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Reply to critics by David Ingram

Before responding to my commentators, I would like to thank each of them for having taken time out of their busy lives to read a long and at times densely argued book. I chose them as my interlocutors because their reflections on selected topics had already served me well in composing my book. I expected quality commentary from them and have not been disappointed.

Gottfried Schweiger's research has pioneered new territory in the field of applied recognition theory, and his comments here and elsewhere have made me more aware of the complications associated with using recognition as one foundational category (along with discourse, which he does not discuss) for theorizing the injustices and pathologies associated with poverty and social marginalization.

In prefacing his comments, Schweiger himself notes several features that seem to recommend recognition theory as at least a necessary supplement to standard liberal theories of distributive (in)justice, namely, its attempt to ascertain injustice by appeal to the ordinary experiences of indignation suffered by those who claim to be victims of injustice and its understanding that a part of justice concerns the psychology of human relationships, which is not a good or resource that can be measured and distributed in any straightforward way. All of this stands in stark contrast to liberalism's concern with distributing basic primary goods, resources, and capabilities that individuals need (taken separately and abstractly as rational agents) according to general principles that have been constructed on the basis of what are taken to be widely (perhaps universally) accepted fixed judgements. The important and difficult challenge for recognition theory, as Schweiger makes clear in his comments, is whether its starting point in experience suffices to generate a theory of injustice and social pathology apart from an elitist theory of objective human development and/or a liberal theory of distributive justice. In other words, does recognition theory's counter-intuitive approach to framing poverty as a psychological harm really provide an alternative or needed supplement to a liberal theory of distributive justice?

Schweiger's critical engagement with my book centres around two major theoretical claims I make in chapter one, specifically about the contribution recognition theory makes to understanding poverty as a form of injustice, and an example that I use to

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illustrate them, which takes up the self-subordination social recognition paradox discussed by Serene Khader in her critique of microfinance as a tool for empowering women in the developing world.

The two claims Schweiger questions are that (1) injustices invariably call forth experiences of misrecognition or lack of recognition in the oppressed and (2) recognition theory provides at least one (perhaps necessary if not sufficient) reason why their experiencing misrecognition or lack of recognition is itself an injustice.

Schweiger denies (1) by correctly noting that many victims of injustice, such as young children and mentally handicapped persons, sometimes do not feel that they are being actively discriminated against as less important than others (misrecognition) or that their basic human needs are being ignored (lack of recognition). Indeed, Martha Nussbaum and Khader herself, writing on adaptive preferences and poor women, have argued that sometimes normally functioning adults can accept (even affirm) treatment that observers would say is unjust without feeling disrespect or neglect. These forms of rationality bias pale in significance to a more general cognitive/education bias: ignorance. As Schweiger notes, most employees do not feel exploited as their wages stagnate in comparison to the ever inflated compensation of CEOs; likewise few people would lament the declining quality of their public services as an injustice rooted in structural coercion of a neo-liberal capitalist economy. Even dependent housewives who justly complain about their husbands not giving them a sufficient allowance might misidentify the recognitive injustice they experience as (to use Honneth's tripartite scheme) simple deficiency of love rather than as disrespect for their autonomy or failure to give them what is their proper due as an equal contributor to the household economy. The appropriate form of recognition needed to resolve this injustice might not be more loving gifts from husbands but daycare policies that enable women to become independent breadwinners outside the home or, at the very least, policies that entitle women to a portion of their husband's earnings or to a government-funded income as a demonstration of society's esteem for the social value of domestic caretaking.

Of course, another way to describe the situation Schweiger raises—one that I should have formulated differently when I suggested that all injustices might be accompanied by experiences of misrecognition or lack of recognition – is to say that not all forms of misrecognition or lack of recognition are experienced as such by those suffering from misrecognition (or lack of recognition), however much it might be perceived by others. Unfortunately, as Schweiger rightly notes, simply saying that oppressed groups are denied the recognition due them *theoretically speaking* regardless of their personal experiences does not save my (or Honneth's) theory of recognition as an experience-based supplement to elite liberal theories of distributive justice. In the absence or misinterpretation of disrespectful experience, recognition theory is now supposed to enlighten ideologically duped social agents about the real inadequacies of their experiences of relational self-contentment. Furthermore, this recognition-based critique of ideological delusion serves an emancipatory interest: motivating the oppressed to radically change their unfulfilling social relationships (e.g., by eliminating domination) through reforming economic, legal, socio-political, and cultural institutions within which these relationships are embedded. Furthermore, it follows that recognition theory must then already have judged the injustice of these institutions by precisely showing

how they have failed to properly distribute basic rights, resources, opportunities, and capabilities in proper recognition of the needs of individuals or groups.

If that is so, then it remains to be explained how recognition theory contributes differently to our understanding of the injustices and pathologies of poverty than a liberal theory of distributive justice. As Rawls notes, experiences such as self-respect can also be primary goods whose absence can be correlated with statistical measurements of social pathological behaviour and whose measurable presence can be affected by social guarantees of decent, well-paying jobs, equal opportunity education, safe and healthy neighbourhoods, and adequate healthcare. If this is right, then self-respect and perhaps other modalities of recognition can be influenced (distributed, as it were) by government policy. Likewise, as Schweiger notes (citing Avishai Margalit), feelings of disrespect (humiliation) would not signal institutional maldistribution of self-respect absent a good reason, which would, in turn, reference the maldistribution of some other good, such as equal access to public services and benefits.

