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## REPLY

# A response to my critics: *Democracy across Borders*

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It is a special privilege for me to have my book, *Democracy across borders*, discussed by insightful critics, all of whom in one way or another have contributed to emerging thinking about democracy, globalization, and international institutions. But it is also a privilege to have it discussed in this particular journal, which I see as a very good example of a transnational (rather than international) space for reflection and communication on matters of global politics. It is *transnational*, at least in part; not just because of what is discussed here, but also because of the norms that underlie its public form of communication: the norm of open access by which some of the barriers for the exercise of communicative freedom across borders are removed. Such communicative spaces did not exist even 10 years ago, although some people were already attempting to find new ways to realize communicative freedom. Other scholars may have objected that scholarly discussion should not be conducted this way, that it violated established norms of the profession and would always be marginal. However, those making such objections realized that the idea of open access would be potentially transformative, allowing the emergence of new publics and creating a dynamic process by which the norms of communicative freedom would be realized and strengthened by new institutions. Such a process might be described as transnationalization, a process that fills out the communicative infrastructure on which novel publics are based and through which they can reconstitute themselves for a variety of political purposes.

The comments on *Democracy across borders* made here are as wide ranging as the book itself, so I cannot do justice to all of them. However, these discussions converge on the same set of themes that I employed in setting forth the main arguments of the book in my precis: first, that transnational democracy is a feasible extension of novel emerging conditions, practices, and institutional orders; second,

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that transnational democracy is its own distinctive democratic form, but can be shown to fulfill what I call the democratic minimum; and third, that transnational democracy is a robust way of realizing human rights and popular control over some of the powers exercised by current forms of political authority. Rather than try to respond to all of the objections, it is more fruitful to look at those recurrent criticisms common to most of these comments that get to the book's central line of argument. Since in his contribution Mark Warren has done the service of providing a sympathetic overview and reconstruction of my 'paradigm shift' in democratic theory, my task is made somewhat easier. In his terms my argument for the feasibility of transnational democracy is 'non-utopian,' in that the theory serves 'to identify progressive opportunities' in the present circumstances of politics; the argument for the democratic minimum develops the normative basis of such a theory of democracy by showing the sufficient conditions for non-domination; and finally, showing that transnational democracy is a robust way to achieve self-rule and that human rights is accomplished by looking at reflexive institutions 'that enable the deliberative generation, revision, and renewal of collective procedures and decisions.'

### IS TRANSNATIONAL DEMOCRACY FEASIBLE?

Since the task of the book is to develop a novel account of democratic possibilities that are distinctive to the new circumstances of politics, departures from current understandings of democracy invite the objection that they are not democratic enough or that they leave out crucial features of the forms of democracy as we know them. Lafont thinks that even with all its flaws, democracy with some kind of voting is superior. These forms of democracy are in fact the very source of the problem and often lead to consequences that undermine democracy, as when citizens dominate non-citizens or engage in wars for the sake of security. Rob Walker thinks that existing international institutions are superior, although if it can be said of currently existing forms of international institutions whose doctrine of state sovereignty often reinforces forms of domination within and across borders. With the emergence of new human rights institutions such as the International Criminal Court and political structures such as the European Union (EU), we can say that new institutional forms are emerging, the structure of which is quite different and goes well beyond the possibilities of the recent past. It is thus also a feature of my argument that these institutions are not only described, but reconstructed not to exaggerate the success of their current forms but to reveal their novel possibilities. Guiding my arguments for feasibility is the premise that the democratic ideal is dynamic. When citizens transform democracy in light of new circumstances of politics, they must determine just what sorts of innovations are necessary in order to make it possible for democracy as such to continue, albeit in a changed form. The basic core of democracy is some ideal of *self-rule*, in whatever form. Even with this common core, there remains significant disagreement, having to do with how to best realize self-rule

under contemporary circumstances. Some argue that democracy can only be realized on a small scale and in shared community, while others see larger size and heterogeneity as promoting rather than constraining democracy. On my analysis the linkage between democracy and a determinate and bounded political community is essential to the conception of democracy as self-legislation within the state and delegation outside of the state, while recognizable to most people in the last century, neither this particular constellation of institutions nor its ideal of self-legislation is a necessary feature of either self-rule or democracy as such.

