relationship between democracy and human rights and almost no attention to institutionalization. Dryzek eschews formal democratic institutions and control over decision-making, describing his "transnational discursive democracy" as a process of democratization, not a

model of democracy.[19] Human rights are assumed to be compatible with this process but, again, the conceptual relationship and potential conflicts are essentially ignored. Habermasians, meanwhile, argue that communicative action must play a constitutive role in creating a transnational *demos* to anchor and express the shared values and solidarity essential to democracy. In this view, respect for the individual rights that enable participation is a precondition for supranational democracy.[20] By and large, however, discursive approaches treat human rights either as a particular issue area in which mobilization occurs or as part of the discursive backdrop to global democratic politics.

Thus, while cosmopolitan and discursive approaches to global democracy acknowledge human rights to varying degrees, the nature of their relationship remains ambiguous. I am not claiming that Held or Dryzek sees no connection between human rights and global democracy, and am I asserting that their implicit views of that relationship are wrong. My point is that the relationship is undertheorized in their accounts—and in global democratic theory more generally. This neglect means that potential conflicts remain inadequately analyzed. Filling this gap is important theoretically and has practical implications for achieving global democracy.

Human Rights and Global Democracy

Modern democracy is animated by two fundamental principles, freedom and equality.[21] What precisely they mean and require, however, is the subject of much debate. Democracy is an "essentially contested concept," a widely used idea whose proper definition and realization are deeply disputed.[22] Some minimalist theorists have argued that democracy only requires periodic elite competition for votes. Others focus on the institutional arrangements—elections, representation, party competition, and so on—that typify the system. Still others stress popular deliberation or other forms of participation in all levels of public decision-making, envisioning a broader and more demanding account of democracy. This disagreement extends to global democracy, whose various proponents envision it, as we have seen, in significantly different forms. Rather than adopt one particular conception of global democracy and show its connection with human rights, I want to argue that human rights are a necessary component of *any* plausible account of global democracy. By reconceiving the challenge that globalization poses for democracy, it is possible to show the essential role of human rights in meeting that challenge.

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One common feature of modern democratic theories is that they take for granted that the state is the natural container of and vehicle for politics.[23] This Westphalian conception of the state reflects an assumption of symmetry among citizens, power, and policy that typifies the familiar model of democracy as a system of elections—of "rule by the people."[24] The ubiquity of the Westphalian model—along with a strong desire to operationalize democracy as a dependent or an independent variable[25]—has meant that, other important disagreements notwithstanding, the academic literature overwhelmingly treats democracy as a system of collective self-rule realized through elections and representative government. Crucial to this model is the state's supremacy within its particular territory, which allows it to create and maintain democratic conditions; the notions of citizenship (a status of full membership in this exclusive political community) and civil society (a sphere of voluntary action, communication, and cooperation parallel to the state) round out this familiar model.

Globalization shatters this supposed symmetry, severely compromising the idealized Westphalian model. Politics now extends across borders, making it fundamentally unclear what "democracy" of this sort might mean. As we have seen, deficits, disjunctures, and asymmetries illustrate the inadequacy of state-based models of democracy in the context of globalization. The challenge of globalization has mainly been viewed as a problem of extending the existing democratic model (cosmopolitan democracy) or of finding ways to compensate for its absence (discursive democracy). But these models cannot easily be replicated transnationally or globally: their legitimacy and even their democratic character are linked normatively and empirically to the (notional) sovereign state.[26]

My alternative approach begins by returning to democracy's core principles and key functions. There is little question among democratic theorists that freedom and equality *at minimum* require institutionalized avenues and robust constraints on the exercise of power for meaningful political agency. Constraints on power ensure the autonomy and integrity of persons. Meaningful political agency provides opportunities for groups and individuals to deliberate, influence, and contest political outcomes and processes, enabling them to shape the terms of their collective interactions and enterprises and to hold government to account. The various components of the Westphalian model—elections, citizenship, civil society, and representative institutions—are one way of achieving these aims, but not the only one. They are best seen as mechanisms for achieving general democratic aims in the specific theoretical and political context of the sovereign state.

This perspective transforms our understanding of the challenge posed by globalization. Rather than being a problem of extending or compensating for existing models of democracy, it can be seen as a problem of (re)establishing effective constraints on power and (re)creating structures of democratic agency at the global level. This reconceptualization makes the discussion of global democracy both more abstract and much more tractable: more abstract, in that conceptual propositions relating to democracy's essential functions replace specific mechanisms; more tractable, in that these conceptual propositions concerning limits on power and effective political agency carry little of the conceptual baggage of existing models and proposals. Abstraction facilitates a broader analysis of the relationship between global democracy and human rights. Still, the problem remains difficult. Establishing effective constraints on power and creating structures of democratic agency at the transnational and global levels is complicated by the sheer diversity of global politics, which comprises overlapping national, intergovernmental, and supranational systems of authority operating within and across varied issue domains. Democratic global governance arrangements will have to constrain many very different actors in very different contexts, and provide meaningful agency in connection with a multiplicity of institutions.

The argument of this article is that achieving these aims requires supranational protections for human rights. Global democracy must constrain power and enable agency—it must fulfill the same core democratic functions—but it need not do so in the usual ways. Indeed, it would be surprising if familiar institutions could perform the same democratic functions globally, given the profound differences between these two political contexts.

The question, then, is how human rights can help constrain power and enable agency globally. Human rights provide a language into which the specific functions of state-based democracy can be translated. As with any good translation, the original meaning remains unchanged—although it is expressed in wholly different terms. The point of translation is to make the original meaningful in a new context; it is needed here because the framework of state institutions and practices that make familiar models of democracy comprehensible and meaningful at the domestic level is absent globally. The global context is defined by multiple and overlapping networks of governance; the absence of a supreme political authority, a comprehensive political framework, and institutions; and the ongoing centrality of already constituted (democratic) political communities.

