



## Moving Beyond Markets and Minimalism: Democracy in the Era of Globalization

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**Democracy as Human Rights: Freedom and Equality in the Age of Globalization by Michael Goodhart. London: Routledge, 2005.**

When the term globalization comes up in general conversation, the press or academic writing, it is given a range of meanings and is either loathed or celebrated. Globalization is subject to a variety of interpretations and descriptions. Debates about its merits or shortcomings are often muddled, as it is never clear if the antagonists are talking about the same thing at the same time. Globalization, in a broad sense, refers to “the expanding scale, growing magnitude, speeding up and deepening impact of transcontinental flows and patterns of social interaction” (Held and McGrew 2002: 1). While globalization describes a whole range of human activity, its main thrust and orientation has come to be associated with global economic activity that is in turn heavily influenced by, if not synonymous with, neoliberal ideology.

The main characteristics of this dominating trend include an emphasis on free market systems, limited government involvement in the economy, structural adjustment policies for developing societies and the widespread privatization of services. It is argued that adherence to these policies and practices brings a whole raft of benefits to the world, such as rising living standards, faster economic growth, poverty reduction, democratization, and higher labor and environmental standards.<sup>1</sup> At the same time it is also argued that the forces of globalization, influenced as they are by neoliberalism, are severely damaging, contributing to an increase in poverty and greater inequalities in society, a lowering of social and environmental standards, increased inequality among the core and peripheral economies around the globe, and the disempowerment and marginalization of subaltern groups, globally and locally.<sup>2</sup>

The debates about globalization occur at many levels and the arguments on all sides claim to be based on the most accurate and realistic evidence. The opposing sides all also claim to possess the necessary insights for the best means forward. The only area where there is some sort of consensus is that the various forces and processes associated with globalization do have an impact upon how

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<sup>1</sup> For example see the various reports and studies available at the Center for Trade Policy Studies, <http://www.freetrade.org/issues/globalization.html>.

<sup>2</sup> Critics of neoliberalism are widespread; a good starting point is Chomsky (1999) or Stiglitz (2002).

human beings and their societies are organized, how these societies interact and how they are governed. This is where Michael Goodhart's book, Democracy as Human Rights: Freedom and Equality in the Age of Globalization, steps into the debate and in turn provides a number of interesting assertions for deliberating how globalization, and all its manifestations and influences, has an impact on the ways in which we both perceive and pursue government and governance in the world today.

Goodhart's contribution to the debate about globalization comes at a propitious moment. The controversy over globalization appears to have reached a stalemate as the opposing sides become ever more entrenched. At the same time, it continues to be more and more evident that the world is a different place with regards to how it is governed, and greater attention is needed to deal with questions of global governance. Held and McGrew explain "the globalization debate projects, into a new context, the cardinal questions of political life concerning power and rule" (2002: 58). Finding appropriate answers to these questions regarding power and rule in the process of globalization is not a straightforward or easy task. There are a range of possible, often competing, explanations and approaches that may be used for addressing the concerns that exist over the impact of globalization.

This review focuses on one particular area that is at the heart of questions regarding governance in the age of globalization—the role of international law. Given the global nature of international law and its ability to generate norms, values, institutions and procedures, it is a useful tool to mobilize discussions about globalization. Goodhart does not give explicit attention to the contribution of international law *per se* to his work, but it is clear that the body of international law concerning the promotion and protection of democracy and human rights has a major role to play in both the normative developments needed to take on the challenges posed by globalization and for the formation of the necessary institutional structures for realizing Goodhart's vision.

International law's concern with governance, both in terms of principles and practices, emerged with the post-World War II international system for the promotion and protection of human rights. Despite the prominent reference to democracy in Article 21 of the 1948 Universal Declaration of Human Rights (UDHR), and the existence of democratic requirements for membership to the regional organizations in Europe and the Western Hemisphere, international law did not actively engage with the issue until the end of the Cold War (Franck 1992).<sup>3</sup> At that time there emerged a wide range of areas where democracy became an object of concern, a legitimizing concept, or a principle for guiding action. It was primarily through international human rights law that the most attention was given to the promotion and protection of democracy, with other aspects of international law taking an active and ongoing concern with democracy, establishing the basis for an "international law of democracy".<sup>4</sup>

Through its concern with democracy and human rights, international law is an appropriate tool for examining the present debates on globalization.<sup>5</sup> The current emphasis on free markets has a direct impact on the principles and practices of governance, and it is becoming more and more

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<sup>3</sup> Franck explains that the development of democracy in international law has been a gradual process but one that accelerated around the end of the Cold War.

