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## Translator's Introduction

The ideal of democratic citizenship was expressed during the French Revolution with the motto *liberté, égalité, fraternité*. The subject of this highly original work, the modern concept of democratic solidarity, can be traced back to the third element in the triad. Of the three, fraternity has in many ways received the least attention, whereas the concepts of liberty and equality each have a long and distinguished literature within modern and contemporary political thought. As for liberty, Constant distinguished the “liberties of the ancients” from the “liberties of the moderns,” which Isaiah Berlin contrasted in terms of “positive” and “negative” liberty. And neo-republicans such as Philip Pettit and Quentin Skinner have recently revived a third concept of liberty in terms of freedom as non-domination. As for equality, the answers to the question “equality of what?” have included equality of welfare, resources, opportunity, status, and capabilities, with important recent contributions from Bernard Williams, Thomas Nagel, Amartya Sen, and Ronald Dworkin, among others.

But “fraternity” or solidarity has not received comparable treatment, perhaps because it defies the language of rights and principles that is typical of contemporary political philosophy.<sup>1</sup> Indeed, John Rawls remarked upon the relative neglect of the concept of fraternity in *A Theory of Justice* (1971): “In comparison with liberty and equality, the idea of fraternity has had a lesser place in democratic theory. It is thought to be less specifically a political concept, not in itself defining any of the democratic rights but conveying instead certain attitudes of mind and norms of conduct without which we would lose sight of the values expressed by these rights.”<sup>2</sup> As a kind of “equality of social esteem,” fraternity does not yield a “definite requirement.” But Rawls then

maintains that the principle of distributive justice that he defends (the difference principle) corresponds to “a natural meaning of fraternity: namely, to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off.”<sup>3</sup> Thus, he takes the difference principle to express the “fundamental meaning” of fraternity “from the standpoint of social justice.”<sup>4</sup> It is interesting that Rawls raised this issue in *A Theory of Justice*, since one of the main communitarian lines of criticism against him was, in the words of Charles Taylor, that “Rawls’s egalitarian difference principle, which involves treating the endowment of each as part of the jointly held resources for the benefit of society as a whole, presupposes a high degree of solidarity among the participants.”<sup>5</sup> And the growing influence of communitarians has placed the themes of solidarity, community, political trust, and civic virtue back on the theoretical landscape.

In this work, by contrast, Hauke Brunkhorst attempts to delineate a conception of solidarity that is not heavily tied to strong conceptions of community. The central normative concept of the book is “democratic solidarity,” the bond among free and equal citizens, who in modern democracies are not identical in any ascriptive characteristics. Furthermore, in the trajectory of Emile Durkheim, Brunkhorst develops a conception of solidarity suited to a democratic society that is a modern society, that is, one characterized by functional differentiation, pluralism, and difference. Solidarity, in this case, must be a “solidarity among strangers.” Moreover, it is intended to be universalist, insofar as it is rooted in a “patriotism of human rights” central to modern constitutional democracy.

Brunkhorst’s distinctive approach to the concept of solidarity combines history, normative theory, and political sociology in an innovative contribution to social and political thought. The first part of the book provides a historical account of the development of this modern egalitarian idea of democratic solidarity out of, and in contrast to, the less egalitarian notions of civic friendship in the Greco-Roman world and brotherliness in the Judeo-Christian tradition. Part II analyzes the modernization of Western societies, which destroyed the older solidarities that depended on the hierarchical structures of premodern societies. This process gave rise to problems of exclusion that modern societies could solve only with the help of democratic solidarity. Democratic constitutions aimed to bring social forces under the control of a politically constituted people; constitutions served as the “institutional embodiment” of democratic solidarity. In the third part, the focus is on the return of inclusion problems at

the level of a globally modernized society—a result, Brunkhorst maintains, of the one-sided globalization of power, law, and money, without a corresponding globalization of democratic solidarity. There will be no such global solidarity, however, without the development of forms of democratic self-governance beyond the confines of the nation-state. Much of the third part of the book is an attempt to analyze the possibilities for such self-governance. Part III culminates in a discussion of the most significant attempt to develop a supranational form of government, the European Union, and a post-national European people.