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Human rights are necessary for achieving democracy in such a context for four reasons. First, they attach to persons rather than to particular jurisdictions; that is, they apply regardless of who violates them or where the violations occur. Second, they are globally recognized as standards of legitimacy binding not only on states but also on IGOs, TNCs, and the like. Third, and related, human rights do not require a comprehensive political framework for their implementation; their protection is compatible with the multiplicity of governance—including democratic state government—characteristic of global politics. Finally, human rights articulate aims rather than mechanisms. They describe what should be achieved, not how it should be achieved. This makes them flexible enough to adapt to the diversity of existing and emerging forms of governance. This way of understanding human rights resonates with the trend in law, scholarship, and practice of viewing human rights not only in the traditional manner—as legal obligations of states to their citizens—but also more expansively as ethical standards for legitimate governance at all levels and binding on all actors.

In this view, democracy requires both constraining rights and enabling rights. *Constraining rights* are those rights necessary for limiting power, such as fairness rights (for example, due process, nondiscrimination, equal treatment) and rights protecting individual liberty and security (freedom of thought, physical integrity, and the like). *Enabling rights* are those that make effective agency possible, including civil and political rights (petition, assembly, expression) and social and economic rights (education, health care, subsistence). There is significant overlap between these sets: fairness and security rights are crucial to political agency; civil and political rights, and social and economic rights, are vital for limiting power. This overlap reflects the fundamental indivisibility and interdependence of a democratic conception of human rights. Interdependence refers to an analytic relationship indicating that—as Henry Shue so concisely put it—unless each of these rights is secure, none is.[27] Indivisibility is a normative imperative that follows from interdependence and from the commitment to realizing democracy: since each right depends upon the secure enjoyment of the others, and since all are necessary to achieve democracy, they should be pursued holistically.[28]

Translating constraints on power into human rights terms is conceptually straightforward, but the role of human rights in establishing agency requires more elaboration. Recent work by David Jacobson and Gayla Ruffer, and by James Bohman, attempts to reconceive agency in ways appropriate to the complex, multilayered, and overlapping institutional forms characteristic of

globalization.[29] Within the increasingly dense web of judicial and administrative rules and systems associated with supranational governance, these scholars envision a form of *political engagement* in which agency becomes embedded in a wide variety of institutional contexts through enabling rights.[30] These legally guaranteed, institutionalized rights allow people to deliberate about and ultimately to contest complex rules and systems of social relations.[31] This conception of agency facilitates democratization of emergent structures of supranational governance because it can be embedded in dispersed and plural forms of authority and centers of decision-making, providing multiple points of access and contestation.[32]

Building on these insights, a global framework for *democratic political agency* would have two distinct, though related, elements. First, to achieve effective political agency, human rights should be anchored within specific institutions or systems of governance and they should be guaranteed within the amorphous political space of TCS. To anchor rights within specific institutions means requiring them to create and protect sites of access, deliberation, and contestation. This would mean, for example, establishing mechanisms to supply information and ensure transparency to facilitate public debate and deliberation; linking rights institutionally to decision-making processes (whether legislative or regulatory); and specifying forums and procedures by which affected parties could contest decisions. In short, it would mean integrating human rights law into the rules and procedures governing IGOs.[33]

Discursive democrats show how the informal steering mechanisms of transnational public spheres provide important avenues for influence and contestation, but such agency presumes protection for the rights underpinning TCS activity—a point discursive theorists often ignore. This is largely a question of constraints on power. TCS activity takes place in a complex political and conceptual space stretching over and across the already constituted legal–political spaces of state politics. The barriers to agency look much different from Yangon than from London, with obvious implications for people's capacity and opportunities as political agents. Similarly, the immediacy of the threats posed by the IFIs—for instance, of economic displacement caused by so-called structural adjustment policies—looks very different from Dodoma or Buenos Aires than from Washington, D.C. For TCS to be democratic requires human rights guarantees to level out these asymmetries. Together, constraints on supranational power and institutionalized guarantees of access make it possible for people to deliberate about,

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influence, and contest the use of power. Securing human rights in these ways would create a sort of transnational political standing similar in some respects to democratic citizenship. That is, it would convey legitimacy on the political claims and activities of groups and individuals seeking to influence or contest IGOs and TNCs, clarifying the appropriate terms and limits of such activity.

Complementing effective political agency, the second element in this conception of democracy through human rights concerns democratic accountability directly. Embedding respect for rights in supranational institutions would make protection of human rights an essential part of their governance role and a precondition for their legitimate exercise of power. Human rights establish standards by which decision-making processes and outcomes can be assessed; they delimit the universe of procedures and policy choices that can be considered democratic. No procedure for publicly binding decision-making that systematically disregards public input should count as democratic, nor should any policy that would predictably lead to violations of human rights. In this sense, human rights would subject transnational power and governance to democratic norms and priorities, although such a requirement would stop short of direct popular control. This would ensure a reasonable degree of democratic accountability— for example, by making the IMF answerable for the impact of structural adjustment programs on people's democratic freedom.[34] Human rights principles cannot determine outcomes; they can only establish (in part) what makes an outcome democratic, a point to which I return below.

In addition to establishing constraints and agency, human rights promote democracy and democratization within states, helping to "lock in" democratic reforms[35] and provide insurance against abuses of state power.[36] This is important because states play a vital ongoing role in constraining power and enabling agency, and they remain the primary sites of political decision-making and responsibility. A "horizontal" extension of democracy to more states is as important to global democracy as any "vertical" extension; it, too, would significantly expand democratic limits on power and democratic political agency. Democratic states also nurture vibrant civil societies, which promote state compliance with human rights standards.[37] Such states are more likely to provide the moral, political, and financial support crucial to institutionalizing human rights guarantees globally.