<sup>4</sup> For further on the concept of an international law of democracy see Burchill (2001: 123-134). Also see the various contributions in Fox and Roth (2000).

<sup>5</sup> See von Bogdandy (2004: 886).

obvious that there is the need for some counteracting efforts to deal with the negative impacts of free markets and globalization. As it is no longer possible to identify the source of the problem or who is responsible, it is necessary to make use of tools that transcend traditional boundaries and provide support for greater emancipation and empowerment globally and at all levels of social interaction. International law has evolved in a number of ways to provide both normative and practical support for arguments in pursuit of further emancipation and empowerment in the world. International law does suffer from its own internal indeterminacies and may be utilized in contradictory ways, but it also provides a substantial source for norms and principles that can be used to deal with globalization's impact on governance.

This essay begins with a brief elucidation on the role of international law in the process of globalization. It then moves to an outline of Goodhart's main argument setting out the basis for his idea of Democracy as Human Rights, followed by an expanded discussion of what he considers to be the "real threat" posed by globalization—the influence of neoliberal ideology. The piece will then go on to discuss how the international law relating to the promotion and protection of democracy and human rights can contribute to advancing claims for increased freedom and equality in the age of globalization.

### **International Law and Globalization**

For those not closely connected with international law, its role in globalization is potentially less obvious. From this perspective, the processes of globalization are seen as primarily political struggles, not legal events, and therefore they require political resolution and not the imposition of legal standards. As with all struggles involving power and governance, it is impossible to separate clearly law from politics as both will have a role to play in the debates and in determining what actions are taken. For the international lawyer, it is self-evident that the body of international law has a major role to play in the processes of globalization. Issues such as world trade, state sovereignty, the movements of persons and goods, environmental standards, human rights and, now, democracy all have a framework grounded in international law. These frameworks provide for institutions, processes, dispute settlement mechanisms, as well as norms and principles that guide behavior. The extent to which the legal framework has evolved, or is effective in regulating behavior, does vary depending upon the subject in question. At the same time, there do exist legal mechanisms that can be called upon for dealing with a particular issue.

The role and contribution of international law in understanding globalization and in finding new ways of promoting democracy is multifaceted. What is clear is that international law does have a major role to play in supporting moves towards greater empowerment and emancipation. When criticisms are raised about the exercise of power or the legitimacy of governance, reference is made to the obligations, standards, principles or norms set out in the plethora of international legal instruments. International organizations will use the various treaties and declarations that make up their system for human rights protection as tools for measuring standards and enforcing compliance among the member states. When states criticize other states on human rights issues, reference will be made to the international obligations they have entered into. Non-governmental organizations and citizens will also make wide use of international human rights standards as the basis for

condemning violators and as part of furthering human rights protection through advocacy and education (Forsythe 2006). Through the promotion and protection of democracy and human rights, international law is involved with the setting of standards by which the process of governance is pursued and how assessments are made with regard to the legitimate exercises of power (Held 2004). This is an important contribution in the context of globalization where there are claims about the diminishing significance of the state and the need for some form of global structures for government. International law provides a general framework for evolving systems of global governance through a “rule-bound multilateral order” (Held 2004: 119).

It is equally important to recognize that international law does not possess a full set of answers or solutions to the real and perceived problems with globalization. Many of the issues surrounding globalization cannot be resolved purely through legal processes, as they involve complex political or social processes as well. At the same time, the structure of international law is highly indeterminate allowing it to be utilized in support of multiple, often conflicting, purposes.<sup>6</sup> Traditionally, the sovereign state has been at the heart of international law, therefore much of the international legal system works in favor of the interests of states. When it comes to how society is governed and how individuals and groups are treated by those in authority, international law has often been found lacking. Following the creation of the United Nations, international law began a shift in how its values are upheld, and state interests no longer hold the absolute position of primacy they once possessed. Now an assortment of actors, from individuals to non-governmental organizations, makes a range of claims upon international law in pursuit of a variety of goals and objectives concerning the organization of social life. In response a variety of normative frameworks have evolved. In some cases, legal frameworks remain frail with no effective means for enforcement, while in others, rudimentary oversight and enforcement structures are in place.