Given this context of analysis, Gilbert's claim that the book 'defends a genealogical or etiological conception of how a democracy of demoi could gradually generate itself and not one based on a fully elaborated or ideal picture of democracy either nationally or internationally' is indeed partly true, but only partly true. Such an account is not merely etiological, but also justificatory, to the extent that it shows that transnational democracy is not only feasible, but based on processes and possibilities that are not merely a realistic utopia, but already employed within a variety of institutions at different levels. For Gilbert, it serves to justify only 'quasi-democratization' based on whatever level of deliberation and democracy can exist in international institutions and in modern transnational regimes. This method of seeing the democratic ideal as continually reconstructed has its source in pragmatism, particularly in Dewey's treatment of the new and emerging public of large scale, industrial democracy of 20th-century America. The inadequacy of the self-legislation model might be revealed in Gilbert's discussion of contemporary American democracy, which he thinks has been undermined by oligarchy, with the solution to be found in civil society movements against neoliberal globalization. But this is even less than quasi-democratization, since democracy and self-rule under the circumstances of oligarchy are reduced to mere contestation, which can only occur outside of corrupt institutions. This kind of public influence through protest and civil society may be democratic in some broad sense, as Gilbert describes it, but it is not a democracy unless oligarchy is democratically transformed. In the end, this transformation would demand the same set of publics and civil society and a democratic minimum that permits some sort of decisional rather than contestatory status. On my account, democracy is the joint exercise of communicative freedom and communicative power, and the analysis of the latter requires understanding the institutional possibilities of the present for organizing self-rule.

In the place of my more institutional analysis, Gilbert offers social movements that are examples of '*democratic internationalism from below*.' They provide the main way to achieve the advances suggested by what he calls 'decent theories of international affairs.' But the idea of democracy from below is often a misnomer and ignores the ways in which such civil society and publics are effective because they have interacted with political institutions over time and come to be seen as a valid source of influence. This is not always the case. Partha Chatterjee and Neera Chandhoke argue that it is an exaggeration to see contestatory civil society as unambiguously democratic, when so many are excluded in this form of society and instead occupy mere 'political society' and are subject to the arbitrary control that

public officials have over their everyday lives. Nonetheless, on my account the freedom of civil society is a necessary, but not sufficient condition for democratization. While as an area for the exercise of basic freedoms of communication and association, it is necessary as a source of plurality, it is also not sufficient for non-domination. As can be seen even in the antiglobalization examples that Gilbert uses, its capacity to influence decisions even in an established democracy such as the USA is too variable. Sometimes it can still accomplish the end of stopping policies that would make things only worse. While the protests in Seattle had little influence over G8 decisions, the movement against the Multilateral Agreement on Investment was quite effective in removing the treaty from the public agenda, mostly by simply exposing its provisions to the force of publicity. In most cases, however, more is required, and at some point democracy from below must be realized in effective self-rule.