Critics might worry that the argument offered here is tautological: that it amounts simply to defining democracy in terms of human rights and then

calling human rights necessary for democracy. However, my argument is that two essential elements of any democratic system of governance are (1) constraining the exercise of power and (2) enabling meaningful political agency. These aims derive from the fundamental principles of freedom and equality and are widely accepted. I have tried to show, conceptually, why and how human rights are necessary for achieving these aims globally. This is not like saying that when democracy is conceived in terms of human rights, democratization of IGOs simply follows. After all, what democratization of such actors means is precisely the question, one that can only be answered by clarifying the conceptual aims of democratic governance.

Institutional Implications

What might a supranational human rights regime designed to constrain power, enable political agency, and promote democracy look like? By *supranational human rights regime*, I mean a global set of formalized rules and procedures (institutions) embodying human rights norms and standards and empowered to enforce them.[38] Hereafter, I shall refer to these proposed institutions as "the Regime." This account of the Regime is prescriptive; it is not intended as an analysis or critique of the existing international human rights regime.

The democratic purpose of constraints on power is to protect people from domination and oppression. The main shortcoming of existing human rights arrangements in this respect is their narrow focus on states. The Regime will have to cast a much wider net, encompassing not only states but also individuals, as the new ICC does, as well as IGOs, TNCs, or any transnational actor whose exercise of power directly and significantly affects people. Broadening our understanding of human rights protections to include this menagerie of global actors represents a significant departure from today's state-focused arrangements.

A variety of mechanisms would help bring these actors into the Regime. These would include mandatory reporting and review of human rights–related activities for states, IGOs, certain TNCs, and supranational authorities such as those created through the EU or the North American Free Trade Agreement (NAFTA), which would significantly expand existing UN Human Rights Council procedures applicable to states. Special rapporteurs should be empowered to investigate human rights violations more broadly and to refer cases to the appropriate sanctioning bodies (again, a significant expansion and strengthening of existing

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UN arrangements). Mechanisms for receiving individual complaints should be created so that individuals can directly contest their treatment by governance authorities. Existing individual complaint mechanisms are typically established under optional protocols to human rights treaties; these should be made compulsory, and in light of the increasing fragmentation of governance, expanded to include complaints against all types of governance agencies. Finally, the doctrine of universal jurisdiction should be strengthened, providing greater accountability and flexibility in pursuing the most egregious violations.

All these arrangements should be tied to institutions adequately empowered to impose meaningful sanctions and to include mechanisms for criminal prosecution similar to the ICC but with jurisdiction over a wider range of human rights violations, perhaps along the model of the European Court of Human Rights. Yet, the emphasis should be constructive rather than punitive: cooperative resolution mechanisms (as in the European Commission of Human Rights prior to its abolishment in 1998) should be used to help actors develop policies and practices that respect and protect human rights. Both carrots and sticks are essential in designing an effective regime, as I discuss in the following section. Fines, sanctions, and even criminal punishment might all be appropriate in some instances, but they need not be the first or even the primary means used to achieve compliance.

In addition to mechanisms such as these, which seek to deter, remedy, and, when necessary, punish violations, proactive procedures should be used to prevent violations resulting from policy implementation. The policies of IGOs—especially IFIs—and supranational authorities should be subjected to regular audits. Similarly, new policy proposals should include human rights impact assessments designed to anticipate and circumvent implementation of policies that foreseeably threaten human rights. Policies that would directly violate or seriously threaten human rights should be revamped or preempted, and all policies should be monitored and audited after implementation.[39] Such measures would help ensure that policies undertaken by powerful transnational actors comply with relevant human rights standards.

The democratic function of agency is to ensure opportunities for people to participate in, influence, and contest decisions that affect them. The Regime must provide the institutional infrastructure for influence and contestation. Deliberative mechanisms for eliciting public input at the stage of policy formation and transparent procedures through which individuals might contest the

substance or process of political decisions should therefore be required of all IGOs and supranational authorities—including, crucially, the institutions of the Regime. In addition, constraints on power also play an important role in enabling political agency: in democratic states, the freedoms enjoyed by citizens ensure their ability to organize, join in public debate, and contest policies they dislike. TCS requires analogous transnational protections.

These constraining and enabling functions should be designed with the support and promotion of state-level democracy in mind. Careful institutional design can cultivate compliance with human rights agreements and encourage meaningful domestic reform.[40] Providing incentives for states to comply and disincentives for noncompliance can make a considerable difference, especially if the more burdensome and technically difficult aspects of compliance are phased. In addition, membership and full state participation in IGOs can be tied to compliance with human rights standards. The EU has had great success in consolidating democratic reform within candidate states by making reform and adherence to human rights norms conditions of membership. Similarly, as Thomas Pogge argues, limits on international borrowing privileges could encourage democratic reform and stability within states.[41] The protections that the Regime would provide for TCS activity would also help promote democracy and democratization.[42]

I have been writing of the Regime in the singular. If we accept that the Regime comprises a global set of rules and procedures embodying rights norms and standards and that it is empowered to enforce them, there is no reason to expect a single institution to perform all these functions. One of the distinct advantages of the human rights approach to global democracy is the flexibility it affords. For instance, institutions might be differentiated according to function: auditing mechanisms, for example, might be distinct from compliance mechanisms. Compliance might be organized regionally rather than globally, helping to diffuse worries about Western domination and to finesse controversies over definitions. As Jack Donnelly has shown, most of the disagreement over human rights takes place at the levels of conceptualization and implementation, and regional arrangements can help provide a "margin of appreciation" for acceptable differences while maintaining consistent global standards.[43] Finally, many enabling functions will be embedded in transnational actors themselves.