Regardless of whether or not these normative frameworks can be effectively enforced, they remain a potent force in debates about the international system as they provide standards and guidance as to how things should be. Goodhart’s work seeks to find new ways for preserving and furthering human emancipation and empowerment. International law alone can never provide all that is needed, but it can provide a good deal of support that proponents can call upon to help the shape the future of global governance.

### **The Path to Emancipation and Empowerment: Democracy as Human Rights**

Goodhart’s point of departure is the argument that globalization undermines democratic systems as decision-making and the exercise of power are no longer confined to the existing structures for governance. These existing structures are based on social organization focusing on the state which is also where discussions about democracy are primarily focused as well. Goodhart tells us that the belief in globalization as a threat to democracy is misconceived. Instead, globalization should be seen as a challenge to the ways in which we have come to understand democracy in today’s world. Goodhart presents a study that explains how our thinking about democracy has come to be

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<sup>6</sup> To this can be added that levels of legalization in the international system vary considerably, see the various contributions to the special issue titled, “Legalization and World Politics” of *International Organization* (2000).

confined to the state and how this is insufficient for the changes and challenges brought on by globalization. The processes surrounding globalization suggest we need some form of governance beyond the state; at the same time the persistence of state sovereignty precludes any move to the supranational. Goodhart sums up it well: “We want a more democratic global order with meaningful guarantees of basic human rights, but we don’t want a global government; we want global democratic norms and decision making without global armies and parliaments” (2).

So what do we do? If aspects of globalization are damaging, but it is not possible to address these problems within the current frameworks available to us, what can be done for the future? Goodhart calls for “a critical reconstruction of democracy” that “reinterprets democracy’s core principles of universal freedom and equality for the age of globalization,” (117). This critical reconstruction leads to a theory called Democracy as Human Rights (DHR) that “conceives emancipation as the goal or aim of democratization and invokes human rights as the language of democratic empowerment” (117). It is clear that Goodhart is not wholly against, or wholly in favor of, globalization. In fact he suggests that there are some positive elements about globalization. In particular he refers to the greater exchange of ideas, social relations and interactions and to the conceptual challenges that globalization poses to our thinking about democracy (217-221). Goodhart’s proposal for DHR is based on a definition of democracy understood as “*the political commitment to universal emancipation through securing the equal enjoyment of fundamental human rights for everyone*” (135, original emphasis).

There are two aspects of this type of democracy that stand out. The first is that it clearly entails more than just elections; it does not settle for a minimalist form of democracy. There has been a tendency in the international system to view democracy as merely a process; the holding of elections.<sup>7</sup> While there is no doubt that elections are a necessary part of the existence of democracy, they do not represent the end goal either. The influence of neoliberal ideology has reinforced this understanding of democracy in minimalist terms. Neoliberalism’s emphasis on the centrality of market mechanisms precludes any sort of acts of governance that may interfere with the market, such as providing welfare for the needy and marginalized in society. Neoliberalism does not completely extinguish democracy as it still relies upon the existence of particular freedoms allowed for the choosing of leaders, but it does limit its application and purpose in society. Neoliberalism’s reliance upon the market keeps democracy limited to the minimalist conception as a process for selecting those that govern. Goodhart’s proposal for DHR is based on “universal emancipation” and this clearly requires more than occasional elections and basic political freedoms.

The second aspect that stands out is how his definition of DHR is grounded in the language of human rights which Goodhart sees as crucial to this reinterpretation of democracy as:

*advocates of democratization have from the beginning used the language of universal rights to attack domination, oppression, and political exclusion and to extend rights, freedom and equality to more and more people. Rights are a tool for breaking down barriers to democratic emancipation...* (131).

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<sup>7</sup> This is also referred to as the “electoralist fallacy” (Linz and Stepan 1996) or “low-intensity democracy”; (Marks 2000).

Goodhart is extending a clear challenge to those that believe markets and minimalist democracy provide the best possible means for ordering our societies. He is expanding the scope of the basic issues into the field of human rights. There have been similar tendencies in the field of human rights towards minimalist conceptions where “real” rights are narrowly understood as certain civil and political rights. The full breadth of human rights is much wider, including a range of concerns in social, economic and cultural areas. This is important for understanding democracy in the age of globalization as the concerns and tribulations individuals and societies face extend well beyond the political. Goodhart believes that rights are tools for expanding the possibility of emancipation and this will require more than a few civic freedoms.