Here it matters little whether we are talking about influencing (distributing) behaviour or experience since the two are closely connected. As I argue in chapter two, poverty knowledge must walk a fine line between treating the poor as passive victims of structural coercion whose behaviours and experiences can be socially engineered by government policy in top-down fashion and as active agents whose (at times self-destructive) choices are entirely free (both voluntary and unconstrained). Any adequate grasp of the so-called 'culture of poverty' that manages to avoid racial stereotyping will have to begin with the phenomenology of poverty as an experience of marginalization (social exclusion) and adaptation to a harsh reality.

In sum, I agree with Schweiger that recognition theory's attempt to explain injustice experientially, which ostensibly privileges concrete practice and motivated struggle over abstract normative theory, is overdrawn. In order to function as social criticism and ideology critique, recognition theory must not only be formulated as an abstract normative theory but it must be more tightly developed as an institution-based theory of distributive justice, something that Nancy Fraser and others have suggested as well.

The second claim of mine that Schweiger questions follows from what I have just said about the need to supplement recognition theory, both as a normative (ideal), teleological theory of social freedom and agency and as a material theory that concretely relates social freedom and agency to specific economic, political, legal, social, and cultural institutions that function both distributionally and relationally. My second claim can be parsed into two separate claims: (1) a normative theory of recognition can help us to distinguish between cases of experienced misrecognition or lack of recognition that correlate with injustice and those that do not and (2) a normative theory of recognition can distinguish between forms of recognition that are inadequate, even if they are experienced as sufficiently self-affirming, and those that are fully adequate, even if they are not so experienced.

Schweiger believes that I have not sufficiently explained how to make good on these two claims, despite my having followed Hegel (and Honneth) in correlating types and modalities of recognition with the concrete institutional spheres of a modern society that actualize social freedom. He may be right. Clearly, institutional analysis is essential for assessing claims to misrecognition and non-recognition. Schweiger notes that the use of normative recognition theory to distinguish between the racist's experience of marginalization and the marginalization experienced by racial minorities must also address institutional racism, which I discuss in chapters one and two. If we accept, as

I argue in chapter one, that deliberate discrimination (misrecognition, in Schweiger's sense) might not be the sole or primary cause currently sustaining racially disparate institutional distributions of primary goods, resources, opportunities, and capabilities and their correlative behavioral/psychological impacts, and we instead assume that these distributions and impacts are partly or mainly the result of passive lack of recognition, then, as I argue in chapter one, we may need to remedy this disparity not by focusing institutional resources on consciousness-raising education about the evils of racial prejudice but by focusing those resources on more poverty research and ameliorative policy. Again, the debate over the 'culture of poverty' and alleged pathologies associated with female-headed African American families, which I discuss in chapter two, is one, I argue, that must attend to the psychological dynamics of adaptation to institutionalized racism.

Again, Schweiger's criticism of welfare-state capitalism as a coherent system for realizing recognition is one that I develop at length in chapter four. Like Schweiger, I question Honneth's failure in *Freedom's Right* to distinguish capitalist market systems from socialist market systems and his apparent optimism that the former can be structurally reformed to fully realize his own recognitive norm of social freedom.¹ Capitalism, of course, designates a comprehensive social system whose various institutions are notoriously conflictual. However, I am not confident that any system can realize social freedom consistently. Within any modern, rationally differentiated system, exchange relations that distribute esteem according to competitive achievement will clash with counter-economic expectations that distribute esteem according to productive contribution, personal risk and sacrifice, and support or dependency-based merit. Esteem will clash with democratic and legal equality. One might therefore privilege the formal legal-political equality that attaches to citizenship and its institutionalization in a constitutional democracy as the locus where conflicts between competing recognition orders are resolved, as Habermas seems to suggest. But his own understanding of democratic social freedom as a publicly recognized, institutional framework for realizing reconciliation comes up short in his frank appraisal of the unavoidable tendency towards reification inherent within constitutional democracy. Even a proceduralist paradigm of on-going discursive reinterpretation cannot dissolve the fixed tension between, for example, the strict formal equality attached to the distribution of civil *liberties*, such as freedom of speech, and the differential substantive safeguards (limitations on campaign financing, hate speech ordinances, etc.) of civil *rights* designed to guarantee *equal protection* under the law to the poor and marginalized.² Here I am inclined to agree with Todd Hedrick's sober prognosis

¹Honneth responds to this criticism in a later book, *On the Idea of Socialism*, in which he argues that the competitive, possessive individualism intrinsic to capitalism since its inception is incompatible with realizing the social freedom he takes to be at the heart of the socialist ideal. I applaud Honneth's effort to recover the socialist idea for the contemporary age by dissociating it from its original nineteenth century formulations (economism, determinism, class dualism). But his own equation of the modern idea of socialism with Deweyan experimentalism and social democracy lacks sufficient detail to see how it clearly differs from a more socially responsible capitalist order (e.g., of the postwar Fordist type). For example, he does not defend public ownership of productive capital, perhaps because he closely associates that scheme with a discredited model of market-free, planned economy. As I argue in *World Crisis and Underdevelopment*, private ownership of investment capital is precisely that defining feature of a capitalist economy that explains why any capitalist market system (however well-regulated and socially responsible) necessarily embeds relationships of domination that are corrosive to democratic life (Honneth's socialist embrace of liberty, equality, and fraternity) as well as environmentally unsustainable. For more on the limits and possibilities of my market socialist alternative, see my reply to Azmanova.