### WHAT IS THE DEMOCRATIC MINIMUM?

Cristina Lafont takes this same issue further by asking whether my account is able to provide more clearly democratic criteria of determinate membership and popular control. Indeed, she claims that I ‘override the actual powers of democratic popular control that the freedom to initiate deliberation can by itself generate.’ In the terms that Lafont uses, it is clear that she stands with Habermas on the familiar terrain of what I have called the ‘self-legislation’ model. Arguing squarely within this conception, Lafont argues that the democratic minimum, as I understand it, that citizens are able to place items on an agenda, cannot be a necessary condition for democracy. In its place she proposes that democracy requires instead that citizens have decisional status derived from their determinate membership. Decisional status is part of my conception as well, understood as the achievement rather than the presupposition of communicative power (43, 90–9). On my view, the democratic minimum is not only a necessary condition for democracy as such (so that its absence even with voting and the standard democratic mechanisms that Lafont endorses, democracy would not be present); it is also a means for *democratization*. Indeed, as I put it in the book, it ‘serves to designate just those necessary conditions of non-domination necessary for democratization, that is, for citizens to be able to form and change the terms of their common life’ (76). For the self-legislation model, decisional power is both necessary and sufficient for democracy, while for the transnational conception it is only sufficient. The deeper difficulty is to be found in the search for some specific feature of democracy that is somehow fundamental. The fallacy here is exactly what Bruce Ackerman describes with respect to the common claim that the legislature is somehow distinctly democratic as appealing to a ‘naïve synecdoche,’ the confusion of the part for the whole, when part only has its role in democratic system or constitution as a whole.

In order to see why the democratic minimum cannot be specified as single decisional status alone, imagine a society governed by an enlightened despot, who as

part of his beneficence allows the people to vote for various candidates (as citizens of the Soviet Union were able to do among selected lists of party members). In this case, this kind of decisional power is not even necessary for democracy, given that citizens have no power to set the agenda. In fact, they have exactly the sort of decisional status that the self-legislation model demands, and as *demoi* (and not as a *demos*) among which ‘ultimate political authority,’ as Lafont puts it, is distributed. In the case of decisional status, many other powers and freedoms are presupposed once such a status, including the power to initiate democratic reform or to change the agendas of the political agents for whom we are principals. Hannah Arendt called the ‘capacity to begin’ the most basic of human freedoms and the basis of political life. In this respect, the self-legislation model is simply too weak under current conditions, in which it is not reasonable to call the decision processes on which it is based as more than simply consultative. Moreover, without reference to particular freedoms such as the freedom to initiate deliberation or to put an item on a deliberative agenda, the decisional status that is possible under self-legislation is not sufficient for non-domination. In the terms that I use in *Democracy across borders*, the status of citizens in this sort of democracy lacks important normative powers and freedoms that are necessary for non-domination. Indeed, the clear weakness of the self-legislation model is that it does not have any resources to prevent the domination of citizens by those with authority, and it does not prevent the domination of non-citizens by citizens.

In this regard, Lafont finds my rejection of standard popular sovereignty democratically inadequate, even as popular sovereignty has now become a dogma of nationalists and the far right who cling to a form of democracy that promotes more domination than it inhibits. But such a suspicion of sovereignty as an inheritance of monarchy has long been part of the republican tradition and has been shared by many philosophers as diverse as Kelsen, Arendt, and Derrida. Even Habermas calls it a fiction and thoroughly proceduralized it in order to remove traces that there is some singular and ultimate deciding subject. Hannah Arendt’s republican rejection of sovereignty is perhaps most interesting for our purposes: ‘the great and, in the *long run*, perhaps the greatest American innovation in politics as such was the consistent abolition of sovereignty within the body politic of the republic, the insight that in the realm of human affairs sovereignty and tyranny are the same.’ Transnational democracy takes this claim about the identity of sovereignty and tyranny in the whole realm of human affairs seriously, but rejects Arendt’s contradictory inference that we for this reason should seek ‘to reconcile the advantage of monarchy in external affairs with those of republicanism in domestic policy.’ More importantly for the purposes of a theory of transnational democracy, popular sovereignty cannot supply the basis for the democratic minimum, precisely because just how the people are or why they have legitimate control over decisions that affect many others cannot be answered on the basis of self-legislation. For this reason, the self-legislation model that Lafont defends simply assumes that there is a distinct and singular people who somehow occupy the seat of ultimate authority through periodic election, despite the fact that democratic constitutions already distribute such authority widely even within states, in order to avoid domination and imperium. Because of interdependence that is

steered by non-democratic forms of political authority, so that self-legislation is no longer able to achieve robust non-domination or to distribute it widely. Indeed, this dogmatic conception of sovereign more often creates the condition that citizens in democracies are now the dominators of the many non-citizens in their midst. Democracy in this common form is no longer a condition for non-domination. The self-rule is made possible by the fulfillment of conditions of non-domination and non-tyranny, today related not just to the state but many different forms of affectedness, dependence, and interdependence.