Goodhart’s DHR approach provides a substantial arsenal for taking on what is essentially the “real threat” posed by globalization—the ever broadening influence of neoliberal thought which is “menacing to freedom and equality” and opposition to it “is an urgent democratic priority” (220). He contends that the problem with neoliberalism is that

*it subjects economic activity to the discipline of the market rather than the forum; it gives precedence to the rights of capital and investors over the rights of women and men; it serves the imperatives of profit and growth before those of emancipation. It sacrifices individuals and communities at the altar of an economic orthodoxy deifying the mythically “free” markets of global capitalism (220).*

Goodhart’s approach of seeing democracy as a commitment to universal emancipation through the use of human rights is commendable in many respects. At the same time, it faces some serious obstacles due to the entrenchment of ideas and practices in international law and relations that do not necessarily favor the approach advocated. The dominant trends in international law and international relations tend to support the neoliberal way of thinking, but equally it is possible to identify possible strategies from within these disciplines for addressing the problems posed.

### **Neoliberalism: The “Real Threat”**

Before looking at how international law may contribute to Goodhart’s belief in DHR, it is necessary look at the basic problems posed by neoliberal ideology. Central to neoliberalism is a passionate belief in market mechanisms. This belief holds that market mechanisms provide the most efficient means for the allocation of resources and directly results in society having the largest amount of prosperity and freedom possible. In free market systems, government is limited and all individuals have the ability to enter into the market and compete, as well as the ability to enjoy the outcomes of their actions. The lack of interventionist forces in the market system is seen as a positive, as the market forces are able to operate in an objective fashion and no one dominating influence can determine inputs or outputs, making the system fair.

However, it is well known that this sort of thinking cannot be adhered to without question. While proponents of the neoliberal view are able to point to substantial evidence regarding the raising of living standards and greater levels of freedom in states and societies that have adopted free markets, it has also become clear that the market cannot address all of society’s problems, and in fact, it contributes to worsening conditions for some. Those who do not easily fit the set market

model—such as the poor, unemployed, sick, disabled, or other subaltern groups—end up being excluded. These exceptions are often explained away as insignificant or as a short-term price to pay for long-term efficiency (Donnelly 1999). However, it should cause one to stop and ask if this is the sort of society we truly want. While there is no doubt that free market models are here to stay, equally there are good reasons for making use of the free market for making society a better place for all (Russell 1999). But at the same time, the free market is not sacrosanct or unassailable, and it is far from perfect. Therefore, it is necessary to find ways of ensuring that all individuals are able to enjoy freedom and dignity, and sometimes this means we have to do more than just rely on the free market.

The growth of free market systems is, rather ironically, intimately connected with the development of individual freedom and liberty (Zakaria 2003). The development of free markets and their eventual acceptance in society meant that no authority could exercise absolute control over all aspects of human life. The result was the evolution of basic personal liberties and property rights being protected by law allowing for individuals to participate in the market. Also, markets have an egalitarian spirit to them as anybody (in theory) can come to the marketplace and compete. However, while this may hold up in theory, the actual practice of free market systems has been rather different. Markets are zero-sum situations, someone has to win and someone else has to lose. Markets also require the ability to participate and those that do not have the means or who do not meet the criteria of the established market models are not always able to participate on an equal basis. Reliance on the market system for distributing the goods and services of society may lead to overall wealth and prosperity for the group, however determined, but it does not mean all individuals will benefit. In fact, experience has proven that strict adherence to free markets may actually exacerbate the negative conditions individuals and groups find themselves in.

This in turn has led to a dilemma for modern democratic thinking as it becomes necessary to explain why it is acceptable for some members of society to be left in a worse off condition than others. The question needs to be asked why the promise of freedom and a good life that democracy supposedly provides is nothing more than a false promise for many in society. This question has become extremely pertinent in recent years, as the euphoria following the collapse of communist systems in 1989 has given way to the grim realities of poverty, underdevelopment and exclusion. The collapse of Cold War ideological rivalry opened new space for international law to take an active concern. During the Cold War, international law was severely limited in its scope as the main issue of concern for the international system was ensuring the ongoing co-existence of the superpowers. The 1990s brought about a new era for international law. This new era was characterized by a reinvigoration of international obligations and a new found emphasis on the human condition and the need for international law to contribute positively to the betterment of human society. International human rights law increased in its stature as it was now to be seen as a force to be dealt with and not ignored when politically expedient. Furthermore, there were a number of developments that led to claims that international law also now supported an entitlement to democracy, something else which would contribute to freedom in the world.