²D. Ingram, 'Disputing the Law: Lyotard in our Time: A Forgotten Critic Bears Witness to Unresolvable Injustices,' *Berlin Journal of Critical Theory*, 2/4 (October 2018): 33–54.

that ironic acceptance of a democratically propelled, constitutional learning process that is our best hope for incremental ‘progress’ in fuller freedom, rather than robust affirmation of any existing social freedom, is the most we moderns can aspire to.³ Therefore, in response to Schweiger’s important question whether competing institutionalized modalities of social freedom (recognition) oppose each other in theory or in practice, let me just say that the only meaningful way to answer this question is by analysing closely the limits and possibilities of actual institutional practice, as my discussion of the different limits and possibilities of capitalist versus socialist markets attests. That doesn’t prevent us from developing empirically testable, theoretical hypothesis regarding essential (structural or logical) limits on any market economy, nor does it prevent us from theoretically postulating structural tensions (or contradictions) between any market system of social freedom and any genuinely democratic system that promises anything more than mere universal suffrage.

Schweiger touches on the particular challenge facing my extension of recognition theory to the global arena. In the introduction I suggest that there is no reason why some of the recognitive expectations underlying globalized capitalism are not universal. These expectations no doubt assume a culturally inflected form as well. But the presence of global labour struggles of remarkably similar focus suggests there is indeed a global ethos regarding the limits of exploitation. As I argue in chapter five, discourse theory, which operates at a much higher level of normative abstraction than recognition theory, provides an important procedural basis for framing our understanding of the bi-conditional relationship between a deliberative democratic legitimation of law and institutionally embedded human rights. However, it seems to me that in Habermas’s more recent genetic account of the moral content of human rights, overlapping ethical struggles against generalized types of disrespect (misrecognition and lack of recognition) play a preponderant role as well; and it is this historical experience of indignity and indignation, rather than a formal deduction of basic rights, that saves a discourse theory of law from privileging classical liberal rights.

Granting that a phenomenology of struggles for recognition explains the complementarity of human rights, especially in their institutional (or legal) form, it still remains a hotly contested question whether recognizing each cosmopolitan citizen as a person who is entitled to an equal and full enjoyment of human rights means distributing the resources, opportunities, and capabilities guaranteed to them by human rights equally instead of differentially (e.g., in a manner more sensitive to socio-cultural context). Do human rights impose legal duties to provide each person a basic threshold of goods sufficient for leading a minimally decent and dignified life, compatible with widely varying standards of living and development? This appears to be Schweiger’s sentiment, when he asserts that women’s struggle for equal rights in Germany occurred within a national constitutional debate whereby any appeal to human rights would have been inflected by local experiences and standards. The alternative is to assert that human rights impose duties to raise all cosmopolitan citizens to a uniform level of development, commensurate with realizing the principle of equal legal protection against standard risks to humanity within a global society. In response to Schweiger’s scepticism about the need for global remedies, I am inclined to think that

³T. Hedrick, *Reconciliation and Reification: Freedom’s Semblance of Actuality from Hegel to Contemporary Critical Theory* (Oxford. Oxford University, 2019).

the latter understanding of human rights, which accords with their aspirational, experiential, and relational nature, is the correct one. Risks to humanity are borne disproportionately by stateless refugees and others who are profoundly vulnerable to climate change and other global risks. So global—and not merely national or regional – remedies are required that involve strengthening the international human rights order. Realizing human rights in this sense would then require drastic alterations in the unsustainable consumer lifestyles of affluent persons, with the subsequent convergence of all national and domestic economies towards a maximally sustainable equilibrium point.

Schweiger's concluding comment that the self-subordination social recognition paradox that women in the developing world experience as they seek emancipation by accessing entrepreneurial opportunities such as microfinance is a general feature of capitalist society – indeed, perhaps of any society in which recognition of one's autonomy (self-respect) clashes with recognition of one's social contribution (self-esteem) – is one that I have endorsed in my more recent research on recognition, adaptive preferences, and constrained choice.⁴ To take the example of capitalist society, not just women, the poor, and the marginalized face the paradox of having to choose between realizing one aspect of their agency (or one modality of their recognition-based social freedom) over another, but in some sense all people are forced to make this choice, surrendering control over their choice to be the author of their own life—to live a life that expresses their authentic sense of self – in favour of earning a living that provides them with freedom to maximize their consumer power and, if possible, increase their social esteem and social capital. Again, the frequently discussed tension between capitalism and democracy can be framed as a conflict between competing recognition regimes, the former differentially distributing monetized measures of self-esteem in a way that undermines the latter's emphasis on securing equal respect of each citizen's right to participate fully in a deliberative process of legal self-determination. Indeed, this paradox of recognition may be central to any market economy whatsoever, no matter how socially regulated, if, as Rousseau and Arendt famously warned, people end up abandoning political and active citizenship in deference to pursuing self-esteem through economic achievement.

Drew Thompson's impressive research explores the potential of discourse theory, the other major normative approach informing *World Crisis and Underdevelopment*, to supplement recognition theory in guiding immigration policy as it seeks to navigate between the shoals of human rights and democratic sovereignty.

His prefatory comments about the non-ideal theoretic approach I take to examining the institutional, above all global economic, impediments to realizing the recognitive conditions of social freedom for poverty refugees perfectly encapsulates the complexities of my critical methodology. In my opinion, the global capitalist economy is analogous to a hostile workplace environment, in which vulnerable segments of the world's poor are faced with the dilemma of having to abandon one aspect of their agency (or one dimension of their social freedom) in order to procure another one. Just as cumulative acts of misrecognition generate a coercive environment for which an entire institution, not an individual member of it, is corporately liable, so too the

⁴D. Ingram, 'When Microcredit Doesn't Empower Poor Women: Recognition Theory's Contribution to the Debate over Adaptive Preferences,' in G. Schweiger (ed.), *Recognition and Poverty* (Springer, 2019).

cumulative acts of an exploitative economic system generate a coercive environment for which the international legal order as a whole is liable. Victims of the former must leave their place of livelihood to recover their dignity; victims of the latter must recover their livelihood by leaving their place of dignity, viz., their familial, communal, and national base of social freedom. Constrained by poverty, the poor must choose between welfare agency and social identity agency; they must choose between social esteem as breadwinners for their families, self-respect as equal rights-bearing citizens of the country in which they work, and love as caretakers of family members.

