# Democracy across Borders

## From *Dêmos* to *Dêmoi*

**James Bohman**

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*James Bohman*

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# Preface and Acknowledgments

The Greeks invented the word *democracy,* if not democracy itself, but it is we who must now use the word for our time. Democracy quite literally means popular government, rule by the *dêmos,* the people. Democracy came to mean rule by a people, or *dêmos,* rather than by peoples, or *dêmoi.* In the singular, *dêmos* originally signified a specific territorial space and meant "district, country, or land," and thus by extension its inhabitants or peoples. Along with its varied institutional forms, the concept of democracy has had a long history, often discussed in terms of the differences between its ancient and its modern form. Yet throughout it has retained its singular noun and its territorial connotation. The main concern of this book is to rethink the deep assumptions this conceptual archeology covers. In the age of globalization and significant authority delegated beyond the nation state, I contend that democracy needs to be rethought in the plural, as the rule of *dêmoi.* This small change of one letter has enormous normative, political, and institutional significance and permits us to better understand how it is that citizenship and membership need to be transformed. Much as a cubist painting alters the given world of objects through the use of multiple perspectives, transnational democracy challenges single perspective politics and fixed jurisdictions.

The transformation of democracy in the current era is a topic of much debate in social science, economics, international law, and political theory. I will refer to this literature, as well as to current discussions of the impact of globalization. However, my main purpose

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here is philosophical. I want to show that many of the basic categories of democracy need to be rethought, including the very basic conceptions of the people, the public, citizenship, human rights, and federalism. Given my emphasis on the potential for a transnational polity, many of the examples in this book are taken from the European Union—even if it now falls short of a deliberative democracy across borders.

This book incorporates, in a greatly revised form, material from previously published articles and chapters, and I gratefully acknowledge the work of the editors of those journals and anthologies. Parts of chapter 1 were first published in *Ratio Juris, Ethics and International Affairs,* and *Journal of Political Philosophy.* Some parts of chapter 2 were first developed in *After Habermas: Perspectives on the Public Sphere.* Material from chapter 3 appeared in the *Canadian Journal of Philosophy,* and some sections of chapter 4 in the *European Journal of Political Theory.* Parts of the conclusion were published in the *Journal of Social Philosophy.* I also want to thank Larry May, Matthias Lutz-Bachmann, Jürgen Habermas, Andreas Niederberger, Simone Chambers, Archon Fung, Samantha Besson, Charles Sabel, Philip Pettit, David Held, and Thomas McCarthy for helpful feedback and comments, as well as the anonymous reviewers for this Press. I give my special thanks to Michael Allen and Mark Piper, who were excellent critics as well as research assistants. Many audiences have shaped my thinking, including those at the American Philosophical Association, the American Political Science Association, the International Studies Association, the Critical Theory Roundtable, the Philosophy of Social Science Roundtable, ARENA, Yale University, the University of Frankfurt, Roskilde University, University of Aix-Marseille, University of Maryland, University of British Columbia, and Carnegie Mellon University, among others. A grant from Saint Louis University helped me complete the manuscript.

Above all, I want to thank Gretchen, Lena, and Clara for their love and support. I dedicate this book to Lena and Clara, through whose eyes I see the future.

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# Introduction

According to the current wisdom, we live in the golden age of democracy. In the absence of any viable alternative, liberal democracy is taken to be the only feasible form of democracy and goes unchallenged. Democracy is now recognized in international documents as "the best means to realize human rights," so that some now argue that international law, formerly unconcerned with internal affairs of states, establishes a "democratic entitlement."[1] At the same time, it is often claimed that democracy has never been weaker. It is increasingly unable to solve collective problems or gain legitimacy, thus leading to economic crisis, the declining legitimacy of states in ever more numerous demands for succession, and greater internal conflicts, even civil wars. As a result, some electoral and representative democracies cede many areas of social life to delegated and increasingly nondemocratic forms of authority. Possible responses to these facts lie between two extremes of a continuum. On the one hand, communitarians call for the renewal of social consensus through a democratic ethos, and some participatory democrats demand decentralization into smaller units. On the other hand, cosmopolitans argue that only supranational levels of governance can solve the many collective action and coordination problems, ranging from global warming to sustainable growth to grave human rights abuses and genocide.