In this introduction, I will first relate the central themes of the book to familiar themes in recent Anglo-American political theory: civic nationalism, civic republicanism, and deliberative democracy. Then I will explain Brunkhorst's powerful combination of theoretical perspectives, usually disjointed in sociology and normative political theory, and conclude with some remarks on his approach to globalization.

### **Civic Solidarity and Civic Nationalism**

One of the book's chief aims is to analyze the prospects for developing democratic solidarity at the global level, within a global community under law. The modern ideal of egalitarian democratic solidarity has its origins within the confines of the nation-state; Brunkhorst locates it in the revolutions of the late eighteenth century, especially in the "ideas of 1789." Those ideas envisioned a form of solidarity conceived not in terms of ethnicity or culture but in terms of universal citizenship.

In the literature on nationalism, it is common to distinguish "civic nationalism" from "ethnic nationalism." An "ethnic" nation is defined in terms of a prepolitical community rooted in common ancestry, race, or ethnicity, while a "civic" nation is defined in terms of citizens' allegiance to a set of civic values or ideals, political principles or procedures. While this distinction has become quite prominent in the literature, a number of scholars have recently challenged the empirical basis for it, questioning whether a purely "civic" nation has ever really existed.<sup>6</sup> They claim that all nations have been based on particularistic commitments and identities and that no nation could be based solely on rational consent to principles. Ethnocultural ideals of nationalism no doubt played a large historical role in the formation of modern nation-states; but versions of "civic nationalism" are put forward by normative theorists as

ideal models. Among the advocates of “liberal nationalism” (Yael Tamir), “republican solidarity” (Charles Taylor), or “constitutional patriotism” (Jürgen Habermas), the point is not simply to give an empirical description of affective allegiance to political community, but to provide a normative alternative to the varieties of ethnic nationalism that have led to so much internal exclusion and external belligerence.<sup>7</sup>

Brunkhorst considers both empirical and normative dimensions of the question. He is attentive to the “stories of peoplehood” that have played such an important role in the formation and maintenance of nations.<sup>8</sup> Thus, in part I, he discusses the role of the Exodus story and the story of the law giving by Moses in establishing the Jewish people, as well as the role such stories played in the French and American revolutions. And he documents the continual significance of questions regarding the creation and maintenance of a people in the context of the European Union. In the end, however, Brunkhorst defends a normative ideal of peoplehood as an “inclusive community of the affected,” who are connected to one another by communication, will, and action. On this approach, the concept of a people is “detached from any natural or historical, racial, ethnic, cultural, or linguistic determinants and defined in purely legal terms as the totality of those who are subject to the law” (71).

Because civic nationalism is supposed to be a form of solidarity based on allegiance to principles, the conception of democratic solidarity that Brunkhorst develops here is founded on a “patriotism of human rights.” This may sound paradoxical, insofar as patriotism refers to the love of one’s country and human rights refer to the universal set of human beings. But the form of solidarity at issue is an abstract form of solidarity among strangers. It is neither civic friendship nor brotherliness among fellow believers. It is solidarity among legal subjects who participate in a common polity. Charles Taylor describes “solidarity among strangers” in the following way: “I may not know most of my compatriots, and may not particularly want them as friends when I do meet them. . . . my bond to these people passes through our participation in a common political entity.”<sup>9</sup> He is referring here to the idea of a republic in which citizens are bound together by their common participation. One question this book addresses is whether such common participation can be extended beyond the patriotism of particular republics to the republic of humanity. The abstract, legal conception of peoplehood it proposes is the kind of flexible conception required to conceive a European or a global people. Being subject to laws over which one has no say is a potent source of protest in

the modern world, and joining together in common action against the proliferation of law that lacks democratic legitimacy (what Brunkhorst refers to as “hegemonic law”) is an obvious source of solidarity. If a people is constituted by those subject to the law, and all the world’s inhabitants are subject to many forms of global law, then we incipiently constitute a people in that sense. This is why Brunkhorst views global protest movements as the vanguard of a transnational people, since the “patriotism of human rights” that was once expressed in the French Revolution can now be heard from global protestors as well.