Neither cosmopolitan nor communitarian approaches to migration ethics incorporate this agential dilemma (injustice) into their theorizing. Both depart from an ideal in which structural coercion does not figure as the background for perfected moral and legal relationships, whether it be the unconstrained moral freedom of individuals to live wherever they please – the cosmopolitan perspective adopted by liberal contractarians, utilitarians, and other ‘open border’ proponents – or the unconstrained moral freedom of the political community to control its own membership – the communitarian perspective of nationalists and other ‘closed (restricted) border’ advocates. Cosmopolitan ethics overlooks the coercive institutional background constraining ‘freedom to migrate’ and the importance of stable democratic communities to realizing social freedom. Communitarian ethics overlooks the complicity of nation states in maintaining coercive international institutions that constrain the freedom of democratic nations no less than the freedom of individual citizens.

Shifting our focus from the positive (moral) freedom of individuals (taken abstractly) and from the negative (legal) freedom of political communities (taken abstractly) to the social freedom of institutionally cooperating co-partners, it becomes imperative that all of those subjected to and affected by global institutions should participate as equals (or in some degree of parity) in constituting and amending their terms of cooperation. It is in this spirit that I draw upon Habermasian discourse theory to problematize three institutional dimensions of immigration policy: the metapolitical presuppositions that frame thinking about national sovereignty, borders, and citizenship; the political presuppositions that frame thinking about national immigration policy; and the judicial presuppositions that frame migrant claims processing.

Unlike most ideal theories of political justice, discourse theory models a project of democratic constitutional reform oriented towards greater participatory inclusivity, equality, and freedom in a manner that refrains from prejudging the content of decisions unless they impede the realization of deliberative and decisional parity. When applied to the first dimension of immigration policy, discourse ethics requires counterfactually reimagining boundaries to accord with a multiplicity of urgent and competing claims for limited sovereignty and transborder connectedness. It reminds us that questions regarding the drawing and meaning of national boundaries should never be regarded as completely settled and that re-opening their status should be sensitive to public opinion informed by free, inclusive, and egalitarian deliberation. The EU’s evolving system of ‘disaggregated citizenship’ can be understood as an example (imperfectly democratic, to be sure) of this kind of deliberation, as can its attempt (as of yet unrealized) to propose a method for resettling refugees among its member states that replaces the Geneva Convention’s state-centric approach. Another example I discuss includes the fluid discussion (currently suspended) about what the appropriate

boundaries determining Palestinian and Israeli political units should look like in order to preserve some degree of national sovereignty combined with supranational rights of transit and much else. Finally, to take a livelier example, as of this writing, the so-called 'Brexit' negotiations revolving around retaining a 'backstop' that might preserve a relatively porous border between EU member-state Ireland and Northern Ireland (UK) for both goods and persons – as per the 1998 Good Friday Agreement, persons born in Northern Ireland can claim Irish or UK citizenship *or both* – continues to find popular support among those most adversely affected by a hard UK exit from the EU.

One question Thompson poses to my application of discourse theory at the meta-political level is how it might actually proceed. It's one thing to conceptualize a democratic procedure for political secession, annexation, consolidation, power sharing and devolution, and another thing to implement it. The fairest way to implement a democratic process in these instances of boundary-crossing must be sensitive to history and context. In the case of Israel and Palestine, the situation is especially fraught because of a number of legitimate historical imperatives. How one balances the need for a Jewish sanctuary, which for many Israeli Jews practically requires immigration and nationalization policies that favour Jews and disfavour Palestinians, with the need to recognize Palestinian claims to their homelands, which requires eliminating these policies, cannot be theoretically resolved. Thompson rightly points out that the exclusion of immigrants that might be justifiably exercised by aboriginal peoples who have a sovereign right to practice their religion freely, which might entail protecting natural and ancestral spirits from territorial desecration, cannot be as straightforwardly justified in the case of a multicultural secular democracy like Israel.

As for applying discourse theory to the political dimension of immigration theory, I propose a principle which is similar in some respects to a principle proposed by Seyla Benhabib, which requires that immigration policies be rationally acceptable to all affected parties, or in my formulation, non-rejectable in light of the rationally considered moral rights and interests of all affected parties. My formulation has the practical implication of shifting the burden of proof onto citizens of affluent states, modulating the discourse theoretical principle of reciprocity in an asymmetrical direction.

Thompson is concerned that I have not provided a theory of reasonableness for racist immigration policies but I make clear my endorsement of Benhabib's exclusion of 'race, gender, religion, ethnicity, language community, or sexuality' as legitimate reasons for *restricting* immigrants (immigration *preferences*, especially when applied to refugees, are a different matter, as are exceptions, noted above, that apply to aboriginal peoples who exercise the appropriate powers of territorial sovereignty).

Thompson also notes my omission in discussing what, if any, duties migrants have towards respecting immigration laws. Should only non-desperate immigrants be duty-bound to fulfilling the legal requirements for entry and residency? It seems that desperate migrants also have a *prima facie* duty to fulfill legal requirements. However, I compare their situation to Jews who forged passports and other documents to escape Nazi persecution. In the absence of readily accessible and affordable legal remedies that enable asylum seekers to escape life threatening circumstances in timely fashion, desperate people have justified recourse to irregular avenues of escape. In a conflict between duties, the survival of oneself and one's family must be accorded priority over adherence to law.