Both of these responses are correct in certain respects and indeed are hardly as mutually exclusive as their proponents believe. In this book I argue that all democracies at some point face a period of

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renewal and transformation. Indeed, many democracies are currently struggling to discover better ways to organize jurisdictions, units, and levels in order to govern well. Contrary to both cosmopolitan and communitarian proposals, good democratic governance needs both bigger *and* smaller units. However, most important in this regard is not size, but the ways in which polities and their subunits are organized and interrelated. The proper solution to the problems of democracy is not to find some optimal size or ideal democratic procedure, but rather to establish a more complex democratic ideal. I call this ideal "transnational democracy."

Since the task of this book is to redefine democracy so as to make it appropriate for transnational settings, it would be premature and misleading to offer a definition of democracy in advance. Defining democracy is made even more difficult by the fact that it should take different forms in different institutions. But as a working definition I offer the following: Democracy is that set of institutions by which individuals are empowered as free and equal citizens to form and change the terms of their common life together, including democracy itself. In this sense, democracy is reflexive and consists of procedures by which its rules and practices are made subject to the deliberation of citizens themselves. Democracy is thus an ideal of self-determination, in that the terms and boundaries of democracy are made by citizens themselves and not others. It does not, however, require the more specific conception of self-determination that has guided much of democratic theory since the eighteenth century—self-legislation in a bounded political community—that is thoroughly imbricated with democracy's current difficulties. If it is self-rule, it is the rule of the many and not of the few.

The modern nation-state has historically been the most successful institutional location for realizing democracy. As opposed to ancient city-states, it has over time achieved universal political rights for all adult citizens regardless of race, class, or gender. More than that, these struggles have expanded the scope of rights to include not just negative rights and immunities, but also various social rights to benefits and services. In light of these achievements, most critics of current democracy still assume the state is the proper institutional location for further democratization. In the wake of globalization,

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this assumption no longer goes unchallenged. Indeed, states now seem both too big and too small: too big to generate the loyalty and legitimacy needed for a demanding democratic ideal, and too small to solve a myriad of social problems. Powerful multinational corporations evade state power even as international financial institutions dictate the terms of cooperation to weak states. In the interest of promoting free markets and trade, states now voluntarily delegate their powers to international bodies and private authorities. Antiglobalization protesters challenge such policies in the name of local control and democracy. What unites these diverse phenomena is a shift to forms of political authority that are no longer accountable to a measure of popular influence and control—one of the necessary, though not sufficient, conditions for any form of democracy.

Whatever the shortcomings of states, it is no longer clear how they will be able to extend and revise democratic practices under their current circumstances. Deeper than their political and institutional geography, these shortcomings have more to do with the ways in which past practices inform our thinking about democracy at the most basic conceptual level. If the world in which these concepts have developed is undergoing a basic transformation, current democratic theory may no longer provide the proper framework in which to propose solutions. This failure extends to the vocabulary in which demands for democratic justice are made, even when these demands are supposed to be against globalization.

This predicament leaves the democratic theorist with two main methodological choices: either to continue to use these concepts as methodological fictions out of the conviction that they are inseparable from the norms of democracy, or to revise the inherited concepts and norms most people associate with democracy itself. In his *Law of Peoples,* John Rawls chooses the first alternative, at the risk of not taking notice of the post-Westphalian world around him. In contrast, John Dewey in "The Public and Its Problems" takes the second route in responding to new problems of scale and complexity, rejecting the fiction of the public as the people assembled in a single forum. While not directly Deweyan in orientation, my framework here is pragmatic to the extent that it sees new social facts as demanding a new normative and conceptual understanding of democracy and its

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political geography. Furthermore, my approach is both constructive and reconstructive. On one hand, I will try to determine the fundamental principles from which to argue for this alternative transnational conception. On the other hand, such principles cannot be developed without first examining and reconstructing the democratic potential of recent innovative democratic practices already crossing the borders of nation states as well as of new polities such as the European Union. Finally, my approach is progressive in that these arguments are based on Jane Addams's well-known adage—perhaps the statement of the democratic faith most common to the Progressive Era—that "the cure for the ills of democracy is more democracy." While the transnational circumstances are relatively new, the need for democratic renewal is not.