It is nonetheless important to specify just what sort of statuses and powers people need to secure non-domination, especially if citizenship in a state is not sufficient to bring this about. My use of the term 'normative powers' primarily occurs within the context of democracy as a means to non-domination and in discussions of the freedoms and powers that come with membership status. To have such powers and statuses means not only that people are not merely consulted, but that people do not have to wait to be authorized by some authority. Both Warren and Lafont criticize this conception as too narrow. Warren captures very well the central aim of the concept, when he argues that 'the focus on non-domination brings democratic theory back to the basic question of how to distribute and contain power relations, such that individuals can thrive.' Here he thinks that the multiple possibilities of domination under current circumstances requires that institutions be designed to support the powers individuals can deploy to identify, resist, and alter interdependencies, which would include obstruction, voting, and actions that 'make use of non-normative capabilities.' Here I agree that normative powers are only a part of the presuppositions necessary for the more constructive and dynamic aspects of democratic self-rule. These would include also social and institutional conditions that make initiating and sustaining deliberation possible, and in their absence it would be hard to call the deliberation in various institutional locations either public or democratic. Without presupposing all of these conditions for non-domination, it would not be possible to develop a plausible democratic minimum. The democratic minimum of normative and non-normative capabilities would not only work so as to enable people to resist and alter various forms of interdependence, but also enable further democratization into areas where domination has emerged.

Hogan raises similar questions about the democratic minimum, specifically about the sufficiency of non-domination as a democratic minimum. While admitting that the global market regime does not meet the democratic minimum, he is worried that the concept of domination may not fit the forms of exploitation brought about by the emergence of a global market in labor. In response, it seems clear to me that domination does not just describe political relationships, but can be extended to include many different ways to arbitrarily interfere with the lives and choices of others, including asymmetrical relations typical of the labor contract. The force of his criticism is that non-domination is 'too weak' when joined together with the 'institutionalism' of my overall approach. Gilbert even claims that my deliberative account is 'hardly democratic at all.' Here we disagree in the diagnosis. Far from the exercise of power alone, the global market regime is itself thoroughly



institutionalized and promoted by a diverse set of institutions and practices promoted by the existing democracies of the world. It is this relationship between such a global, neoliberal market regime and those who are subject to the many evils that domination in my sense is clearly present. I have described this as an issue of forced inclusion, requiring what Mark Warren does as the ability to identify, resist, and transform such interdependencies. This is clearly a case in which Gilbert is correct that what is needed are forms of resistance in the form of non-normative capabilities such as obstruction and collective action. These actions do not just aim at overcoming exploitation but transforming its institutional basis, something that could only be done transnationally, much as was the case with respect to the slave trade. But the main point here, as in the case of the transnational movement to halt the slave trade that began in the cross-border public sphere is that increasing transnational political ties makes such a transformation possible.

Hogan and Gilbert both argue that deliberation is insufficient in such cases, or that the emphasis on institutions, particularly of the EU, leads me to turn a blind eye to such global problems. First of all, an actual deliberative body may not be sufficiently diverse to solve a particular practical problem, to the extent that important perspectives are left out and for that reason not addressed institutionally. Second, the institutional procedures themselves may have particular limitations, such as the limits and costs of participation. International financial institutions present such a difficulty, answering to the interests of states. In these cases, democratic practice as it is currently structured is unable to afford diverse citizens the capacity to express their reasons and interests effectively. Here we have the answer to Hogan and Gilbert on the differences between exploitation and domination. Under these circumstances of politics, those interested in democratization ought to see how existing institutions have failed to create conditions for democratization. In this case, their exclusion from such *institutions* is better described as a matter of domination that makes possible practices of exploitation. It is not that exploitation is not descriptively adequate; it is that it sets a problem to be solved rather than identify the wider set of possibilities that, if realized, would open exploitative practices to institutional restructuring. An open and vibrant civil society thus does have the epistemic benefit of preserving the wider set of perspectives than are ever currently available in institutional public deliberation. The challenge is resisting involuntary inclusion and also to open to these institutions by raising the demands of deliberative legitimacy.