As for how the law should treat undocumented (or irregular) migrants, I argue strenuously against criminalizing illegal entry and undocumented residence. I do not advocate open border policies in deference to the principle of national self-determination which finds support in the territorial conditions of institutionally secured social freedom. The enforcement of even unjust immigration policy must sometimes involve the imposition of sanctions. Fines and even deportation may be appropriate (especially if the defendant has a serious criminal record). However, my application of discourse theory to the third dimension of immigration ethics – the judicial processing of suspected violations – requires that judges take the defendant’s circumstances into account as well as the harm that deportation would inflict on their (and others’) agency in applying and interpreting the law. Judges should not abuse their discretion in carving out new exceptions (a recourse that can normally be justified only when national immigration policy clearly violates human rights) but they should exercise the legitimate discretion they have to compassionately apply the law.

Thompson raises additional points that I would need to address in fleshing out a discourse- and recognition- theoretic account of immigration ethics. For example, my account suggests that the best way to safeguard the social freedom of economic (and climate) refugees is by eliminating the coercive poverty and unsustainable growth of a global capitalist economy, but the model of economic democracy I propose as a substitute for capitalism (in chapter four) is, for the time being, a *desideratum* to be realized in the distant future. In the meantime, the current refugee crisis calls for reform. No government has an unconditional duty to admit vast numbers of refugees when doing so might drastically obstruct its duty to protect the human and domestic rights of its current residents. To relieve this burden I propose the creation of supranational and international systems of governance (chapters five and six) that would be empowered to facilitate the resettlement of refugees in a manner that gives voice to all affected parties. Above all, a discourse theoretic approach should give refugees equal voice (through representative agencies, such as the UNHCR) in the design of international resettlement policies and in their own resettlement.

Thompson concludes his commentary by providing an important supplement to my discourse theoretic treatment of migration. Drawing from my recognition theoretic account of social freedom, he notes that any adequate ethics of immigration will have to include a theory about how resettled migrants should be socially and politically integrated in a manner that fully respects their and their host community’s agency. Such a theory must be sensitive to the full costs of resettlement (economic and non-economic), for which only inclusive and impartial dialog can guide the fair distribution of burdens and benefits. In this respect, discourse theory does not specify the precise procedures instituting participatory parity but reminds us that no legitimate integration can exclude the reasonable interests of any affected party.

Albena Azmanova’s most original and provocative studies of capitalism provide a useful framework for sharpening my thesis about capitalism as a coercive system of domination whose evils go beyond maldistribution of wealth, impoverishment, and unsustainability. I find her tripartite breakdown of domination into relational, structural, and systematic important for discussing any form of political economy, capitalist or non-capitalist, and her elaboration of it has made me reconsider whether the model of economic democracy I appropriate from David Schweickart as an alternative to capitalism manages to eliminate or sufficiently mitigate these forms of domination.

Azmanova and I agree that capitalism implicates all three forms of domination. At the essential core of a capitalist system is a mechanism of labour exploitation that is 'legitimized' through voluntary wage contracts in which threats backed by economic and legal sanctions are necessarily leveraged to the advantage of employers. In contrast to Honneth's ethical analysis of capitalist forms of exchange and cooperation in *Freedom's Right*, she and I are sceptical that these forms can adequately meet a threshold of non-exploitation and mutual benefit sufficient to satisfy the conditions of social freedom that he and I endorse regarding institutional recognition of socially esteem-worthy contribution.

This relational form of domination, which is structurally necessitated by the rules of capitalist competition and capital accumulation, finds a parallel at the global level. Developing nations located at the periphery of a global network of exchange are constrained to supply developed nations located in the technological industrial core with raw resources and cheap labour in a way that perpetuates a one-sided relationship of dependency and domination.

Relational domination within a capitalist system can be increased or diminished – never eliminated – by altering the rules of exchange to diminish exploitation and aggregate flows of wealth to the core, coupled with reductions in surplus environmental degradation and resource depletion in the periphery. However, the political power that lies behind the rules structuring exchange is concentrated in the hands of a corporate capitalist class and the governments of countries located at the core. I discuss one aspect of this structural domination in my treatment of the US government exercising near-imperial hegemony over the global capitalist economy and its subsidiary international economic multilaterals, the World Trade Organization and the International Monetary fund.

In response to my thought experiment about a free trade capitalist economy in a state of nature, free from the political distortions of structural power, Azmanova remarks that even a perfectly fair system of exchange between individuals or between nations based on the competitive pursuit of profit would still harbour systemic domination, if nothing else. Simply redistributing capital assets and liabilities among economic agents would not eliminate the domination of the entire system over anyone who participates in it.

Azmanova's concern recalls Marx's own conviction that true social freedom cannot be achieved by redistributing wealth. As we shall see, her concern also echoes another belief of Marx, held by many first-generation critical theorists, that socializing the means of production will not eliminate the domination of competitive market forces over our lives. As we know, Marx conceives the elimination of competitive markets as a prerequisite for even undeveloped socialism; and he conceives the elimination of the legal domination necessary for maintaining market exchanges and accumulations as a prerequisite for a fully realized communism, which inscribes on its banner: 'From each according to his abilities, to each according to his needs.'

It is at this point in her commentary that Azmanova suggests that I may have underestimated the degree to which systemic domination structures not only capitalism but my alternative to capitalism: democratically regulated, market-based socialism. Before addressing this concern, I would like to briefly respond to two other points she raises in this regard. The first point is that my analysis of global capitalism focuses

too much on international domination and not enough on domination within subnational territorial units and between (and across) them. If I were to revisit this topic today, I would spend more time discussing the dynamics of direct investment and finance capital than I have here. What I do say in this regard is that financialized capitalism (to use Fraser's term) has radically intensified the process of capital accumulation, generating greater disparities in wealth accumulation between the investor class and the rest of us and inducing global debt risks and new management and legitimation crises that have crippled national governments and created distrust of democratic institutions from both the Left and the Right.