When Dewey takes up Addams's common faith, he immediately introduces several qualifications that are particularly important in thinking about the possible emergence of new transnational forms of democracy. Democratic institutions cannot produce more democracy by "introducing more machinery of the same kind as that which already exists." Just recognizing the necessity of new frameworks and machinery highlights the need for philosophical work to free democratic theory from the conceptual straightjacket of its historical exemplars. The goal, as Dewey puts it, is "to criticize and remake its political manifestations."[2] These new conditions and their publics, Dewey reminds us, "bring about their own forms"[3] and their own novel practices, which far outstrip the current philosophical discussion of democracy and cosmopolitanism.

In this pragmatic spirit, my task here is twofold. First, I describe the new circumstances of politics so as to show why more of the same democracy is not the solution. By "the same democracy," I mean liberal democracy that remains tied to specific institutional innovations of the early modern past. Liberal democracy's many enduring solutions to modern social problems include the transformation of practices of self-government into practices of representation and the adaptation of democracy to the already existing and historically contingent state form, whose structure of sovereign power and commitment to exclusive political identity is at odds with the universal principles of democracy. Globalization fundamentally challenges

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these institutions and their assumptions of congruence between decision-takers and decision-makers, or the ruled and the rulers, in a territorially bounded political community. However, nothing should be immediately inferred about democracy from the mere fact that globalization has changed the scale of significant social relationships, unless this change can be shown to affect the feasibility of core democratic values and principles. My first task is to rethink these values and principles under the changed circumstances of politics and the distribution of political authority.

My second task is to take up Dewey's intellectual problem and criticize and remake the idea of democracy. For this purpose, I justify my account of transnational democracy based on republican rather than liberal premises. Republican premises, I argue, supply the necessary orientation to the *terra nova* that democracy becomes when it occurs outside the familiar container of the state. As I noted in the preface, I mark this new conceptual terrain by using the plural form of the Greek term *dêmos*, *dêmoi*. Such a conception goes beyond the eighteenth-century model of a self-legislating *dêmos* that is at once the author and the subject of the laws guiding most of philosophical thinking about democracy. Instead this conception of democracy goes beyond the nation-state and takes as its political subject *dêmoi* within a larger political community of humanity. The central feature of this democracy as I understand it is that it is a reflexive order, an order in which people deliberate together concerning both their common life and the normative and institutional framework of democracy itself. Democracy in this view is popular control over decision making in a specific sense: it is the interaction between communicative freedom as it is manifested in the public sphere and the normative powers by which people create and control their rights, obligations, and deontic statuses. Fundamental human rights are then precisely such normative powers, the most basic of which is the right to initiate deliberation. This freedom is the basis of what I call "the democratic minimum." Such an account of democracy is certainly broad enough to encompass states and their political communities. It is, however, not necessary that such normative powers be exercised only in such contexts. Indeed, human rights and nondomination are better realized in a variety of institutions and

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overlapping political communities. In this sense, transnational democracy—democracy as realized in a variety of institutions and communities—is not only more democratic, but is the only feasible way (for the medium term at least) in which to realize the democratic minimum and the rights of members of the human political community. Transnational democracy is first and foremost a response to the increasing potential for political domination that cannot be addressed by traditional interpretations of the democratic ideal.

## Nondomination and the Ends of Transnational Democracy

Sociological skeptics of democracy have frequently appealed to long-term social trends to justify their criticisms. For example, Weber argued that democracy was one of many victims of a self-undermining modern rationalism and its "iron law of oligarchy," according to which large organizations tend toward hierarchical and centralized structures of authority.[4] Similarly, Schumpeter argued that the increasing division of epistemic labor from the political role of expertise would lead to a strong distinction between the ruler and the ruled. Democracy would then devolve into the act of voting to choose the elite who would be the guardians of the people. These arguments share a common emphasis on changes in the structure of political authority that undermine the conditions needed for democracy as rule by the people. Some critics use facts about globalization to make the case for this sociological skepticism, arguing that the state is no longer able to fulfill even these minimal democratic conditions. Because it lacks the proper congruence between the rulers and the ruled, the state no longer has the legitimacy it once did; in failing to possess or exercise exclusive authority over its own territory, it also fails to protect its citizens from subjection and domination. Moreover, many no longer support the idea that there are special characteristics of social interaction that limit "especially intense interdependence and mutual subordination" to one's compatriots, or to those in close proximity.[5] The very policies implemented to deal with these new exigencies (such as the active denationalization of new international legal regimes) also widen the gap between the effective exercise of citizens' important normative powers and the authoritative demands of powerful institutional actors. My argument does not