### **Civic Republicanism: Freedom and Domination**

Brunkhorst contrasts the idea of democratic solidarity with the typical understanding of freedom and democracy within liberalism. Thus, he goes beyond freedom as non-interference to a conception of freedom as autonomy or self-governance, and beyond the idea of democracy as majority rule to a more participatory ideal of democracy. I will deal with the latter in the next section. As for the former, it is important to see how Brunkhorst’s conception of freedom, along with a number of other themes in this work, relates to the concerns of the recent “republican revival” in political and legal theory. Contemporary theorists find support for their ideas in a diverse variety of republican and civic humanist sources, including Aristotle, Roman authors such as Cicero, early modern authors such as Machiavelli, modern thinkers such as Rousseau, and neo-Roman theorists of seventeenth- and eighteenth-century America, England, and France. The renewal of the republican tradition has sparked a conflict of interpretations, as does any living tradition with active adherents.

In a recent book critical of the ascendancy of procedural liberalism over republicanism as the dominant “public philosophy” within the United States, Michael Sandel identifies the republican conception of freedom with self-government: “Republican political theory teaches that to be free is to share in governing a political community that controls its own fate. Self-government in this sense requires political communities that control their destinies.”<sup>10</sup> By contrast, Philip Pettit, another leader in the revival of republicanism, argues that this emphasis on understanding liberty in terms of democratic participation simply reinforces the dichotomy between positive and negative liberty, which has obscured the classic republican ideal from view: the ideal of freedom as non-domination. He defines this idea of freedom in terms of the “absence of depend-

ence upon the will of another and the absence of vulnerability to interference at the will of that other. The antonym of freedom for the republican conception is not restraint as such but rather slavery and, more generally, the position of subjection. A person is free, and a person acts freely, just to the extent that she is not exposed, in the way a slave is exposed, to the arbitrary interference of another."<sup>11</sup> The question of whether democratic participation should be viewed as intrinsic or instrumental to liberty need not be decided here, but it is important to keep the distinction between the two versions in mind.<sup>12</sup> Jürgen Habermas has recently formulated a third version, which he calls "Kantian republicanism." Focusing on freedom as autonomy, he argues for a conception that is intended to overcome the dichotomy between classic liberalism and civic republicanism by articulating the internal connection between private autonomy (negative liberty) and public autonomy (positive liberty).<sup>13</sup>

Whatever the proposed connection between liberty and democratic governance, a recurring theme within the republican tradition is the opposition between the citizen and the slave. As Pettit puts it, explaining the "liberty-versus-slavery theme,"

the condition of liberty is explicated as the status of someone who, unlike the slave, is not subject to the arbitrary power of another: that is, someone who is not dominated by anyone else. . . . This opposition between slavery or servitude on the one hand and freedom on the other is probably the single most characteristic feature of the long rhetoric of liberty to which the experience of the Roman republic gave rise.<sup>14</sup>

This theme of freedom as contrasted with slavery, servitude, and domination is prominent in Brunkhorst's account as well. He returns to these themes repeatedly in the first three chapters of the book, discussing it in several different historical contexts: the status of slaves in Greece and Rome, the political economy of ancient Greece, and Greece's dependence on an extensive slave economy; the status of slaves in Israelite society, the Exodus from slavery in Egypt, and the critique of domination associated with prophetic monotheism; the strand of Christianity that is against all slavery—since all humans are "children of God"—as well as the strand that accommodates slavery and makes freedom dependent upon otherworldly redemption. The Exodus narrative also played a key part in the rhetoric of the French Revolution and the spirit of American pilgrims. He even suggests that "Europe began in Jerusalem with the mythic story of the Exodus of the slaves from Egypt, in which the political course was first negatively set against foreign domination" (30).