Another peculiarity of what she takes to be my agent-centred approach to power that she believes prevents me from fully perceiving social domination is my endorsement of Iris Young's social connectedness model of social responsibility for structural injustice. If I understand Azmanova correctly here, the social connection model still presumes that agents have power to reduce systemic domination through political reform of rules that frame isolated aspects of structural domination (e.g., global sweatshops and the retail apparel industry). If what she is saying here is that piecemeal political reform will not eliminate capitalism as a system of domination, then we are in agreement. But then I fail to see how belief in agent-powered reform 'obscures the dynamics of domination that are sourced from the very practices of the competitive production of profit.' Of course, reformism without some ironic awareness of the infinite struggle required to reduce domination in all its forms (including that embedded in the competitive production of profit) can obscure the tragic moral downsides associated with any productivist economic paradigm.

This takes me to Azmanova's central charge that my desire to achieve a global socio-economic order as (in my own words) a 'voluntary social contract between nations and persons' (212) cannot be realized without eliminating the 'competitive nature of economic practice as well as the productivist nature of work.' She may be right. But if she is, then I doubt whether any feasible alternative to capitalism can realize such a voluntary social contract.

Azmanova understands capitalism to be a social formation that is irreducible to any of its structuring institutions. For her, capitalism is rather a social system, 'constituted by the dynamic competitive pursuit of profit which permeates actors' social existence beyond their engagement in the economic process of commodity production.' This bold thought recalls what many first-generation critical theorists writing in the forties and fifties suggested when they asserted that modern economic systems, ranging from the democratic welfare state to bureaucratic socialism, had managed to solve capitalism's structural crisis tendencies. By implementing state planning and severely regulating the role of capital and labour markets, they came close to eliminating what, for Marx, was one of the necessary features of capitalism that explains its inherent inability to meet the basic needs of the proletariat. However, according to these critical theorists, the severe regulation of capital and labour markets – indeed, the very elimination of productive *private* property itself – did not eliminate labour exploitation. On the contrary, they believed that a system of capital accumulation based on labour exploitation permeated all modern economic systems, which they accordingly characterized as a form of 'state capitalism,' to cite Friedrich Pollock. More importantly, they believed that even under socialism, the rational imperative to amass capital in competition with other states – or

even for the sake of promoting growth as an end in itself – required rational management of labour and consumption that intensified exploitation and commodification. The ‘performance principle,’ in Marcuse’s words, would still dominate the lives of persons, no matter what social position they occupied in the social system. Today, the U.S. Supreme Court’s ruling in *Citizens United* (2010) stands as irrefutable proof of the penetration of capitalism’s logic of productivism in the court’s understanding of democratic politics and free speech.⁵

So, I agree with Azmanova, Nancy Fraser, and many others that capitalism is more than the sum of its institutional parts, which in any case cannot be reduced to competitive economic markets in capital, labour, commodities, and services. That said, my criticism of capitalism in *World Crisis and Underdevelopment* was primarily focused on structural rather than systemic domination for practical, economic reasons, pertaining to the imperative to reduce global poverty while at the same time respecting the limits to growth, in general.

In my opinion, the lessons learned from the collapse of bureaucratic socialism and the collapse of laissez-faire capitalism are, first, that neither unregulated market economies nor government planned economies are efficient on their own; and second, that market systems can be coupled with different systems of property ownership, including one whose public ownership and democratic regulation of productive/capital assets structurally inclines towards less domination, commodification, consumerism, and growth. However, if a logic of competitive productivism is intrinsic to any competitive market economy, then Azmanova’s assessment of democratic market socialism as perpetuating systemic domination in a different (perhaps milder) form will be correct. My acknowledgement and subsequent neglect of this shortfall in my discussion of social freedom simply reflects my informed judgement, shared by Habermas among others, that important parts of our economic lives cannot be subjected to democratic control without serious loss of other dimensions of social freedom. This is as much to say, echoing what I said in my response to Schweiger, that social agents in modern societies must contend with actualizing whatever freedom they can by establishing a felicitous balance between the competing recognition orders they live within.

To be sure, Honneth is right to note (against Habermas) that market systems comprise normative recognition orders that mark a progressive advance in social freedom over both pre-and post-market economies. What he neglects to sufficiently emphasize is the extent to which such systems function differently under different property relations and different economic recognition orders. However, even he recognizes that Post-Fordist neoliberal capitalist markets have eviscerated much of the ethical expectations of the older forms of capitalism. Neither employees nor employers feel as strongly obligated to one another or to work and vocational duties associated with company loyalty and patriotic solidarity as they perhaps once did during the postwar boom of the fifties and sixties. And, of course, the Fordist model of accumulation was most definitely marked by intense systemic domination, as first-generation critical theorists never ceased to remind us.

But that doesn’t settle the question about what the best alternative to today’s neoliberal financial capitalism might be. For reasons that I have explained in chapter four,

⁵See my essay, ‘Disputing the Law.’

a market socialist economy populated by worker managed, publicly owned firms (which following Schweickart I call Economic Democracy) does not have the same growth imperatives or suffer from the same tendencies towards relational and structural domination as capitalism, even if it does not eliminate systemic domination as such. Schweickart presents compelling arguments, which I cannot summarize here, to show why the tendency towards commodification, social reification, competition, and growth would be less pronounced under Economic Democracy. Most importantly, the core form underwriting the capitalist form of relational domination, the wage contract, would be virtually eliminated. In other words, only markets in goods and services would be permitted, and the motivation for engaging in practices of competitive accumulation would likely be muted once workers were finally given control over the pace and duration of their labour relative to maintaining (rather than expanding) their company's market share.