Existing human rights arrangements are primarily geared toward outlining the responsibilities of states toward their citizens and encouraging compliance; they

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have limited enforcement capacity by design and they provide few incentives for compliance with—as opposed to rhetorical support for—human rights standards. The proposed Regime would be binding not only on states but also on transnational actors of various kinds. Its institutions would encourage compliance through incentives and conditionality as well as sanctioning noncompliance, using a much wider variety of tools.

To illustrate these points, consider the WTO, which is frequently criticized for its democratic deficit and the asymmetries its policies reflect. It is doubtful that existing human rights arrangements touch the WTO. It is not party to any human rights instrument, and there is no existing mechanism for holding it accountable to human rights standards. This would change under the Regime. The WTO would have to ensure that all of its actions and policies respected human rights (for instance, by assessing the human rights impact of policies such as rich-country agricultural subsidies) and would be required to submit to monitoring and reporting as well as to investigation by special rapporteurs, if evidence warranted it. The effects of trade policies would be audited, and the impact of proposed rules would be assessed prior to their taking effect. States would be required to comply with monitoring and reporting procedures, to cooperate with other enforcement activities, and to negotiate and follow compliance programs to ensure continued participation. Finally, the organization would have to create institutional forums for public deliberation, influence, and contestation—such as an ombudsman office, public hearings, and mechanisms for appeals of its decisions. Of course, these suggestions are only illustrative: the point here is not to design the Regime but to illustrate how it could fulfill its democratic functions.

To be effective, the Regime would have compulsory jurisdiction over IGOs and supranational governance authorities. Otherwise, it would be unable effectively to constrain their power and to enable participation. In addition, states that wished to benefit from global governance arrangements would be required to meet certain conditions for participation; these should be negotiated, phased in (with incentives tied to each phase), and should include technical and financial assistance to make compliance feasible. No state would be *required* to participate, although states would have to bear the costs of nonparticipation—for instance, by forfeiting some membership privileges and benefits. The point is to design the Regime—and the broader system of global governance—to encourage and reward democratic reform and respect for human rights and to make other options costly and unappealing.

Can the Regime be Effective?

One important objection to my argument—call it the "realist" objection—concerns whether the Regime could be effective in constraining supranational power and enabling supranational political agency. The realist view equates effectiveness with independent coercive enforcement capacity, mistaking one type of effectiveness for effectiveness generally. This is not to say that coercive capacity is unimportant; it is rather to suggest that independent coercive capacity might not be the only or even the primary means of achieving compliance with transnational regimes. Extensive evidence suggests that *compliance* is a much more complex phenomenon than *coercion*. In addition to demanding compliance, institutions can cajole other actors into complying: as Laurence P. Helfer and Anne-Marie Slaughter have noted, "In the supranational context [this depends on an institution's] ability to secure such compliance by convincing domestic government institutions . . . to use their power on its behalf."[44] Effectiveness is not a fixed trait: the European Court of Justice has developed significant, and in some respects quite remarkable, effectiveness over time.[45]

A related objection—call it the "neoliberal institutionalist" objection—questions whether human rights mechanisms can be effective where the costs of compliance with treaties and other obligations can be said to outweigh the benefits. This view treats costs and benefits as fixed and focuses narrowly on *material* costs and benefits. States ratify treaties for both expressive and instrumental reasons in response to legal and nonlegal incentives at both the domestic and the international levels. Regime effectiveness could be increased by mitigating the costs of compliance with more rigorous regimes, by harnessing the expressive effects of treaty ratification—on reputation, for instance—in designing membership requirements and benefits, and by allowing for phased implementation of human rights commitments.[46] In particular, by making compliance a condition for full membership of and participation in IGOs, the international community could significantly augment the reputational dynamic of compliance while simultaneously altering states' cost–benefit analyses radically.

As this argument suggests, states respond not only to material incentives but also to nonmaterial ones. They have strong incentives to weigh the reputational effects of human rights treaty ratification.[47] Further, states become socialized to widely shared normative expectations through logics of appropriateness that inform their interests and shape their actions,[48] even when conformity and

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compliance are costly in material terms.[49] As these norms and expectations are internalized by actors within the state, compliance becomes a question of "doing the right thing." Moreover, by a similar logic, regulatory regimes can become effective by creating clear expectations and monitoring compliance—techniques that generate increased efficacy over time.[50]

It is also important to bear in mind the *indirect* effects of human rights mechanisms. These include establishing a common normative language; reinforcing the universalism of human rights and warding off relativism; legitimating rights claims, encouraging judicial precision, and bolstering domestic enforcement; stigmatizing violators; and signaling the will of the international community.[51] These indirect effects facilitate socialization and the internalization of norms. Moreover, the direct and indirect effects of all the various human rights mechanisms taken together are mutually reinforcing. In Douglass Cassel's vivid metaphor, the elements of a regime are not parallel cords pulling in one direction; they form a rope whose overall strength is much greater than that of the individual strands comprising it.[52] The indirect effects of regimes are difficult to measure. Some scholars have argued that they are best evaluated with evidence of changes in political behavior and attitudes.[53] By this standard, the overall effects of human rights institutions appear quite powerful: human rights have become the dominant normative discourse in global politics and they increasingly constitute the standard of legitimacy by which international conduct is judged.