Rather than seeing all democracy as tainted by oligarchy, Lafont's argument for voting and other standard mechanisms of national citizenship overestimates the capacity of the institutions typical of self-legislation to be able to achieve popular control. As Warren points out, my objection to the self-legislation paradigm endorsed by Lafont and Walker is that it fails not so much as a particular version of the democratic ideal, but in its institutionalization under current circumstances. Indeed, its institutions have in fact become an impediment to democratic change. In this regard, normative powers are precisely those which enable precisely the constructive aspects of democracy, in which communicative status is transformed into decisional status. But here, Lafont confuses democratization with democracy. In a democracy,



citizens do already have some decisional status, whatever it is; in a democracy of *demoi*, institutions organize such statuses deliberatively. In national democracies, citizens lack the decisional status necessary to avoid the costs of interdependence; those statuses are had only in an institutionalized transnational democracy, making it a condition for democratization even within states. National citizens do not have the statuses over all decisions that affect them as Lafont supposes. They lack normative powers needed to transform this situation in both domains; sovereignty as full control is a fiction. National citizens, as Dahl points out, have no decisional status with regard to many forms of delegated authority and thus are in danger of being dominated by them. In the transnational setting, it is not necessary to start all over from a null point; people have statuses and powers of various kinds already and seek creatively to acquire more and this extends democracy. In some cases, as with the EU, they even have institutions that can authorize deliberative reform. The transformation of communicative freedom into communicative power can be promoted by institutions that recognize the decisional status of members of publics. Under these conditions, the communicative freedom to initiate deliberation becomes the communicative power to place an item on an institutional agenda and then further to have the status to influence decisions made about items on that agenda. Here, various institutional designs can entrench both communicative conditions, and democratization requires a design based on diverse forums in which citizens exercise communicative freedom and generate communicative power. This description focuses on the process as a whole, leaving open the important question: How can participants in deliberation generate enforceable decisions? An adequate account must capture complex interrelationships of civil society, the public sphere, and formal institutions in an established democracy, all of which are required as conditions for democratization.

Behind this discussion is an important methodological point that explains why false dilemmas abound in democratic theory in general and transnational democracy in particular. Rather than look for a single axis on which to connect emerging publics to decision-making processes in international and transnational institutions, it will be more useful to consider a variety of possible forms of communication given various ways in which connections can be made between communicative status and decisional status in the public sphere. In considering possible institutional designs that enhance and democratize deliberation, it is necessary to see that different institutional arrangements can function best at different levels and scales, starting with the local, the national, the regional, and the transnational. Looking for some fundamental form of self-rule in voting as assuring popular decisional status on the one hand (Lafont) or for cases of successful contestatory opposition through civil society on the other hand (Gilbert and Hogan) seems to me once again to be a naïve synecdoche, favoring a part that functions only because of the democratic system as a whole. In the self-legislation model, the naïve synecdoche is the legislature, which somehow stands in for the whole of the democratic system. In a properly functioning democracy, at any level, democratization is possible from a variety of sources.