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depend on strong versions of the claim that various social and economic interactions have reached "unprecedented levels," but only that such interactions are sufficient to impede the ability of sovereign states to secure nondomination.[6] Conversely, a positive impact of globalization on democracy is the emergence of sufficient cross-border communication to form transnational public spheres.

What is unique to this debate about globalization and democracy is not just that it calls into question the state's authority by challenging the idea that democracy currently resides in a viable unit. It also implicitly challenges the model of self-legislation that is the basis of democracy in the constitutional state: namely, that the people who are subject to the laws are also their authors. Given such challenges, globalization seems then to be a social fact that potentially affects how we think of democracy in much the same way that Rawls thinks pluralism "profoundly affects the requirements of a workable conception of justice."[7] Social complexity and interdependence affect not only justice, but also the capacity of the *dêmos* to exercise control over social processes. Two consequences follow: first, the task is not to determine some special institutional design of an ideal cosmopolitan democracy in which a global *dêmos* could be formed. Second, the main task of transnational theories of democracy is rather to analyze the basic conditions of global democratization, the aim of which is the emergence of a democracy of *dêmoi.*

Historically, democracies have responded to extensive interdependence in a variety of ways. They may attempt to exert control, limiting the complexity and extent of global social, political, and economic interactions by strengthening their boundaries, thus increasing centralized authority. This response is no longer effective, as shown by the denationalization of central state powers in a variety of regimes and institutions. It is also more likely than not that such an attempt would lessen rather than increase democracy within states. Another possible response is the division of labor and political delegation of authority that produces a proliferation of principal/agent relationships in which agents govern citizen-principals in many areas of life. Certainly, large areas of economic life, from the Federal Reserve to the International Monetary Fund, show this reversal of agency where the terms of the relationship are

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dictated by the agent rather than by the principal. A more effective response to increased interdependence has been federalism, with the recognition that the large and populous democratic polity must be divided into numerous units to be well governed. Many federalists who argued for such arrangements were republicans who saw federalism as a means of overcoming the potential for domination seen in colonialism and classical tyranny; they also saw that republican principles and arrangements could be applied across borders. In this book, I offer a contemporary account of such a republican federalism, the normative core of which is freedom as nondomination, interpreted in such a way as to apply to emerging forms of global political authority.

As opposed to the liberal ideal of noninterference, the republican emphasis on nondomination develops the concept of freedom depending on the social and political statuses of its bearers. The traditional republican contrast is between slave and citizen, where the former is subject to the arbitrary will of a master. The status of citizen brings with it the robust capacity to command the nondomination of others. Those who lack this status are not slaves, but rather rightless persons who lack even the right to have rights. Besides producing rising numbers of stateless persons, the current distribution of global political authority produces situations in which many people lack the very minimum of normative powers and control over their own rights and duties: they lack the capacity to make claims of justice and to initiate deliberation, and in lacking this power are subject to normatively arbitrary political authority. Members of democratic communities can, however, recognize others as participants in various publics. In so doing they can initiate a fundamental condition for democratization: communicative freedom—that is, the freedom to address others and be addressed as members of publics.

In order to account for such powers and freedoms in their transnational context, a republican cosmopolitanism must introduce a richer conception of nondomination and of the political order that realizes it. Rather than develop Philip Pettit's conception of government as a nonarbitrary interferer, the notion of domination needs to be reexamined within the transnational context. In particular, I argue that Pettit's nonnormative definition of domination as arbitrary

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interference concedes too much to the idea of negative liberty it is meant to replace.[8] It also confuses the ancient problem of tyranny with the problem of modern domination that is accentuated under conditions of complexity, pluralism, and interdependence. Modern democracies may successfully undermine tyranny, but they still have their own potential to produce specific legal and political forms of domination.