One might ask if this view is unduly influenced by the European case, and whether what works in Europe will work where unstable democracies or nondemocratic states are concerned. However, evidence (not just from Europe) suggests that transnational human rights institutions can have a catalytic effect on domestic democracy, providing legitimacy and support for political agents struggling for reform.[54] So, too, transnational human rights regimes can create the conditions of their own success. It should also be remembered that Europe in the 1940s was hardly a region that looked ripe for sixty years of peaceful democratic development. Effective regimes, therefore, are much more than simply cost-effective regimes or regimes with coercive capacities. Human rights mechanisms can work through sanction and suasion, through processes of socialization and internalization of norms that redefine states' interests and their strategic calculations, and through a host of indirect effects. Effectiveness, as these observations suggest, is not a dichotomous variable. Regimes have varying degrees of effectiveness achieved through various means, methods, and instruments in different

conditions; effectiveness often increases as regimes mature. It is also vital to stress that these objections focus exclusively on *states*' compliance with human rights norms and standards. There is thus little direct empirical evidence bearing on how transnational mechanisms might be designed to deal effectively with IGOs and TNCs. How to ensure compliance on their part is a significant challenge with important legal, normative, institutional, and, most of all, political dimensions. In meeting them, institutional imagination and innovation will be required, including fresh thinking about compliance and effectiveness.

However well conceived and carefully designed, the Regime will fail—indeed, it will never get off the ground—unless states make human rights a priority. There is in principle no problem of capacity: IGOs remain essentially the creatures of states and thus subject to their control. Corporations still produce and sell their products and services within states, giving the latter tremendous regulatory leverage in shaping and constraining their behavior. States, in short, collectively possess the capacity to constrain supranational power and ensure meaningful participation in supranational governance. What they lack, at present, is the political will to use this capacity.

A third *in principle* objection to my argument would simply be that it is naïve or utopian to imagine that such resolve will ever materialize. Sadly, there appears to be ample evidence supporting this objection. Yet skeptics perhaps look to the wrong places in dismissing the potential of democratic political will to overcome such obstacles. Against what can only be characterized as insurmountable odds, democratic movements have succeeded throughout history and around the world. Certainly not in every state, and not completely, but democratization within states has been a strong trend over the past three centuries and especially over the past three decades. In comparison, the challenges of democratizing global governance are relatively new in historical terms—though there is already a strong backlash against globalization and growing intolerance of the unaccountable power of many IGOs and TNCs. The proposals advanced here are no more utopian than democracy has ever been.

Is the Regime Democratically Legitimate?

This section considers objections concerning the democratic legitimacy of the proposed Regime, addressing two related issues: (1), that the specific implications of human rights principles are controversial and that these controversies

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must be resolved democratically, creating a potential conflict between democracy and human rights; and (2), that global human rights standards contravene a democratic community's prerogative of self-determination and can become sources of domination in their own right.

Let us begin with the worry about the implications of human rights principles. There are two distinct issues here: first, in what sense are these implications controversial; second, what does it mean to suggest that such controversies should be decided "democratically"? Take as an example the right of nondiscrimination. This principle clearly precludes differential treatment on the basis of sexual identity or orientation—an implication that might be regarded as controversial in several ways. It might be considered controversial insofar as many citizens might regard differential treatment on this basis as perfectly fine, or it might be considered controversial because equal treatment would require recognition of same-sex marriages, which many citizens oppose. To resolve these controversies democratically might mean to decide them on the basis of democratic principles or it might mean to let the majority prevail.

If the controversy is over equality for all citizens, it is really no controversy at all. Democracy requires freedom and equality for everyone. These principles may be controversial—not everyone subscribes to them—but commitment to them defines what it means to be a democrat. That people should enjoy different rights and privileges on the basis of sexual identity—or race or religious belief—is anathema to democracy. Unfortunately, it happens that majorities do sometimes violate the rights of minorities through "democratic" institutions, but this fact hardly means that they have a *right* to do so; as Robert Dahl long ago observed, no friend of democracy has ever held that it licenses the majority to do whatever it wants.[55]

This issue again reflects the conflation of democracy with majority rule. Majority rule and representative government can be justified on various grounds—individual autonomy, communal right, equal consideration of interests, and the like. On any democratic justification—one that respects freedom and equality—majority rule follows from these principles and cannot be held to trump them.[56] Laws or policies that violate human rights are thus axiomatically undemocratic: they contradict the very premises on which majority rule is predicated. Human rights constrain democracy, but they should not be seen as external constraints. Respect for human rights is inherent in the commitment to democracy and entailed by any democratic justification for majority rule. Critics might object that,

philosophical niceties notwithstanding, constitutional or other checks on majoritarian procedures remain essential, and I fully agree. My claim is not that such checks are superfluous but that they should be properly viewed as internal to and required by democracy rather than as external limitations on it. The Regime provides one such check.

Consider now the other sense in which nondiscrimination might be controversial: its policy implications. Critics will protest that policies such as recognizing same-sex marriage should be decided through democratic deliberation, not imposed from the outside. This is certainly right. The objection incorrectly assumes that recognition of nondiscrimination requires recognition of same-sex marriage. But there is a range of policies consistent with nondiscrimination: recognition of same-sex marriage, replacement of marriage as a public institution with civil unions, a choice among various intimate partnership arrangements equally available to all, and so on. Which policy response to adopt is a question for democratic institutions to deliberate and decide; whether homosexuals, like all citizens, deserve equal rights and respect is not. This example illustrates how human rights delimit the range of democratically acceptable policy options without imposing specific political programs. Put differently, the Regime would decide no questions that are legitimately "on the table" in democratic states.

Consider another example: counter-terrorism policies. Some critics see a conflict between "democratic" and "human rights" approaches—for instance, when courts overturn democratically enacted security policies. Again, only if we think that "democratic" should mean merely "endorsed by a majority" is there a conflict here. Whether terrorist suspects may be detained without charges for seventy-two hours or seventy-two days is the type of question requiring careful democratic deliberation about how to achieve the optimal mix of security and civil liberties. At seventy-two months—roughly the period that the Guantanamo Bay detention facility has been open at the time of writing—the right to a fair and timely hearing sets a democratic limit. But it makes little sense to say that this imposes a controversial policy. The commitment to freedom and equality takes torture and unlimited detention off the table; human rights merely restate the commitment in a straightforward way.