## REALIZING SELF-RULE AND HUMAN RIGHTS

On the basis of this particular republican and transnational account, there are a number of ways to discuss the emerging social spaces for democratization. My view is that in the present period, the possibilities for new forms of democratization are primarily transnational rather than national or international. It is also not cosmopolitan in the narrow sense, since these global spaces for democratization are not yet fully developed. The shift away from nation-states and the international system constructed in the wake of the Second World War raises great concerns about the losses that such new institutions may entail. These concerns are expressed in a variety of ways, from liberal nationalists and Euroskeptics to those who seek to create communities to promote self-determination. Along these lines, Rob Walker expresses dismay that I show ‘little sign of being disturbed by such worries,’ particularly about what will happen to the constitutive and regulative roles of modern states. Most importantly, he objects to the way in which ‘the international or interstatist character of modern forms of politics are both assumed and ignored’ in my analysis. At one level my response is simple: advocating for a multilevel form of democracy *across* borders suggests that *borders* and hence states will *not* disappear. As with the nation-state and the version of popular sovereignty that Lafont defends, I am particularly concerned that the international system has become an impediment not only for democratization of the system itself, but also in its ability to actually realize its own greatest achievement: the emergence of a human rights regime, now backed with the hedged powers of the International Criminal Court. So while I do not reject the important role of states, in a transnational democracy they would reconstruct themselves around possibilities, such as new forms of citizenship. But this is nothing new; the states of today are not fulfilling the same set of roles as the states of the 19th century. While I am sure that Walker will disagree with me, a closer examination of the history of the state will show that states have distributed decision-making at a variety of levels already, so that only a few sites are now thought of exclusively in terms of control by territorial units. Collective decision-making on many different levels no longer reside in states alone or are made by one demos. This situation has opened up new *transnational* possibilities beyond the exclusive focus on the national and the international. There is no empirical reason to think that states and international organizations exhaustively describe current possibilities.

The main thrust of Walker’s criticism has to do with the way in which the ‘international’ has defined the possibilities of modernity. Indeed he finds that the very idea of the transnational to be misleading and ultimately reduces to one more version of the international. The argument for this is a puzzling definitional fiat that leads to circular reasoning. Walker claims that the conceptual space of the present is exhausted by the international system, since ‘to move beyond the state is to move into the international, not the transnational.’ This is supposed to show that my account is ineluctably a ‘specific version of the international that [...] may or may not be preferable to various other versions, but his [Bohman’s] is an account of the international nonetheless.’ While this sounds very much like a mere difference in

words, I take it that the real issue at stake is about the extent to which the social world has actually changed in the ways that many different scholars have argued that it has. To return to the discussion with which began this section, the fundamental disagreement concerns whether or not contemporary political possibilities are to be understood in terms of a two-term relationship (the national and the international for Walker) or in terms of multiple relationships consisting minimally of the national, the international, the transnational, and the global among the relata. Further, the dispute revolves around whether there is anything distinctive to the transnational not already captured by the international, both of which occupy the same conceptual space between the national and the global. My claim is not that the transnational should replace the international, but rather that the best explanation of present possibilities for democracy should add the further term, the transnational, to designate the new properties of interdependences and connectedness across borders. For example, the concept of the transnational emerges empirically with an affirmative answer to this question: Are there institutions which are neither national nor international that have become important parts of the world politics? If we say yes, then we get different accounts of the status of various post-war innovations, such as the EU, than Walker would offer. We thus differ on the status of the EU, where Walker seems forced to accept that it is merely one more intergovernmental organization. True or false, such an empirical claim is hardly an analytic truth, but a substantive and hotly disputed debate. It means that the EU is and will remain an intergovernmental organization. On the other hand, to see the EU as transnational is to not to deny that it has intergovernmental aspects; it is rather to see in it a new kind of organization for which democracy is not only a matter of delegation. We would then locate new publics and new forms of deliberation across borders which involve new political connections that directly involve a variety of citizens in the role as citizens of the EU. One clear sense in which the EU is transnational rather than international is that it recognizes its own form of citizenship, its recognition of regions independently of states, its own mechanisms for making human rights claims against member states, its own distinctive forms of public deliberation, and so on.

The other main differences between Walker's view and mine would turn on the ways in which political movements and other forms of democratization through publics, networks, and civil society are no longer mediated through the international system and have become transnational. Such communicative and political ties signify the emergence of transnational forms of interaction and association, whereby individuals facing similar problems and issues organize and are thus able to gain influence over those interdependencies that are sources of domination. 'International' institutions have repeatedly failed to make such non-domination possible, precisely because they were constructed for purposes that take domination and interdependence off the table. Walker's undiminished optimism about the sufficiency of the international all on its own, without transnational sources of innovation, is breathtaking.