These are not all traditional sources for republican thought. But when Brunkhorst identifies modern democracy with the “project of overcoming every form of servitude” (73), he relies on the modern republicanism of Rousseau and Kant. In a republic, the citizens are subject only to law; this is the definition of a “free people.” Rousseau declares that “the worst of Laws is worth even more than the best master.”<sup>15</sup> But Rousseau defines liberty *both* in terms of not being subject to the will of another *and* in terms of not ruling over another: “Liberty consists less in doing one’s will than in not being subject to someone else’s; it also consists in not subjecting someone else’s will to ours. Whoever is master cannot be free, and to rule is to obey.”<sup>16</sup> With this move, Brunkhorst argues, “Rousseau climbs out of [the] premodern circle of freedom and servitude—and with him come Kant, Hegel, the French Revolution, and the Western constitutions” (72). Another distinguishing feature of this modern version of republicanism is that, as an “order of freedom,” it breaks with the classic republics, which were “orders of virtue” that went beyond law to determine many of the details of everyday life. Brunkhorst’s approach maintains the connection between republicanism and modern law, which permits whatever is not explicitly forbidden and thereby protects the sphere of private autonomy.

Economic dependence is another issue that is clearly related to freedom as opposed to domination and servitude. The virtue of a free man in ancient Greece, Brunkhorst notes, consisted in his ruling over the household. Thus, the underside of virtuous freedom, the very condition of its possibility, was the economic dependence and servitude of the women and slaves within the Greek household. In contrast, universal freedom from economic dependence is a central theme of modern republicanism. It was certainly important to Rousseau’s conception of the social contract, in which “no citizen shall be rich enough to buy another and none so poor as to be forced to sell himself.”<sup>17</sup> And Quentin Skinner has noted that while the “neo-Roman” theory of freedom became less prominent during the nineteenth century, elements of it are still evident in Mill’s account of the subjection of women and in Marx’s critique of capitalism in terms of wage slavery, alienation, and dictatorship.<sup>18</sup> In the same vein, Michael Sandel takes up the issue of the “political economy of citizenship” and recalls nineteenth-century American debates over whether wage labor could produce independent citizens capable of self-government. He emphasizes the republican conviction that economic dependence is contrary to citizenship, an argument that was voiced in nineteenth-century

America but eventually gave way to voluntarist ideas about labor in terms of freedom of contract.<sup>19</sup> For Brunkhorst, after the political revolutions of the eighteenth century, it was the social movements of the nineteenth and twentieth centuries that were central to the expansion of democratic solidarity. In that context, domination took on a more economic than political sense.

### **Deliberative Democracy and the Public Sphere**

Brunkhorst relies not only on a conception of freedom that goes beyond the liberal ideal of non-interference, but also on a conception of democracy that goes beyond the liberal model of aggregation of preferences and majority rule. This puts him in line with a recent trend in democratic theory toward deliberative democracy. One of the primary concerns of deliberative models is with “the public use of reason,” as Kant called it. Thus, theorists have focused on the extent to which public deliberations and procedures for legitimating political decisions are or could become guided by reason. In contrast to liberal models of democracy that focus on the aggregation of preferences or interests transmitted to the political apparatus through voting, deliberative models emphasize the potential for transforming preferences in light of public deliberation. The basic idea was put forward by John Dewey in *The Public and Its Problems*:

Majority rule, just as majority rule, is as foolish as its critics charge it with being. But it never is *merely* majority rule. . . . “The means by which a majority comes to be a majority is the more important thing”: antecedent debates, modification of views to meet the opinions of minorities . . . The essential need, in other words, is the improvement of the methods and conditions of debate, discussion and persuasion.<sup>20</sup>

Deliberative theorists also emphasize the effect of democratic discussion on political decision making. It might be thought that such an ideal of deliberation, however well-suited to the small, face-to-face democracy of Athens or to the democracies advocated by Rousseau, simply has no place within modern societies characterized by social complexity and cultural pluralism. How could such an ideal be institutionalized?