The second concern is that human rights standards are democratically illegitimate because they are not set by the *demos* itself. This view reflects a communitarian ideal of democratic self-determination that, while not necessarily rejecting human rights, places special emphasis on the process by which a community

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decides on its own laws and policies. Some scholars even see this process as dependent upon unique ethical bonds among citizens—based in shared culture, language, history, or identity—that transnational and global institutions simply cannot engender.[57] If the community's right to self-determination is seen as flowing from a recognition of the freedom and equality of its members and from an individual right they exercise jointly as a group (roughly the civic republican or liberal nationalist positions[58]), the case becomes essentially similar to those discussed above: human rights inform the right to self-determination, not the other way round. In these democratic contexts, it makes most sense to see the choice for democracy itself as the fundamental act of self-determination.

A more robust communitarian position is that a community's right to self-determination is independent of or supersedes the rights of its individual members. In such cases, the possibility arises that the community might not endorse, or might choose to restrict, the human rights of (some of) its members. But this is no longer a question of imposing human rights on a democratic community, for it is unclear on what grounds such a community could even be considered a democracy. When a community chooses to violate the freedom and equality of its members, it might be exercising self-determination, but it is no democracy.

There is another important response to the communitarian objection, however: that in the context of globalization, self-determination simply becomes incoherent. It is not clear, for instance, what self-determination might mean in connection with tackling climate change or participation in IGOs regulating trade, finance, and development. By their very nature, such matters cannot be determined by any community alone. Moreover, entities such as IGOs and TNCs and issues such as global climate change and international terrorism already sharply limit the self-determination of all communities. The Regime would promote values already embraced by democratic communities, primarily in seeking to democratize agents and issue domains where virtually no democratic constraints presently operate. It does so in a way that—unlike many cosmopolitan proposals—preserves maximal space for community self-determination within a global democratic framework.

Conclusion

I have argued that human rights are necessary for extending democracy globally and indicated how a transnational human rights regime could work in securing

them. Human rights provide essential democratic constraints on power, enable meaningful democratic political agency, and help promote democracy within states. On this view, human rights are a necessary condition for global democracy. But let me conclude by pushing the argument further. Specifically, I want to suggest that human rights are perhaps a *sufficient* condition for global democracy as well.

The argument for necessity relies on the insight that two essential democratic functions—constraining power and enabling agency—can be understood as or translated into human rights requirements. The argument I want to propose for sufficiency is that democracy can be interpreted precisely as a political commitment to realizing freedom and equality for everyone through the protection of human rights. There is in fact a long tradition of democratic theory and practice that sees democracy this way—that conceives human rights not as something separate from democracy but rather as the language of democratic empowerment.[59] On this view, human rights and democracy are not simply compatible and complementary but in fact mutually constitutive. This is not simply to equate the two, however, but to deepen and enrich our understanding of each.

Democracy understood as a system for making collectively binding decisions or as a means of collective self-determination is, on its record, rather uninspiring. Democracy understood merely as electoralism or majority rule is, in addition, dangerous and irresponsible. It is democracy's steadfast opposition to domination and oppression and its promise of a better life for all that makes it so appealing to people around the world. Understanding democracy as a system to protect and promote human rights shifts the focus away from institutions, mechanisms, and procedures and back to the core values underlying them. Similarly, understanding human rights as a set of guarantees designed to promote freedom and equality and to combat domination and oppression helps address persistent questions about their philosophical foundations, their justification, and their substance. Linking democracy and human rights helps fill in the content of democracy and highlight its core values. It simultaneously clarifies the nature of human rights and explains something about their wide appeal, their close popular association with democracy, and their political—rather than philosophical—foundations and justification.[60] Put concisely, human rights crystallize the democratic ethos; they tell us what it means, individually and socially, to treat others as free and equal.

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One might object that democracy is fundamentally about something more—about self-determination or collective autonomy. But globalization compels us to rethink what democracy might mean when the idea of self-determining communities no longer makes sense and severe democratic deficits, disjunctures, and asymmetries of power plague emerging global governance arrangements. Conceiving of democracy as human rights has the distinct advantage of freeing our institutional imagination from the stranglehold of familiar democratic institutions—institutions that can themselves be interpreted as mechanisms for protecting human rights. In doing so, it facilitates more creative and pragmatic thinking about democratization beyond the state. In particular, it offers a solution to a profound communitarian worry about the impossibility of democracy without shared values and identity. A shared democratic commitment to human rights can provide the grounds for a value-based solidarity and cultivate transnational cooperation while also enabling people to frame and pursue local struggles in ways that respect culture and context. Finally, this approach to democracy invites a critique of the familiar institutions on human rights grounds. Many of them fall far short of providing the sorts of social and economic guarantees that are foundational for meaningful democratic participation and agency. This account thus points toward an ongoing democratization within states that must accompany democratization of transnational and global politics.

NOTES

[1] David Beetham, *Democracy and Human Rights* (Cambridge: Polity Press, 1999), ch. 7.

[2] Though compare Michael Goodhart, *Democracy as Human Rights: Freedom and Equality in the Age of Globalization* (New York: Routledge, 2005); Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2005); Jürgen Habermas, "On Legitimation through Human Rights," in Pablo De Greiff and Ciaran Cronin, eds. *Global Justice and Transnational Politics* (Cambridge, Mass.: MIT Press, 2002), pp. 197–214.

[3] For example, Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca, N.Y.: Cornell University Press, 2003), p. 191ff; Michael Freeman, "The Perils of Democratization: Nationalism, Markets, and Human Rights," *Human Rights Review* 2, no. 1 (2000), pp. 34–35; Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* 76, no. 6 (1997), pp. 24–43.