With the process of globalization, the influence of neoliberalism and the dominance of the state have tempered the ability of international law to promote and protect human rights and democracy in an effective manner (Marks 2000). The influence of neoliberalism in the process of

globalization has led to the position where “results and means by which success is determined often are dominated by economic values without any effective way of determining what noneconomic values are relevant and how their importance might be assessed” (Aman 2003). Richard Falk has explained how the prevailing understandings about democracy and human rights have been intimately tied to neoliberal thinking and its belief in marketization (2000). What has resulted is an adherence to minimalist approaches towards democracy and human rights that have not resulted in emancipation and empowerment for all but rather only for a select few.

### **Overcoming the State: The Power of Human Rights**

In Goodhart’s theory of DHR, the state holds a particular position which the author believes has skewed how we think about democracy. He therefore proposes a new model for thinking about democracy, based on human rights, that is not wholly tied to the state as it addresses the existence of inequality and oppression regardless of the source. However, this move to a human rights-based model for democracy is going to have some problems as the main textual sources for the promotion and protection of human rights, the body of international human rights law, are state dominated. The current international system for the promotion and protection of human rights has its origins with the United Nations; an organization which attempted to overcome the exercise of unbridled state power through principled declarations and international legal obligations for the furtherance of human rights. The opening paragraphs of the U.N.’s founding document make clear the importance attached to human rights as they express a desire “to save succeeding generations from the scourge of war” and “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.”

While there is no doubt that the U.N. and other international organizations have furthered the promotion and protection of human rights substantially around the globe, there remains a nagging concern with the overall efficacy of the system. This concern is directly connected with the fundamental paradox that characterizes international human rights law due to the position of the state—the main violators of human rights law are also the main source for the creation of legal obligations. Faced with this sort of paradox there can be no real surprise that the international system for the promotion and protection of human rights is limited in its ability to deliver on human emancipation and empowerment. The problem the state causes for promoting and protecting human rights is similar to that which plagues democratic thinking. As Goodhart explains, the existence of sovereign states, understood as discrete territorial units with an all-encompassing authority over that territory and its inhabitants, makes it very difficult to argue in favor of values, principles and obligations that are not directly linked to the pursuit of self-interest by states. Goodhart charts how the existence of the sovereign state contributes to competing processes of inclusion and exclusion and has resulted in vast asymmetries between states and various forms of subjection within states. The very same characteristics have ensured that the international system for the promotion and protection of human rights has been less effective than it could be.

Goodhart’s grounding of DHR in the language of human rights is an important move as it gives his theory a relatively strong foundation, at least in moral terms. In the international legal system, the sort of paradox that exists with regard to international human rights law is not as outrageous as it first appears. As sovereign states are the primary units of the international system, the processes for

creating obligations are left to these units. Given that international human rights law directly impugns upon the actions of a state, it is not surprising that the ability of this system to limit state action has been restrained. The condition of international human rights law opens it to accusations of being futile if not completely irrelevant to human struggles. Goodhart himself seems to marginalize the position of international human rights law arguing that the future of DHR is “primarily political” and is “less about building institutions than about building political will by articulating appealing values and persuading people to fight for them” (220). There is no doubt that the struggles for democracy and human rights are primarily political struggles. At the same time, making any arguments about the importance of respect and recognition for human rights depends heavily upon the wide ranging body of treaties, declarations, comments and decision that make up the international system for the promotion and protection of human rights. Falk has explained “the human rights framework has provided a ground for the politics of resistance, of opposition and of struggle” (Falk 2000: 59). This body of law provides substantive rhetoric in favor of human values that work to support calls for emancipation and empowerment and help to overcome the obstacles created by the position of the state and the influence of neoliberal ideology (Burchill 2008).

Since the end of World War II, human rights have become a pervasive aspect of the international system, and since the end of the Cold War, democracy has taken on similar characteristics. In both cases, there is an ongoing struggle between rhetoric and reality. Due to the nature of the state based international system and its dominant ideology, both democracy and human rights have been seen primarily in minimalist terms, thereby limiting their effectiveness as tools in the struggle for emancipation and empowerment. For human rights, the preferred minimalist approach means that only a limited range of rights receive full recognition as creating legal obligations that need to be acted upon. The enduring distinction between civil and political rights—rights that are easily recognized through negative state action and amenable to judicial processes, and socio-economic rights—rights requiring positive state action as part of policy decisions and not open to legal assessments, is central to the minimalist approach. This results in a rather skewed vision of the human condition, as the rights commonly associated with the socio-economic category are those most essential to human survival as they involve health care, food, clothing and education. Yet the influence of neoliberal thinking results in these areas being left for determination by the market and not a concern for human rights or democracy.