Brunkhorst focuses on the central importance of the public sphere as the locus for deliberation within modern democracies and, in the third part of the book, on an emerging global public sphere as the site for developing democratic legitimacy beyond the nation-state. Following Nancy Fraser and Jürgen

Habermas, he distinguishes between strong and weak publics. A public sphere is weak insofar as its deliberations shape opinion formation but have no power to make binding political decisions. This includes communication and deliberation that take place through various mass media, that are developed by non-governmental organizations (NGOs) in civil society, and so forth. A strong public sphere, on the other hand, is authorized to make binding decisions—for example, parliaments and legislatures whose deliberations result in decisions enforced by state administrations.

Brunkhorst attempts to render this model more flexible and less closely attached to the particular institutions of the nation-state by not defining strong public spheres strictly in terms of their authority to make binding decisions. Rather, “where there is a normatively effective constitution, *any* autonomous public sphere is a strong public, as long as it excludes no one from discourse and contributes to binding decisions in a legally secured way” (138). He explains that a “normatively effective constitution” has two key parts: the part concerned with basic rights and the organizational part that establishes procedural norms and organizational powers (such as the branches and powers of government, the ways they interact, a system of checks and balances, etc.). In short, in this view a strong public can be established by rights to participation together with a constitutionally secured pathway for public deliberations to contribute to decisions. The possibility of institutionalizing these two aspects of a constitution at the global level is central to Brunkhorst’s account of establishing legitimate decision making within global politics.

The principle of inclusion is essential to deliberative democracy, both for normative and for epistemic reasons. Following Dewey and Habermas, Brunkhorst emphasizes that “the people are sovereign only as a *learning sovereign*, which exposes itself to a risky experimental practice of trial and error and continually includes those voices that have been excluded, the dissent that has been ignored, and the minorities that have been silenced” (140). Only decisions that emerge from a wide and open spectrum of opinions, in a democratic public sphere that is secured through basic rights, can carry “the presumption of rationality” (Habermas). Autonomous public spheres play a central role in legitimating the decisions that emerge from deliberative politics; they are where the organizations and actors of civil society put forward new proposals and solutions to problems, uncover new issues, and develop arguments. The problem-solving capacity of the democratic constitutional state is not limited to addressing everyday political problems. The full scope of this capacity only

becomes apparent when we combine two methodological perspectives—the functional and the normative—and understand how the development of constitutional democracy was a solution to problems of both types.

### **Evolution and Revolution**

Thus far, I have considered Brunkhorst's account primarily from the normative perspective of political theory. But one of the major strengths of this book lies in its combining different methodological perspectives in the analysis of solidarity, joining sociological insights to normative political theory. The sociological perspective comes to the fore primarily in part II of the book, as Brunkhorst focuses on the transition from premodern to modern society and the distinctive characteristics of the latter. Part I of the book concludes with a normative account highlighting the universalist content of the modern principle of democracy, grounded as it is in human rights. But if these normative ideals are not simply to fall flat when confronted with "social reality," and in particular with the forces of unconstrained processes of globalization, then normative requirements must be systematically attuned with conditions of social reality. Brunkhorst calls his two perspectives on social transformation "evolution" and "revolution." The former refers to the "evolutionary emergence" of new social forms, a process that is by and large unplanned and unconscious, and that is visible from the "external" perspective of the sociological observer. Revolution, on the other hand, refers to the "revolutionary implementation" of new ideas, which is visible from the "internal" perspective of participants in social change. Thus, it highlights the normative self-understanding of modern individuals and social struggles for revolutionary change. An account that systematically mediates both perspectives is able to keep the complexity of modern society in view without simply abandoning normative ideals in the face of social facts.<sup>21</sup>

The story of the social transformations associated with modernity has been told in numerous ways, with different combinations of evolution and revolution: the supplanting of "mechanical solidarity" by an "organic solidarity" based on the division of labor (Emile Durkheim); the "change in form of servitude" from feudal exploitation to capitalist exploitation (Karl Marx); the rise of the "Protestant ethic" and the origin of modern capitalism within Europe (Max Weber); the "great transformation" that involved the "disembedding" of the modern economy from society (Karl Polanyi); and the functional differen-