Interestingly, given its propensity towards stasis, Schweickart recognizes the need to qualify Economic Democracy with a bit of capitalism. He recommends supplementing Economic Democracy with entrepreneurial incentives, such as permitting innovative ventures that might be operated as privately owned businesses employing wage labour for the initial twenty years or so of their existence. There are other qualifications, too detailed to be explained here, that include temporary forms of national protectionism and compensatory disbursement of tariff revenues back to developing nations that could be used to raise wage levels in those countries. Because investment capital would be generated from taxing the use of publicly owned productive assets, the domination of finance capital would be eliminated (only consumer credit unions would be permitted) and investment capital would be dispersed to regions on a per capita (or needs-calibrated) basis, thereby compensating for the kind of uneven development that constrains un- and underemployed workers to uproot themselves from their communal bases of social freedom.

I conclude chapter four with a remark about the limits of Economic Democracy which in some degree concedes Azmanova's criticism of that model:

Infusing stakeholder business ethics with discourse ethics might not solve all problems associated with a market economy but it would mitigate them better than reformed capitalism. A just distribution of the burdens and benefits attached to the creation of a sustainable global economy will require that all parties to the social contract *shift from a one-sided focus on maximizing personal gains – which, when considered apart from its legitimating ethos, appears to be the natural law underwriting any market system, capitalist or socialist* – to a broader focus on the common good, with a preference for solutions that maximize the condition of the worst off (and possibly require sacrifices on the part of the better off) (*World Crisis* p. 218, my stress).

This passage reaffirms the importance of submitting a substantial portion of a market economy to global democratic control in the long run, guided by discourse ethical principles enjoining the voluntary consent of all affected parties to terms of cooperation that they are rationally convinced will work to the best advantage of everyone. Here, Azmanova's concluding comment that 'eliminating coercion from our economic lives might also need constraint on democracy – just like, at the very inception of European liberal democracies, the core principles of liberalism were placed beyond the decisional power of democratic publics' strikes me as the wrong note to strike in our

contemporary context. For, although few would question the constitutional entrenchment of individuals' basic human rights as a safeguard against majoritarian tyranny (such as today's fascist populism, with its anti-immigrant and anti-global protectionism), many – including, I'm sure, Azmanova – *would* question the libertarian immunization of private wealth and capitalist markets against democratic intervention, not to mention the subsumption of democratic politics under the logic of a productivist exchange economy.

My understanding of the connection between democracy and human rights has benefited enormously from my many discussions with Fr. Willy Moka-Mubelo, who has written what, in my opinion, is the most comprehensive discussion of Habermas's theory of human rights and one, moreover, that deftly manages to relate the abstract arguments of that thinker to the realities confronting African legal theorists.

Moka-Mubelo's insistence on the need to reconcile pluralism and contextualism in justifying and applying human rights with universalism in understanding the core meaning of human rights agrees with one vital strand of my argument. That argument is motivated by a number of interrelated concerns: navigating the relationship between moral and legal conceptions of human rights; avoiding philosophical approaches that truncate or inflate the legitimate functions human rights serve; distinguishing interactional and institutional applications of human rights; defending the special role that human rights play in the discourse of development, agency, and social freedom; expanding the addressees of human rights beyond states to include other actors, and establishing what kind of interdependency can be said to obtain between human rights and democracy.

Moka-Mubelo begins his commentary by rightly emphasizing my motivation for writing on human rights. In my opinion, human rights carve out a language of powerful duties that institutions have towards respecting and protecting the welfare of individuals. Furthermore, these duties are individually actionable, and universal; viz., independent of the actual practices, functions, rights and duties of mundane forms of social cooperation and social freedom. Social contractarian duties that can be fairly negotiated among local producers and consumers, e.g., regarding the permission of energy-consuming entities to emit carbon when bound by enforceable caps, might not be negotiable if they endanger the human rights of individuals and groups (such as island nations) to survive at all. Human rights are not unconditional trumps, but they typically claim a priority over other rights and duties, and so can normally only be overridden under certain exceptional circumstances. In the minds of many theorists, and in the practice of human rights enforcement, human rights to material welfare typically weigh less than human rights to bodily integrity and freedom in the face of active physical threats by others; I argue that this way of thinking is wrong.

In order to make this argument we must first clarify the ambiguous status of human rights themselves. I argue that legal and moral conceptions of human rights are irreducibly distinct but that one aspect of the moral conception, in particular the concept of human dignity, serves an important *formal* role in highlighting the equal, elevated legal status of individual persons in comparison to groups and corporations, which are also beneficiaries of certain human rights protection. Allen Buchanan, who persuasively argues that many legal human rights are tailored to protecting public goods whose moral justification cannot consist in protecting the capabilities, interests, and

dignity of individuals *qua* individuals – the target of moral human rights – concedes this point, and argues (as does Habermas) that human dignity must essentially refer to a species-potential that finds expression in rational (discursive) accountability. However, as against Rainer Forst and K-O Apel, who derive human rights from a single moral foundation in discursive accountability (in tandem with other empirical and historical facts about human functioning), I agree with Habermas, Nickel, Buchanan and many others who argue that legal human rights do not mirror moral human rights in their functioning (e.g., they do not derive from a moral duty of individuals to justify their normative commitments to others) and that their moral grounds cannot be reduced to a single set of moral reasons. The fact that humanitarian laws proscribing genocide and ethnic cleansing clearly function to protect groups rather than individuals *qua* individuals, however, does not obscure the fact that some legal human rights, especially those falling under the compulsory and peremptory category of *jus cogens*, such as prohibitions against torture, slavery, and the like, do largely mirror moral human rights in directly protecting individuals *qua* individuals. Finally, in agreement with Moka-Mubelo, I argue that legal human rights find their moral justification politically (as Rawls puts it) in an overlapping consensus among different comprehensive beliefs, as well as discursively (as Habermas puts it) in a rational consensus based on universal interests and human practicalities.