Goodhart rightly argues that our understanding of human rights cannot be limited in this way. For his theory of DHR, human rights are understood as “those rights necessary for protection against potential subjection” (141). He goes on to identify four clusters or bundles of rights that take us beyond minimalist conceptions: 1) rights for liberty and security as intimidation and force can prevent the enjoyment of other rights; 2) rights for fairness that ensure equality of protection and prevent certain classes of persons being mistreated; 3) rights for an adequate standard of living as this ensures the effective exercise of other rights; and 4) civil and political rights as these provide the public with the means for ensuring the accountability and responsibility of those who govern (143-144). The broad clusters of rights set out by Goodhart provide the necessary tools for dealing with the human condition in a more holistic fashion and does not leave some aspects of rights at the margins.

## Democracy and Human Rights: Moving beyond Minimalism

In the same way that human rights have been subjected to minimalist conceptions, democracy too has been given a rather limited understanding (Beetham 1999, chapter 5). This limited understanding equates the holding of elections, along with some basic legal protection of certain civil and political rights, with the existence of democracy. With the end of the Cold War, democratic elections were widely held across the world. International law responded to these events and there now exists a strong international principle in favor of democracy. But at the same time, little attention has been given to what democracy is or should be as the dominance of neoliberal ideology has kept understandings of what constitutes democracy limited, for the most part, to the holding of elections (Marks 2000).

This minimalist approach to democracy has come under sustained criticism but equally has continued to prevail in the international system. Franck has explained that the holding of elections, with some basic human rights protection, is probably the extent to which international agreement about democracy is possible (Franck 1994). The prominence of the minimalist conception of democracy is due to a number of reasons. Proponents of minimalist democracy argue, first, it provides the easiest way of determining the existence of democracy. When elections are held the democratic process is an observable fact. Influential democratic theories have maintained the importance of minimalist democracy as it provides stability and efficiency (Schumpeter 1943). This leads to the second reason why minimalist democracy has taken hold; it ensures that difficult and contentious debates about values are avoided. Under a minimalist understanding, democracy is reduced to a process. Issues surrounding values are not part of this process and therefore do not merit any substantial consideration. This in turn avoids substantial disagreement, and potential conflict, when the nature or extent of values cannot be agreed upon. Third, it provides a system for choosing governmental representatives which all societies can adopt. Using a process of selection based on specific criteria is a universal model that can be adapted to fit particular circumstances where necessary, but the basics remain the same. And finally, it is argued that a minimalist type of democracy ensures the maximum amount of freedom in society as everyone gets the vote and everyone, supposedly, is able to participate in the market mechanism for determining other substantive outcomes. The dominance of neoliberalism has worked to maintain the perceived linkage between minimalist democracy and free market capitalism. In summary, a minimalist understanding of democracy is seen as easy and likely the most we will be able to achieve widespread agreement on.

However, what the minimalist approach fails to recognize is that this system of democracy fails to live up to the ideals and values inherent in democracy. Democracy has a long history of being a subversive idea as it calls into question the arbitrary exercise of power and it has been central to appeals for greater freedom and equality throughout the ages. Therefore, the type of democracy that currently dominates thinking is very problematic as it fails to live up to the promises of emancipation and empowerment that have been long been the hallmarks of democracy. International law's embrace of democracy has been equally problematic as a limited understanding of democracy has meant that the law has been used not to further emancipation and empowerment, but rather it has been instrumental in validating unequal power relations and continued oppression.

The immediate response to this criticism is that democracy is not about substantive values, it is only a process for choosing leaders and representatives. However, a minimalist form of democracy does not allow all individuals to be part of the processes that impact upon their lives. Instead, it creates a situation where those who are powerful and privileged in the market are also powerful and privileged in other facets of society and those who are less powerful in market terms remain marginalized and faced with continued subjection. Therefore democracy needs to be understood as “an ongoing call to enlarge the opportunities for popular participation in political processes and end social practices that systematically marginalize some citizens while empowering others” (Marks 2000: 109). The democratic thinker C.B. Macpherson has explained that democracy is not just about picking leaders: “the egalitarian principle inherent in democracy requires not only ‘one man, one vote,’ but also ‘one man, one equal right to live as fully humanly as he may wish’” (1973: 51).