The final issue that Walker raises concerns the conception of humanity, which for me is not an abstract category but a basic form of membership required for non-domination. As in his reference to Athens and Jerusalem, Walker takes the 'the

aporetic relation between human and citizen' to be an eternal truth about 'international' politics, where their permanent opposition to each other derives from 'the constitutive distinction between human being and citizen.' But in what context is this mysterious ahistorical distinction truly constitutive? It is constitutive only for a specific realization of politics that Arendt diagnosed so well with regard to stateless persons, who lack 'the right to have rights.' It seems to be a minimum requirement of any defensible conception of the realization of human rights that such an utter lack of status be impossible. My argument is that membership in humanity is just such a right, in that it allows the person who has been stripped of status to make claims on humanity and its representatives. I doubt that there is any argument for a constitutive and aporetic relationship of human and citizen that makes such a membership inconceivable. It is a matter of institutionalization, primarily to be cashed out in terms of the increasingly transnational character of the rule of law within and across states. Indeed, the framers of the Bill of Rights and later amendments of the US Constitution did not somehow miss the constitutive features of politics when they argued that *persons* and not citizens have a legal status protected by the Fifth and Fourteenth Amendments. The protection of all persons with or without legal status is thus part of the transnational character of the constitution.

For Walker, Hogan, and Gilbert, the concept of humanity is simply too abstract to be of any use in practical terms. Hogan thinks that the analysis of membership in humanity does not go far enough, and needs 'to be supplemented by normative powers that humans possess that are constitutive of human agency.' For this reason, I think that we may talk about the recognition of membership in humanity as entailing normative powers that are the basis making legitimate and enforceable claims. The creation of a legal body that recognizes such claims, due in part because of deliberation across borders, operationalized the recognition of such claims, and in so doing humanity as the party of interest in particular crimes, much like the USA is in the case of the claims made by legal persons. Both are constitutional forms of legal order. If one is functionally and performatively a demos, why not humanity itself? The scope of these claims is broad, so would include all possible claims that are understood as human rights. We do not need further metaphysical or teleological commitments concerning human nature, as Hogan argued. Walker takes up another suspicion about humanity and argues that my conception of humanity depends on the trope of 'humanity to come,' which somehow always and dangerously favors some specific set of citizens over other. This is wrong in two ways. The claims of humanity are already being made in various courts worldwide. Perhaps more audaciously, institutions such as the International Criminal Court already provide agency for humanity to act as a demos. If some class of people is somehow the favored representative humanity, then the status of membership in this demos makes it possible for people who are denied their human rights to make claims on this demos and thus to obligate them institutionally to fulfill their normative commitments. On this basis, they can now, if only nascently begin to make claims against the *imperium* of those who, as Europeans did for centuries, justify their domination by appeal to humanity.

They typically did so by denying membership to those who they thought inferior and certainly gave no possibility of redress for their domination.

Gilbert raises an important point about statuses such as being a person or a member of humanity: that is, even the best constitutions and other means for realizing and entrenching rights can be undermined in security-minded democracies. This can undermine not only important statuses and rights, but also the strength of democratic minimum. I have already argued that many aspects of decision-making within states are not subject to popular control, leading in Gilbert's conception to oligarchy. While that diagnosis seems too strong, it is not surprising that in undermining the transnational aspects of the US Constitution, the states become less rather than more democratic. The realization of human rights is thus a transnational achievement, where the states with the strongest transnational ties will also be the states that promote human rights. The lesson here is that the USA needs a human rights court and not just a constitutional court to protect all of its residents from domination.