If we adopt my non-reductive, pluralistic account of human rights, then we avoid the tendency towards theoretically truncating or inflating an acceptable list of human rights. Contrary to James Griffin, we can allow that groups and not just individuals can be appropriate designees of human rights (this means that conflicts between group-ascribed and individual-ascribed human rights cannot be ruled out, as evidenced by the right to development, which applies to nations, and the right of a national minority to democratically protect its culture). At the same time, the functional and practical prerequisites for legal enforcement rule out inflating human rights to include a human right to ‘maximal healthcare’ as stipulated in the ICESCR.

In addition to pluralizing and contextualizing the moral, functional, and practical rationales underlying human rights, my approach also expands the addressees of human rights. Borrowing Thomas Pogge’s and Henry Shue’s distinction between interactional and institutional human rights applications, I argue that institutions that seriously risk grave human rights shortfalls through their normal legal functioning, such as the WTO’s prohibition against producing cheap generic drugs in violation of TRIPS patent and licencing codes, or the IMF’s stipulation of loan conditions that force governments to privatize goods (such as water) and social services (healthcare), can violate the non-regression clauses contained in human rights treaties. Importantly, as Cristina Lafont has argued, under the Responsibility to Protect doctrine, states can appeal to their sovereign right to implement international human rights duties against global economic multilaterals. This logic can be extended to including transnational companies as addressees of institutional, and not merely criminal (or illegal) interactional, human rights liability. Going beyond implementing voluntary social responsibility codes for conducting business in accord with human rights to imposing legally binding human rights duties would help strengthen the enforcement of human rights targeting ecological integrity and welfare.

The final piece in my account of human rights addresses the problem of institutionalizing a democratically legitimate, international human rights regime that enables the context-sensitive application of universal human rights, on one side, along with the constitutionally limited international enforcement of human rights, on the other. Without going into detail, if we assume that the UN Charter represents a compulsory constitution rather than a voluntary super-treaty, and if we further accept a hierarchical, monistic account of law (following Kelsen's logic), then we can understand human rights as abstract placeholders that authorize concrete, contextual applications in national legislatures and courts. This stepwise, non-deterministic generation of plural human rights interpretations through descending democratic iterations guarantees the democratic legitimacy of human rights in an ecological or symbiotic sense, to use Buchanan's phrase. In other words, the UN, now understood as the institutional pinnacle of international law, authorizes the legal systems of democratic states (their rights and duties as sovereign nations), just as these states discursively legitimate international treaties in their own domestic legislation.

I argue that the legitimation of international human rights law requires more than this. In order to avoid allowing state governments to voluntarily opt out of human rights treaties, I follow Habermas in recommending that the UN Charter undergo an additional process of constitutionalization in which the General Assembly assumes the form of a bicameral, quasi-legislative body (or constitutional assembly representing both nations and delegates reflecting the cosmopolitan interests of humanity). In conjunction with this constitutional reform, the executive body responsible for enforcing human rights, the Security Council, would have to be restructured and, most important of all, an international constitutional court would have to be set in place to adjudicate (conflicting) human rights claims and exercise review over Security Council decisions, whose sanctions have at times resulted in gross human rights violations of their own.

An international constitutional court at the pinnacle of an international human rights order could be configured in a way to pluralize (decentralize) the process of review and make it responsive to local democratic concerns. A fine balance would have to be struck between centralization of authority within a hierarchical system, which is necessary to mitigate the tendency towards legal fragmentation and forum shopping attendant upon a heterarchical or pluralistic legal order, and decentralization of authority that responds to local democratic units. Many other checks and balances would have to be introduced as well to ensure that the incorporation of higher-level human rights-regarding decisions into lower level constitutional regimes would not impose retrogressive restrictions or be done without democratic approval.

The constitutionalization of international law is not idle utopian fantasy; it is gradually happening. Something like constitutional review has begun to check the power of the Security Council (see the *Kadi* case). Moka-Mobelo notes, as well, my opinion that the Responsibility to Protect principle (R2P), even in its final watered-down formulation, effectively redefines the concept of national sovereignty as a power authorized by international human rights law. Sadly, as events in Libya and now Yemen show, not all interventions undertaken in the name of R2P are, in fact, undertaken while being responsible.

The possibility for realizing this ambitious scheme of global governance depends on extending feelings of solidarity in a cosmopolitan direction – something that neither

Honneth's nor Habermas's respective theories are particularly well equipped to do. Even solidarity with victims of human rights violations presupposes, at the very least, some sense that human rights and cosmopolitan recognition are not only rationally possible but affectively desirable. The tension between individual and group-based human rights, highlighted by the Asian values debate over the right to development, forces us to re-examine the compatibility of comprehensive religious traditions that motivate sacrifices for the greater good with liberal democratic individualism and the critical challenge that democratic questioning poses to absolute authority of any kind. My concluding chapter attempts to mitigate the apparent conflict between secular human rights individualism and religion by suggesting how religions must accommodate themselves to risky democratic politics in realizing their own social justice agendas. I remain optimistic that this protracted education in civility and public reason is both possible and necessary, if liberal democracy is not to devolve into a contest of wills pitting hostile, selfish interests against each other.