This understanding of democracy requires us to look beyond just elections and a limited range of civil and political rights. It requires ensuring that all individuals in society, regardless of their market characteristics, are able to fully participate in the processes going on in their lives and have the equal opportunity for realizing their full potential. To do this the full range of human rights, such as those identified by Goodhart, are necessary for an effective democracy. The rhetoric of international human rights law provides substantial support for an understanding of democracy along these lines. Evidence of this rhetoric can be seen in the final statement of 1993 Vienna Conference on Human Rights (United Nations, 1993) where it was declared that democracy is about people determining “their own political, economic, social and cultural systems and their full participation in all aspects of their lives;” a point that has been repeated by the U.N. General Assembly in the Millennium Declaration and at the 2005 U.N. World Summit (U.N. General Assembly 2000, 2005). It would appear to be self-evident that the type of democracy necessary for ensuring all people able to participate in all aspects of their lives must include something more than the minimalist form democracy offers.

Immediately, this sort of approach will be criticized from a range of angles. Supporters of the free market will dismiss any attempt to manipulate the market mechanism as a means of ensuring socio-economic rights. It is often argued that any attempt to enforce aspects such as living standards will actually result in greater inequality as the rich and powerful will more easily prevail as demonstrated by command economies throughout history (Bhagwati 2004). Furthermore, any attempt at engineered social justice through the enforcement of rights will be seen as anti-democratic in that it means the will of the majority, a supposed basic democratic principle, will not prevail.

While these retorts do have some validity that must be kept in mind, what does not follow from these assertions is what a democratic system does about those that are left marginalized and disempowered by the minimalist practices of democracy and the dominance of the market. The proponents of the neoliberal position are vociferous in promoting the benefits of the market, but rather quiet over what to do about the shortcomings of the market mechanism. A belief in democracy and human rights demands that inequality and marginalization cannot be acceptable. The United Nations Committee on Economic, Social and Cultural Rights has openly commented that the market does not always provide the best means for meeting the needs of individuals (Committee on Social, Economic and Cultural Rights, 1994). The Committee has openly spoken out against

reliance on the market with an emphasis on the need for action in areas such as social integration, solidarity, efforts towards equality, and social welfare provisions for all. Calls of this nature are much closer to the ideas inherent in democracy as they signal a refusal to accept continued oppression and inequalities.

## Conclusion

It is not possible to conclude unequivocally that the current process of globalization is wholly a negative process. The prevailing characteristics of globalization appear to favor those who hold economic and political power, leaving those at the margins even worse off. But this is not to say that all aspects of globalization are to be condemned as inherently destructive (Goodhart 2005; de Feyter 2005). In a similar fashion, the same can be said of international law which will be a key tool in the process of globalization that can contribute to furthering DHR and versions of democracy that are much more about emancipation and empowerment. It was set out above that the position of the sovereign state has created numerous obstacles for the efficacy of international human rights law. While this may hold true in terms of enforcing particular legal obligations, the situation differs with regard to the rhetoric of human rights and the ways in which this rhetoric can empower those calling for change. E.P. Thompson (1978) has demonstrated, through a historical study of repressive legislation in England, that while those in power are able to manipulate the law for their own interests, the universal aspirations of the law and the moral force behind it provides the basis for an inclusive discourse that the marginalized may use in their own struggles. International human rights law is in the same position. States created this system of law in such a way that state interests were not impeded upon too dramatically. But at the same time, the rhetoric of human rights and democracy is very much about emancipation and empowerment for all individuals. The rhetoric is very much part of the public discourse, giving voice to the marginalized and oppressed, and has been extensively used in calls for more effective protection of human rights and greater democracy (Risse, et al 1999). Undoubtedly this does not provide sufficient support for radical change, but it does place us on the right course for dealing with the unwanted impacts of globalization. Globalization has the potential to bring a great deal of good to the world and to all of its inhabitants, but there has to be, as Goodhart explains, “the substitution of freedom, equality, and human rights for the values and priorities of neoliberalism” (220). States and markets may hold a position of primacy but they do not occupy any sort of immovable position that can never be questioned.