Under these modern democratic political circumstances, domination is neither simple tyranny nor the ability to interfere arbitrarily. It is rather tied to another republican meaning of domination: rule by another, one who is able to prescribe the terms of cooperation. Thus political domination is the arbitrary use of normative powers to impose duties and obligations, and it can operate even against the democratic background of normative expectations. This means that domination is the result of the use of distinctly normative powers. However, to have robust nondomination is to have a particular kind of normative status, a status allowing one to create and regulate obligations with others. This is the status of being a citizen. It is a status for nondomination rather than self-legislation; it is to be not ruled by others. The two conceptions of freedom coincide in that citizens can only overcome domination if they have the capacity to deliberate on and change the terms of democratic cooperation, and thus have normative power over the distribution of normative powers, including our status as members of humanity.

If persons have such a status in virtue of being bearers of human rights, including political rights, such rights entail a commitment to the proper organization and constitution of the human political community. I argue that this commitment demands that rights be realized in a variety of overlapping institutions. Constitutionalism in the European Union (whether successful in its current attempt to expand its scope or not) provides the best example of this sort of a reflexive, democratic, and transnational order. In order to be successful it must move beyond the current juridical conception of rights toward a political conception that sees them as rights of membership in the human political community. It must also become more fully democratic, to the extent that it includes the capacity to reform itself democratically, a capacity it currently lacks sufficient legitimacy to execute.

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Throughout this book, I use the European Union (EU) as a model of some of the main features appropriate for successful political integration at the transnational level. Even in its nascent form, such a model makes it possible to show two things. First, it is clear that some of the conditions necessary for transforming and extending democracy across borders already hold, and that the EU's institutions have at least begun to develop "the means by which a scattered, mobile and manifold public will recognize itself and define its interests."[9] These publics institute the conditions for communicative freedom. Second, we can begin to ask different questions about the democratization of a polity. The main issue is not the real or supposed democratic deficit, but the democratic criterion itself; the question is not what it would be for a transnational polity to be fully democratic, but to determine how a transnational polity might be adequately democratic "given the kind of entity we take it to be."[10]

Many nation-states are now internally pluralistic, with differentiated citizenship, institutional complexity, and many different levels of organization that repeat the same powers and competences. The difference between the nation-state and the European Union is a difference in *kind,* not one of size or scale (the problems that representative institutions putatively mean to solve). Rather, it is a difference between a democracy that organizes a *dêmos* and one that organizes *dêmoi.* Democracy of the first kind is insufficient to realize nondomination democratically in a polity of *dêmoi.* The conceptual foundations of democracy are in each case quite different, even if we hold some of the norms and principles constant across both. On the republican account I am defending, democratic institutions aim to secure the conditions for nondomination. The facts of authority and interdependence suggest that national democracy and political membership no longer secure these goods, if they ever did. The institutional conditions that enable citizens to be free from domination are realized in unitary states as shown by the republican impulse toward federalism with a variety of variously sized units. The form of republicanism I defend here has its roots not in the English Commonwealthman traditions, but in the republican anticolonialism and anti-imperialism of Diderot, Kant, and others. Their fundamental insight is that domination abroad undermines democracy and nondomination within

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the republic, and thus that secure nondomination is based on the common liberty of all rather than the escalation of executive and military power.

## An Argument for Transnational Democracy

In the last section I described the tasks of a theory of democracy during times of transformation. This theory is broadly cosmopolitan, in both a moral and political sense, in that it demands a significant reorganization of current political institutions into highly differentiated structures containing multiple units and levels and many different *dêmoi*. As a way of framing the overall argument, I begin by mapping the cosmopolitan terrain in order to show the distinctiveness of my position vis-à-vis the main alternatives. Along with the reconstructive method I employ for a theory of democracy in times of transition, my positive argument must demonstrate three main things: first, that transnational democracy is a feasible extension of emerging preconditions, practices, and institutional orders; second, that it is possible to fulfill the democratic minimum in democracies of *dêmoi*; and, lastly, having fulfilled this minimum, that transnational democracy is a robust way of realizing human rights and establishing popular control over some of the normative powers exercised by political authority without appealing to a singular *dêmos* or unified will of the people. Whereas the idea of a singular *dêmos* has been tied to a fundamentally juridical model of self-legislation, the idea of nondomination decenters this conception and requires that citizenship powers be exercised in a variety of overlapping *dêmoi*.