## CONCLUSION

By way of conclusion, let me consider one more issue that has been raised by Hogan, Gilbert, and Warren that the EU is too restrictive a model to develop all the aspects of transnational democracy. In certain respects this is true. However, it has all the empirical difficulties and practical rewards of an actual case. The EU is indeed less than fully adequate to say the least, particularly since, as I point out in Chapter 4, it has not yet solved the fundamental problem of successfully initiating democratic reform. But it is still the best elaborated and realized model of the right sort of institutional structure and political differentiation to count as transnational, at least structurally. The EU presents one sort of feedback model for enabling democratization, in which primarily the transnational-level institutions that enhance democracy at the lower levels. Certainly, even in the EU the interaction can go the other way: democracy exercised at the lower levels (in cities, regions, and states) can enhance the democracy of higher levels, especially as these suffer from the potentially dominating effects of juridification that often make transnational institutions so distant and alien. With such mutual interaction across levels and locations, a highly differentiated polity works not merely creating various policies, but also in creating a regime of human rights that can multiply realize the powers of citizenship and make them more rather than less robust. For the lower levels to begin to democratize the higher level institutions, a commitment to an increased role for publics and citizen representatives is necessary, which so far the EU has not made. But the role of real examples is to develop realistic extensions of the possibilities of the present, which have a specificity that mere philosophical reflection cannot achieve.

As I have argued in the book, these real developments suggest that there are two primary agents for a possible transnational democratization. The first are democratic states, which pool their sovereignty and pursue broadly federalist and regional

projects of political integration. The EU exhibits how this possibility may actually develop beyond initial intergovernmental and internationalist intentions and become a project of polity building. The second sort of transformative agent is less institutional: namely, the participants in transnational public spheres and associations, the citizens who inhabit networks of communication and interaction. These citizens become agents when they create the means by which they gain voice across borders. They do so not merely by employing new technologies and networks of communication, but also by using them self-consciously to create public spheres in order to pursue justice, create innovative practices with decisional features, and establish common liberty and further democratic ends.

The reform of the EU is like any other institutional order and follows Jane Addams's dictum, that the cure for the ills of democracy is not just more democracy, but better democracy. I have sought to criticize and remake our understanding of democracy in two ways. First, I have criticized the deeper assumptions about self-legislation and bounded territoriality underlying the limitations of democracy's historically contingent insistence on a unitary rather than a plural political subject and its search for the optimal size polity as a bounded community committed to freedom and equality. Second, I have proposed an alternative sociological account that significantly transforms the current political markers of democratic institutions. This alternative is not simply cosmopolitan in the hierarchical or juridical sense. It does not merely demand bigger and better institutions, but that we reshape familiar state institutions and understand them on the same transnational model, as a democratic polity of democratic polities within a distributed system of democratic authority. The goal of my argument has been the same as that of the first transnational republicans who saw the deep connection between transnationalism and non-domination in a political order that does justice to our deepest commitments to freedom and justice.

In this response, I have made two main sorts of argument. First, I have argued that certain inherited concepts used in democratic theory are not helpful in the task of developing a democratic theory across borders. These concepts include some conceptions of popular sovereignty and the internationalist conception of the institutional labor, especially its restrictive conception of democracy as self-legislation. Both are non-starters for the theory of transnational democracy. Besides considerations of non-domination, a second set of arguments would best be made in terms of developing a full democratic theory appropriate to the contemporary circumstances of politics, the board outlines of which Mark Warren sketched well in his contribution and which I have also developed in my more recent writings. Some of the dimensions of such a theory should be developed in terms of problems that democracy as it is currently constituted is not very good at solving. Finally, because of the focus on the transnational dimension of democracy, I did not develop the possibilities of a global democracy except by way of contrast. I have given some hints of the possible role of the global demos in defense of the idea of humanity. A global demos described functionally could be thought to be at least instrumentally valuable to the extent that global democracy is a necessary means to achieve particular



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valuable ends or to avoid terrible evils. If transnational democracy addresses such evils as war and famine, a global democracy might be able to create the political conditions necessary to avoid the evils not only of the loss of human rights but also to avoid looming environmental destruction that will affect the political possibilities for generations to come.