Goodhart’s theory of DHR provides a good account of how we may use the language of empowerment and emancipation that is inherent in the international system for the promotion and protection of human rights and democracy to take on the challenges posed by globalization. Concrete results will take time and it is unlikely to be a smooth transition, but at the very least a start has been made that makes clear that the neoliberal ideology that has come to dominate our understanding of globalization is not natural or inevitable and neither are its end results. Those in power, however defined, are unlikely to go along with this willingly. At the same time, this is what democracy and human rights are all about—questioning unequal power relations and striving to make the world a better place for all. Democracy as human rights will be a powerful tool in this struggle and Goodhart is to be commended for stimulating our thinking in this respect.

**References**

- Aman, Jr., Alfred. 2003. "Globalization, Democracy and the Need for a New Administrative Law" 10 *Indiana Journal of Global Legal Studies*, 139.
- Beetham, David. 1999. Democracy and Human Rights. Cambridge: Polity Press.
- "The Benefits of Globalization" Center for Trade Policy Studies,  
<http://www.free-trade.org/issues/globalization.html>
- Bhagwati, Jagdish. 2004. In Defense of Globalization. Oxford: Oxford University Press.
- von Bogdandy, Armin. 2004. "Globalization and Europe: How to Square Democracy, Globalization, and International Law" 15 *European Journal of International Law*, 886.
- Burchill, Richard. 2001. "The Developing International Law of Democracy" 64 *Modern Law Review*, 123-134.
- \_\_\_\_\_. 2008. "International Human Rights Law: Struggling from Apology to Utopia" in A. Bullard, ed. Human Rights in Crisis. Aldershot: Ashgate.
- Chomsky, Noam. 1999. Profit over People: Neoliberalism and the Global Order. London: Seven Stories Press.
- Committee on Social, Economic and Cultural Rights, 1994. General Comment 5, "Persons with Disabilities, U.N. Doc E/1995/22."
- Falk, Richard. 2000. Human Rights Horizons: The Pursuit of Justice in a Globalizing World. London: Routledge.
- de Feyter, Koen. 2005. Human Rights: Social Justice in the Age of the Market. London: Zed Books.
- Forsythe, David. 2006. Human Rights in International Relations, 2<sup>nd</sup> ed. Cambridge: Cambridge University Press.
- Fox, Gregory and Brad Roth, (eds). 2000. Democratic Governance and International Law. Cambridge: Cambridge University Press.
- Franck, Thomas. 1994. "Democracy as a Human Right" in Louis Henkin and J. Hargrove, (eds), Human Rights: An Agenda for the Next Century. Washington DC: American Society of International Law.
- Held, David. 2004. Global Covenant: The Social Democratic Alternative to the Washington Consensus. Oxford: Polity.

Held, David and Anthony McGrew. 2002. Globalization/Anti-Globalization. Oxford: Polity Press.

“Legalization and World Politics.” 2000. 54 *International Organization*.

Lin, Juan and Alfred Stepan. 1996. Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe. Baltimore: John Hopkins University Press.

Macpherson, C.B. 1973. Democratic Theory. Oxford: Clarendon Press.

Marks, Susan. 2000. The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology. Oxford: Oxford University Press.

Risse, Thomas, Stephen Ropp and Kathryn Sikkink (eds). 1999. The Power of Human Rights: International Norms and Domestic Change. Cambridge: Cambridge University Press.

Russell, Peter (ed). 1999. The Future of Social Democracy. Toronto: University of Toronto Press.

Schumpeter, Joseph. 1943. Capitalism, Socialism and Democracy. London: Allen and Unwin.

Stiglitz, Joseph. 2002. Globalization and Its Discontents. London: Penguin Books.

“United National Millennium Declaration.” U.N. General Assembly Resolution 55/2 U.N. Doc. A/RES/55/2 (18 September 2000).

United Nations 1993. World Conference on Human Rights Vienna Declaration and Programme of Action United Nations, UN Doc. A/CONF.157/24.

United Nations General Assembly. 2005. World Summit Outcome, UN Doc. A/60/L.1 (15 September 2005).

Thompson, E.P. 1978. Whigs and Hunters: The Origins of the Black Act. New York: Pantheon.

Zakaria, Fareed. 2003. The Future of Freedom: Illiberal Democracy at Home and Abroad. London: W.W. Norton.

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