tiation of various social subsystems (Talcott Parsons and Niklas Luhmann).<sup>22</sup> Brunkhorst draws on aspects of each of these, but especially on the functional differentiation of modern society as developed by systems theorists such as Luhmann. The basic idea here is to view society neither as an aggregation of individuals nor as an organic whole, but primarily in terms of the subsystems of modern society that are specialized according to function, such as the economy, law, politics, science, religion, and so forth. Each system “creates order out of chaos,” forming a closed system that functions primarily in terms of its own internal logic.<sup>23</sup> The logic of each system is determined by its specific “code”; or, following Parsons, one can say that each system functions according to its own “steering media,” such as money, law, power, and so forth. For example, the economic subsystem is said to function according to a logic determined by money, which coordinates the aggregate consequences of individual action “behind the backs” of participants rather than as a result of their conscious control.

Combining the perspectives of evolution and revolution, Brunkhorst argues that the process of functional differentiation within modern societies (evolution) led to two “structural inclusion problems” that could not be dealt with solely by norm-free steering media. Rather, their solution required the (revolutionary) development of the normative resource of democratic solidarity. This argument draws attention to both the limits of functional differentiation and the limits of strictly functional analysis.

The first inclusion problem involves what he calls the “de-socialization of the individual” as a result of the growing individualization that accompanied functional differentiation. Traditional forms of solidarity that were organized around hierarchical structures were undermined as modern social life was reorganized in terms of functional roles. As the premodern social structures in which individuals were tightly integrated gave way, the modern isolated individual emerged as a being separated from society. Whereas normative political theory often starts with and presupposes free and equal individuals, from a sociological perspective modern individualism was the result of a long process of social evolution. How can such individuals be integrated into society? From a sociological perspective, this appears as the problem of order: How can society be constituted by asocial individuals? From a normative perspective, this appears as the challenge of reconciling individual freedom with social order: How can free and equal individuals enter into society with other such individuals without diminishing their freedom? Combining normative and

sociological perspectives, modern constitutional democracy can be viewed both as a way of legitimately coordinating individual freedom and as a way of productively institutionalizing individualism. The normative dimension is captured by Kant and Rousseau in terms of autonomy: We obey only the laws that we give to ourselves. Universal inclusion of individuals also provided the solution to the functional problems: Individual freedom provides the constant variation that functional systems require.

The second inclusion problem was created by the exclusion of entire segments of the population from the achievements of the functionally differentiated society. Brunkhorst refers to the “pauperization” or “proletarianization” of segments of society excluded from enjoying the gains of modern society as a whole. For them, political inclusion through civil rights had little value. As Brunkhorst puts it, “For those who are denied access to the achievements of the economic system, inclusion through political and human rights is practically worthless” (98). The solution to this inclusion problem, which came only after the social and revolutionary movements of the nineteenth and early twentieth century, required that the realization of political inclusion also include social rights. As John Rawls put it, there must be some means of securing the “fair value of equal political liberties.”<sup>24</sup>

## **Globalization**

In the relatively successful democracies of the North Atlantic region, then, universal political inclusion was the solution to the first problem, while the development of social rights was the solution to the second. The third part of the book focuses on the return of these inclusion problems at the level of global society and asks whether there could be a successful response that involves bringing global society under a “constitution,” suitably reconceived. In recent years, the term *globalization* has come to refer to a congeries of social, economic, political, and cultural changes that have resulted in an increasingly interconnected world. Thus, all of the following have come to be discussed as aspects of globalization: increases in the flow of goods, capital, and people across borders; the rise and increasing power of multinational corporations; the declining power of the nation-state in relation to external political and economic forces; and the homogenization of global popular culture, to name only a few.<sup>25</sup> Some of these trends have also led to an increase in threats to well-being and security that take a global form: environmental catastrophes,

diseases, and epidemics; global networks of terrorists, criminals, and drug traffickers. The potential of such dangers to affect people throughout the world has led some to claim that global society is constituted as a global “risk society” (Ulrich Beck).