[4] James N. Rosenau, "The Complexities and Contradictions of Globalization," *Current History* 96, no. 613 (1997), p. 361; compare John Markoff, "Who Will Construct the Global Order?" in Bruce Morrison, ed. *Transnational Democracy in Critical and Comparative Perspective: Democracy's Range* (London: Ashgate, 2004), pp. 19–36; Michael Zürn, "Democratic Governance Beyond the Nation-State: The EU and Other International Institutions," *European Journal of International Relations* 6, no. 2 (2000), pp. 183–221.

[5] David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Palo Alto, Calif.: Stanford University Press, 1995), p. 99.

[6] See, e.g., Madeline Morris, "The Democratic Dilemma of the International Criminal Court," *Buffalo Criminal Law Review* 5 (2002); John R. Bolton, "The Risks and Weaknesses of the International Criminal Court from America's Perspective," *Law and Contemporary Problems* 64 (Winter 2001): 167-180.

[7] Each of these problems affects different states differently. See Michael Goodhart, "Democracy, Globalization, and the Problem of the State," *Polity* 33, no. 4 (2001), pp. 527–46.

[8] This brief summary does not encompass recent scholarship on global justice; for an assessment of the (dis)connection between work on global democracy and global justice, see Simon Caney,

"Cosmopolitanism, Democracy and Distributive Justice," *Canadian Journal of Philosophy* 31, Supp. (2005), pp. 29–63.

9 Held, *Democracy and the Global Order*.

10 For an excellent overview of cosmopolitan proposals, see Daniele Archibugi, "Cosmopolitan Democracy and Its Critics: A Review," *European Journal of International Relations* 10, no. 3 (2004), pp. 437–73.

11 Beetham, *Democracy and Human Rights*, p. 144ff.

12 Held, *Democracy and the Global Order*, p. 223. Held's preference for "empowerment" rights turns on his reluctance to assert their universality. Nonetheless, Held argues, they are rights any democrat must accept.

13 See Archibugi, "Cosmopolitan Democracy and Its Critics."

14 John S. Dryzek, *Deliberative Global Politics: Discourse and Democracy in a Divided World* (Cambridge: Polity Press, 2006), pp. 30–51; John S. Dryzek, "Transnational Democracy," *Journal of Political Philosophy* 7, no. 1 (1999), pp. 389–420; Ronnie D. Lipschutz, "Reconstructing World Politics: The Emergence of Global Civil Society," *Millennium: Journal of International Studies* 21, no. 3 (1992), pp. 389–420; Jan Aart Scholte, "Civil Society and Democracy in Global Governance," *Global Governance* 8, no. 3 (2002), pp. 281–304; Jackie Smith, "Global Civil Society? Transnational Social Movement Organizations and Social Capital," *American Behavioral Scientist* 42, no. 1 (1998), pp. 93–107.

15 See Smith, "Global Civil Society?"

16 Dryzek, "Transnational Democracy," p. 46ff.; compare John S. Dryzek, *Democracy in Capitalist Times: Ideals, Limits, Struggles* (New York: Oxford University Press, 1996), p. 146.

17 Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999). On transnational issues, see Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, "From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics," in Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, eds. *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis: University of Minnesota Press, 2002), pp. 3–23.

18 Dryzek, *Deliberative Global Politics*, p. 7.

19 Ibid., pp. 93–94.

20 Erik Oddvar Eriksen and John Erik Fossum, "Europe in Search of Legitimacy: Strategies of Legitimation Assessed," *International Political Science Review* 25, no. 4 (2004), p. 442ff.

21 Goodhart, *Democracy as Human Rights*, ch. 3.

22 W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1955–56), pp. 167–98.

23 See Charles R. Beitz, "Sovereignty and Morality in International Affairs," in David Held, ed., *Political Theory Today* (Palo Alto, Calif.: Stanford University Press, 1991); Held, *Democracy and the Global Order*.

24 On this symmetry, see Held, *Democracy and the Global Order*, p. 221ff.

25 Carole Pateman, "Democracy and Democratization," *International Political Science Review* 17, no. 1 (1996), pp. 5–12.

26 See Michael Goodhart, "Europe's Democratic Deficits through the Looking Glass: The European Union as a Challenge for Democracy," *Perspectives on Politics* 5, no. 3 (2007); Michael Goodhart, "Civil Society and the Problem of Global Democracy," *Democratization* 12, no. 1 (2005), pp. 567–84.

27 Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton, N.J.: Princeton University Press, 1996).

28 This view excludes so-called minimalist conceptions of human rights, which do not explain, for instance, how rights to education or subsistence will be secure in the absence of political rights that allow people to influence and contest government policy or how political rights can be meaningful when people are ignorant or malnourished. The interdependence of rights makes such divisible conceptions undemocratic.

29 David Jacobson and Galya Benarieh Ruffer, "Courts across Borders: The Implications of Judicial Agency for Human Rights and Democracy," *Human Rights Quarterly* 25, no. 1 (2003), pp. 74–92; James Bohman, "Constitution Making and Democratic Innovations: The European Union and Transnational Governance," *European Journal of Political Theory* 3, no. 3 (2004), pp. 315–37; James Bohman, "International Regimes and Democratic Governance: Political Equality and Influence in Global Institutions," *International Affairs* 75, no. 3 (1999), pp. 499–513.

30 Jacobson and Ruffer, "Courts across Borders," pp. 74–75, 81–83.

31 Bohman, "Constitution Making," pp. 321–23.

32 Ibid.

33 Ernst-Ulrich Petersmann, "Time for a United Nations 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration," *European Journal of International Law* 13, no. 3 (2002), pp. 621–50.