This leads to the first question regarding the feasibility of a democracy of *dêmoi*: what sort of cosmopolitanism is required for democracy under the current circumstances of politics? Transnational democracy is certainly a form of political cosmopolitanism, to the extent that it sees new political institutions as fundamental in addressing concerns for global justice. While entirely consistent with cosmopolitan moral concerns, transnational democracy is neither directly a form of moral cosmopolitanism, nor are its institutions justified by an appeal to broad moral principles such as equal concern and respect for fundamental human dignity. Its political character can be determined

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from its emphasis on humanity—not merely as a moral property of individuals, but also as a political community in which the right to have rights is recognized.

Compared to some forms of political cosmopolitanism, transnational democracy emphasizes the plurality of institutions and communities necessary for the flourishing of humanity. In common with liberal nationalism, transnational democracy is opposed to the idea that the *dêmoi* ought to be subsumed into a cosmopolitan hierarchy with a single *dêmos* at its apex. As the term transnational suggests, states continue to have a role in the political life of the transnational polity, although not as the democratically favored form of organization; they are but one of the *dêmoi* and one of the polities organized within the human political community. At the same time, distinct peoples or sovereign states are not the fundamental units of transnational federalism. It is not democracy *beyond* borders but *across* borders; democracy across borders means that borders do not mark the difference between the democratic inside and the nondemocratic outside of the polity, between those who have the normative power and communicative freedom to make claims to justice and those who do not. It is not a democracy of a single community, but one of many different communities.

The overall argument here aims to provide just such a normative theory of transnational democracy, a theory that is much less dependent on inherited juridical conceptions than are theories of cosmopolitan democracy. The first two steps of the argument develop the theory of the democratic transformation from *dêmos* to *dêmoi*. This argument begins with certain social facts: first of all, with those conditions that constitute the social field of constraints and opportunities in which democracy can be realized, including macrosociological facts concerning globalization outside the state and increasing pluralism within it. The second set of conditions is related to the nature of the public sphere, the existence of which is a basic presupposition for interaction in a democratic form of political life. The main issue regarding this set of conditions is this: if talk of a global public sphere in the singular is a nonstarter, what is the relevant alternative? The third step in the argument follows as a consequence of these conditions and is distinctly normative and

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republican in character. Rather than the threat of global institutions with regulatory capacities, an increased potential for domination at the transnational level is one consequence of uneven interdependence. Thus, a transnational democracy must no longer reconstruct rights as the claims of a juridical subject to immunities from interference, but rather as normative statuses and powers in the political domain sufficient to promote nondomination. This reconstruction of political rights as rights against domination also suggests the fourth and final step in the argument: the development of a distinctive form of transnational constitutionalism that is the basis of any democratic reflexive political order. When human political rights are multiply realized in a such a reflexive constitutional order, they provide the minimum sufficient conditions to establish the reasonable hope that such a democratic order could be a means of attaining global justice.

The first chapter begins both of the main reconstructive tasks, one negative and the other positive. The negative task is to reject the usual argument for cosmopolitan democracy. In David Held's well-known definition, globalization is a complex and multidimensional process that primarily denotes "the expanding scale, growing magnitude, speeding up and deepening impact of transcontinental flows and patterns of interaction."[11] From this account of globalization, many infer that the problem of democracy is one of scale, and thus contend that democracy can once again be effective so long as it develops on the same scale as the social processes it interacts with and often tries to regulate. But however the process of democratization is connected to this abstract description of globalization, these arguments do not take seriously enough the political circumstances of current asymmetrical globalization, circumstances which demand the deeper conceptual transformation of democracy beyond simply rejecting the assumptions of state sovereignty. Democracy must now not only change its institutional form, but also its political subject.