In Brunkhorst’s view, functional differentiation has affected all societies to such an extent that we can now speak of a “world society.” But this world society comprises a center, the Western democracies with their highly developed functional differentiation and normatively effective constitutions, and a periphery, in which much of the world lives under merely “symbolic” constitutions and the population is largely excluded from the achievements at the center. Indeed, Brunkhorst argues that inclusion problems similar to those that marked Western modernization have now reappeared at the global level: The “de-socialization of the individual” is now well-advanced throughout the world and has resulted in various forms of fundamentalism, civil wars, and regional secession; and the “social exclusion” characteristic of European modernity now arises in a more pernicious global form. Within national economies there was still some degree of dependence upon the inexpensive labor of the “industrial reserve army” (Marx), and democratic constitutions made it at least possible for social movements to succeed. But the current exclusion problem has generated a global population at the periphery of global society that is so thoroughly excluded—economically, socioculturally, and legally—that it is becoming entirely superfluous from the point of view of the center of global society. Combining functional and normative perspectives, Brunkhorst argues that the solution to both problems will require the extension of constitutional democracy.

What are the prospects for more democracy at the global level? The principle of democracy states that all those affected by or subject to the law must have a say in its creation. But, as Brunkhorst notes, there has been a significant growth in the “hegemonic global law” that is generated by a variety of non-state sources such as supranational decision-making authorities (e.g., WTO) and even multinational corporations, which are increasingly becoming autonomous sources of law. These developments have created a situation in which more and more decisions are made with less and less inclusion of the voices of those affected. Thus, such decisions and the resulting regulations and laws are only loosely tied, if at all, to democratic chains of legitimation.

There are two aspects of Brunkhorst’s account that are especially relevant here: the significance of the global public sphere and the role of human rights.

The phenomenon of an emerging transnational public sphere has become increasingly visible in recent years. One of the trends associated with globalization is the increase in the number of NGOs and social movements operating across borders and the amount of political activity carried out at a global level. Technological innovation has made it possible for transnational civil society to develop, thus making it increasingly possible to counteract the other two main actors at the global level: international business and government. Brunkhorst remarks on the successes achieved by the protesters who have attempted to shape the agendas of WTO and G8 meetings ever since the 1999 Seattle protests against the WTO. And Jürgen Habermas has suggested that the mass demonstrations of February 15, 2003, against the U.S.-led invasion of Iraq “may well, in hindsight, go down in history as a sign of the birth of a European public sphere.”<sup>26</sup> He was referring to the simultaneous demonstrations in the capitals of Western Europe. But *The New York Times* went a step further, referring to the demonstrations that occurred in over three hundred cities around the world as “reminders that there may still be two superpowers on the planet: the United States and world public opinion.”<sup>27</sup> Brunkhorst sees this type of activity as the beginning of a “globalization of civic solidarity.” Indeed, he goes so far as to refer to global protest organizations as “the vanguard of a slowly developing transnational ‘people’” (159). But because the global public sphere is not “constitutionally” authorized to make binding decisions, it is limited to the “politics of appeal.” It can try, as in the anti-war protest leading up to the U.S. invasion of Iraq, to obstruct power, to raise consciousness, to open debates, but it cannot contribute directly to authorized decision making.

It can also speak the “language of human rights” and, in so doing, rely on the gains that have been made in international law in the last fifty years toward making human rights valid as global law. While the organizations of global civil society form the organizational core of a “strong public-in-the-making,” human rights correspond to the basic-rights element of a constitution. Brunkhorst views human rights as a “placeholder for democratic legitimation” that comes into play whenever the members of the “actual people” are not represented by those who are authorized to make decisions, an increasingly common situation in both nation-states and global society. In the absence of a strong global public sphere that is constitutionally connected to decision-making authorities, human rights can be appealed to as the placeholder for democracy. Specifically, NGOs and other international actors can

appeal to communicative and social rights, for instance, by calling attention to violations of political rights, demanding that labor and environmental standards be addressed by the WTO, or bringing attention to debt relief for poor countries, AIDS, and global climate issues. Of course, these are at most the first steps on the way to establishing civic solidarity among all the members of a global community under law, or, as Brunkhorst puts it, on the way to realizing at a global level the “constitutional project of 1789.”<sup>28</sup>