34 This suggests an alternative approach to global democratic accountability; compare Ruth W. Grant and Robert O. Keohane, "Accountability and Abuses of Power in World Politics," *American Political Science Review* 99, no. 1 (2005), pp. 29–43.

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35 Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 2 (2000), pp. 217–52.

36 Jamie Mayerfield, "The Mutual Dependence of External and Internal Justice: The Democratic Achievement of the International Criminal Court," *Finnish Yearbook of International Law* 123 (2001), pp. 71–107.

37 Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal* 111, no. 8 (2002); Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* 49, no. 6 (2005), pp. 925–53.

38 A regime is commonly defined as "[a set] of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations"; Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization* 36, no. 2 (1982), p. 186.

39 See Goodhart, *Democracy as Human Rights*, ch. 8.

40 Oona A. Hathaway, "Between Power and Principle: An Integrated Theory of International Law," *University of Chicago Law Review* 72, no. 2 (2005), pp. 469–536; Hathaway, "Do Human Rights Treaties Make a Difference?"

41 Thomas W. Pogge, "Achieving Democracy," *Ethics & International Affairs* 15, no. 1 (2001), pp. 3–23.

42 Risse, Ropp, and Sikkink, eds., *The Power of Human Rights*; Thomas Risse, "The Power of Norms Versus the Norms of Power: Transnational Civil Society and Human Rights," in Ann M. Florini, ed. *The Third Force: The Rise of Transnational Civil Society* (Washington, D.C.: Japan Center for International Exchange/Carnegie Endowment for International Peace, 2000), pp. 177–209; Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton, N.J.: Princeton University Press, 2001).

43 See Jack Donnelly, "The Relative Universality of Human Rights," *Human Rights Quarterly* 29, no. 2 (2007), pp. 281–306; Eyal Benvenisti, "Margin of Appreciation, Consensus, and Universal Standards," *International Law and Politics* 31, no. 4 (1999), pp. 843–54.

44 Laurence P. Helfer and Anne-Marie Slaughter, "Toward a Theory of Effective Supranational Adjudication," *Yale Law Journal* 107, no. 2 (1997), p. 278.

45 Karen J. Alter, "Who Are The "Masters of the Treaty"? European Governments and the European Court of Justice," *International Organization* 52, no. 1 (1998), pp. 121–47; compare Tom Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox," *Human Rights Quarterly* 19, no. 3 (1997), pp. 510–46.

46 Hathaway, "Between Power and Principle"; Hathaway, "Do Human Rights Treaties Make a Difference?" Similarly, on the political and institutional components of effective adjudication, see Helfer and Slaughter, "Effective Supranational Adjudication."

47 Hathaway, "Do Human Rights Treaties Make a Difference?" For a good survey of the literature, see Sonia Cardenas, "Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior," *International Studies Review* 6, no. 2 (2004), pp. 213–19. For a comprehensive—and more optimistic—empirical study, see Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington, D.C.: Georgetown University Press, 2005).

48 For example, Martha Finnemore, *National Interests in International Society* (Ithaca, N.Y.: Cornell University Press, 1996); John W. Meyer et al., "World Society and the Nation-State," *American Journal of Sociology* 103, no. 1 (1997), pp. 144–81.

49 Darren Hawkins, "Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms," *International Studies Quarterly* 48, no. 4 (2004), pp. 779–804.

50 Nicholas Greenwood Onuf and V. Spike Peterson, "Human Rights from an International Regimes Perspective," *Journal of International Affairs* 38, no. 1 (1984), pp. 329–42.

51 Douglass Cassel, "Does International Human Rights Law Make a Difference?" *Chicago Journal of International Law* 2, no. 1 (2001), pp. 121–35.

52 Ibid.

53 Robert O. Keohane, Peter M. Haas, and Marc A. Levy, "The Effectiveness of International Environmental Institutions," in Peter M. Haas, Robert O. Keohane, and Marc A. Levy, eds., *Institutions for the Earth: Sources of Effective International Environmental Protection* (Cambridge, Mass.: MIT Press, 1993), pp. 3–24.

54 See, e.g., Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998); Risse, Ropp, and Sikkink, eds., *The Power of Human Rights*; Thomas, *The Helsinki Effect*. For a theoretical model describing this process, see Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

55 Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), p. 36.

56 See, e.g., Ronald Dworkin, "Rights as Trumps," in Jeremy Waldron, ed., *Theories of Rights* (New York: Oxford University Press, 1984), pp. 158–67.

[57] For example, Robert Dahl, "Can International Organizations Be Democratic? A Skeptic's View," in Ian Shapiro and Casiano Hacker-Cordón, eds., *Democracy's Edges* (Cambridge: Cambridge University Press, 1999); Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (New York: Oxford University Press, 2001); Charles Taylor, "No Community, No Democracy, Part I," *Responsive Community* 13, no. 4 (2003), pp. 17–28; Charles Taylor, "No Community, No Democracy, Part II," *Responsive Community* 14, no. 1 (2003/2004), pp. 15–25. I am grateful to reviewers for helping me to sharpen and clarify the argument here.

[58] James Bohman, "Deliberative Democracy and Effective Social Freedom: Capabilities, Resources, and Opportunities," in James Bohman and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass.: MIT Press, 1997); David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), pp. 321–48; David Miller, *On Nationality* (Oxford: Clarendon Press, 1995); Yael Tamir, *Liberal Nationalism* (Princeton, N.J.: Princeton University Press, 1993).

[59] See Goodhart, *Democracy as Human Rights*, ch. 6.

[60] Ibid., ch. 7; Michael Goodhart, "Neither Relative nor Universal: A Response to Donnelly," *Human Rights Quarterly* 30, no. 1 (2008), pp. 183–93.

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