The reconstructive task of this chapter begins with the development of an exhaustive typology of current theories of democracy beyond the nation-state. There are four main axes that provide the basis for such an exhaustive classification of positions on this issue:

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social or political, institutional or noninstitutional, democratic or nondemocratic, and transnational or cosmopolitan. In considering the major theories of Rawls, Habermas, Held, and Dryzek, I will show that only my position is political, institutional, democratic, and transnational, while Held's cosmopolitan democracy and Dryzek's transnational democracy cover only three such aspects each, to the detriment of their theories. While Held's conception of cosmopolitanism is multileveled in its institutional form, at the apex of its framework is a *dêmos* organized by standard parliamentary institutions. Dryzek, on the other hand, emphasizes civil society as the appropriate agent of transformation, and this emphasis tends to conceptualize democracy entirely in terms of contestation rather than deliberation. Both ignore the most fundamental necessary condition for democratization: the power to initiate effective public deliberation. For the purpose of accounting for this distinctive democratic power, I develop a conception of the democratic minimum: the minimum necessary conditions for democracy to be sufficiently self-transformative so as also to be a means of achieving global justice.

The second chapter shifts from theoretical concerns to the main practical precondition for the exercise of rights against domination: a vibrant public sphere in which people regard themselves as members possessing communicative freedom. The increasing level of cross-border communication is now a recognized social fact, leading many to assert the emergence of a new global public. Just as in the national case, it would be easy to overestimate the significance of global civil society for democracy. The emergent public sphere more clearly opens up spaces for deliberation across borders than does global civil society alone. Publics can begin to take on "some measure of political organization," as Dewey noted, when they establish a dynamic between the communicative freedom of publics and the normative powers of citizens as embodied in particular institutional processes.[12]

Here, too, we should not underestimate the differences between national and transnational publics and the conceptual task of developing an alternative, decentered conception of democracy. Rather than merely a location for associations and contestation, the transnational public sphere is also the potential source of communicative freedom and novelty when it begins to interact with and shape

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institutions. Historically, public spheres emerge and develop in interaction with political authority, particularly when that authority tries to shape and restrict the public sphere itself—as was the case, for example, with early modern attempts at state censorship, which helped give participants a greater sense of identity as members of a public. Given the role of initiation and claim making that I emphasize in the first chapter, such public spheres establish crucial deliberative conditions for the democratic minimum. The sorts of public best able to challenge and contest the new dispersed forms of delegated authority on the principal/agent model are what I call "distributed publics," which have already emerged in network forms of communication such as the Internet. In the case of transnational democracy, the creative and generative side of communication is needed to establish new institutional frameworks. Those who create the new public spheres will act as new transnational intermediaries, replacing older democratic intermediaries whose agency opened up and maintained the spaces needed for the exercise of communicative power.

The third chapter turns to the normative basis of transnational democracy in the common currency of international politics, human rights. This chapter develops the conception of political rights as crucial normative powers to resist domination. Here international human rights law provides conceptual clues regarding the development of this normative conception in crimes against humanity and in the right to nationality owed to refugees and stateless persons. While many have thought of such a cosmopolitan requirement as instantiated politically in the constitutional state at a higher scale, this understanding of humanity is most fully realized in a multilevel, differentiated polity with multiperspectival forms of deliberation. Here humanity is not only the addressee of the claims of rightless persons, but it is also the proper perspective of the generalized other that is constitutive of humanity as a political subject across *dêmoi*. That the concept of humanity must play various roles in a democracy that realizes universal human rights also suggests that a differentiated institutional structure that translates human rights into normative powers distributed throughout that structure is the best way to realize human rights, particularly human political rights. To the

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extent that human rights denote statuses, these statuses require a particular political community—the republic of humanity—and thus at least some global institutions to secure common liberty and nondomination.

The fourth chapter turns to just the sort of differentiated institutional structure that best realizes political rights as human rights. It is possible to determine this structures's principles of design from an ongoing experiment in transnational political integration and polity building: the European Union. Although there are several forms of constitutionalism beyond the nation-state—including the United Nations, the World Trade Organization, and other institutions that seek to bind their members through self-governance—the EU is distinct in its political goals and democratic ambitions. In particular, the EU is not simply an aggregate of peoples governed by a minimal overlapping consensus, but a political community, and as such it does not "merely replicate on a larger scale the typical modern political form."[13] Given that states must be democratic to become members, the European Union is a polity of *dêmoi*, a "people of others" (in Joseph Weiler's terms).[14] This suggests some general principles of institutional design: namely, a principle of institutional differentiation that includes both distinct institutions at the transnational level and iterated institutions, with the same competences but distributed at different levels, both of which secure robust nondomination. This creates parallel and intersecting forms of deliberation, as can be seen in various novel forms of deliberation in the EU. The second task of this reconstruction of the EU institutions is to consider the conditions necessary for its further democratization and to conceive of its democratic reform, with the benefit of the will of the people in the standard sense that includes their constituent powers. Such a shift requires a new constitutionalism, especially given the problem of legal domination or juridification that is the biggest source of the EU's democratic deficit—that is, its perceived lack of democratic legitimacy when compared with member states. The problem of legitimacy, I argue, is more specific than an overly generalized democratic deficit. It is rather a deliberative deficit, a deficit in the reflexive capacity of citizens to initiate democratic reform. The problem of constitutionalism is not to create a European *dêmos*, but to create in the EU's institutional structure the

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democratic capacity to initiate legitimate democratic reform, which is required if it is to become something more like a transnational republic.

The conclusion brings these arguments together by raising the fundamental issue facing many forms of cosmopolitanism: global justice. Here I argue that democracy and justice are mutually dependent terms and that one cannot be achieved in any secure way without the other. Two examples that are important for global justice illustrate this dependence. The first is the problem of borders, which liberal democratic theory treats simply as a given. I argue instead that to the extent that borders and jurisdictions set the terms of democratic arrangements, they must be open to democratic deliberation. In multiunit polities, this requires that both citizens and noncitizens have the ability to place an item on the political agenda in order to ensure that such a power is not democratically arbitrary. Second, I argue that transnational democracy is also instrumental in producing peace and security in addition to creating the capacity to avoid other great human evils such as famine and extreme destitution. In particular, we can see this from the failure of the democratic peace hypothesis, when it is turned into public policy. Democracy promotes peace only if there is a positive feedback relationship between democracy within states and the international system. Indeed, it is only when some supranational institutions exist to make these states more rather than less democratic that such values are best secured. In other words, peace requires not democracies, but democratization at positively interacting levels.

If this cumulative argument succeeds in each of its steps, I will have shown that the republican conception of nondomination provides the normative warrant for democracy that is generally lacking in more liberal versions of political cosmopolitanism. Cosmopolitan democracy makes more sense in republican terms, for without freedom as nondomination it can address neither the political problems of complexity and interdependence nor check its own potential for democratic domination and juridification. Perhaps some might argue that a commitment to a more minimal form of democracy at the international level, based on demands of transparency, would be more feasible and less ambitious than the democratic project of establishing a political community of *dêmoi.* While perhaps enabling

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some reforms, such a minimal form of democracy does not achieve the necessary conditions for democratization and is insufficiently republican to solve the fundamental problem of domination. It may indeed be possible to have some universal human rights without a democratic cosmopolitan political community, but then such human rights could not include political and civil rights against domination and tyranny. If we want to be true to our commitment to both rights and democracy, then we must also be committed to establishing an international political community that is entailed both by human rights as political rights and by political rights as human rights. Republicanism tells us that we cannot institute these norms except in a properly organized political community. Cosmopolitan republicanism adds that freedom from domination cannot be achieved without transforming our fundamental democratic conceptions and ultimately embedding our democratic institutions within a transnational polity.

This argument is able to fulfill Dewey's two main desiderata for democratic theory in a period of transformation. First, it returns to the fundamental requirements of democracy and asks how they can best be fulfilled under the new political circumstances. Second, it takes its principles of institutional design from the innovative forms that have already developed in various settings, from international regimes to the European Union, to show that transnational democracy is a realistic extension of political possibilities. The ideal of democracy does not merely apply to the international arena and its institutions, but rather elaborates the conditions for the legitimacy of any modern democracy committed to human rights. In this sense, Kant and other transnational republicans were right when they contended that the achievement of a democracy of *dêmoi* is now a fundamental demand of political justice and an obligation of humanity to construct.

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