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and Problems of Democratic Legitimacy**

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***Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy*¹**

Robert O. Keohane and Joseph S. Nye, Jr.

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Globalization can be defined as a state of the world involving networks of interdependence at multicontinental distances. Globalization as we understand it refers to processes – economic, military, environmental and social – that strengthen or “thicken” these networks. We are now living through the second major period of globalization since the beginning of industrial society: the first took place during the decades before World War I. By many measures, current levels of globalism – the thickness of networks along several dimensions – are unprecedentedly high.²

Globalism and the networks of interdependence that it reflects create the potential for discord, since the desired actions of governments often adversely affect their neighbors. The simplest solution – to internalize these externalities in larger political units – is rendered difficult, often impossible, by the world’s variety of cultural practices and political-economic preferences, difficulties of cross-cultural communication, and competition among ruling elites. World government seems infeasible as a result of this heterogeneity. But national autarchy is highly inefficient, and autonomous action in political anarchy generates conflict.³ World politics is thus bedeviled by a dilemma of governance: sufficient governance to control conflict and generate economic efficiency has often been unattainable as a result of political and cultural fragmentation.

For over two centuries thoughtful observers have sought intermediate solutions – short of world government – to this dilemma of governance: sets of practices that would improve coordination, consistent with the maintenance of national states as the fundamental form of political organization.⁴ The tenuous 19th century solution to this problem combined nationalism and imperialism – 19th century globalism was organized around nation-states and the empires that many of them controlled – with reliance on relatively open movement of capital and labor (less so for goods). With the onset of World War I, nationalism trumped cosmopolitanism and

¹ Sections of this paper are drawn from a paper that we wrote for a conference in honor of Raymond Vernon at the John F. Kennedy School of Government, Harvard University, June 1-2, 2000. We are indebted to Roger Porter and his colleagues in the Center for Business and Government for organizing that conference, and especially to Robert Hudec for particularly perceptive comments on our paper, which was entitled “The Club Model of Multilateral Cooperation and the World Trade Organization: Problems of Democratic Legitimacy.”

² For a fuller discussion of these arguments, see Robert O. Keohane and Joseph S. Nye, Jr., *Power and Interdependence: World Politics in Transition* (Third Edition: New York, Addison-Wesley, 2001); for a summary of some of these points, see Keohane and Nye, “Globalization: What’s New? What’s Not? (And So What?)” *Foreign Policy* 118 (spring 2000): 104-119.

³ See Kenneth N. Waltz, *Man, the State and War* (New York: Columbia University Press 1959) and *Theory of International Politics* (Lexington, Mass: Addison-Wesley, 1979).

⁴ The classic statement is that of Immanuel Kant in *Perpetual Peace* (1795), reprinted, *inter alia*, in Carl J. Friedrich, ed., *The Philosophy of Kant* (New York: Modern Library, 1949): 430-476. For a discussion of early efforts by activists to develop international organizations to cope with this dilemma, see Craig N. Murphy, *International Organization and Industrial Change: Global Governance Since 1850* (Cambridge, UK: Polity Press, 1994).

continued to do so (with brief exceptions) until the defeat of Nazi Germany and Imperial Japan in 1945. Hence 19th century globalization failed to solve the problem of governance.

The solution to the governance dilemma devised by the generation of World War II was the invention of international regimes designed to enable elites in governments jointly to manage interdependence. These regimes were constituted by rules and norms that governed their members' relationships in specific issue areas of international relations. They were typically managed by an international organization with a specific headquarters and a secretariat. Early 21st century globalism is organized around international regimes and their accompanying organizations, from the World Trade Organization to the World Tourism Organization.⁵ Going through the alphabet between one WTO and the other, one encounters an impressive array of acronyms for intergovernmental organizations, and many more if nongovernmental organizations (NGOs) are included.

To point out that regimes are central to international relations in a variety of areas is not to claim that the international organizations themselves are powerful. On the contrary, they were designed as the creatures of states, and for the most part remain so. Even the most significant and intrusive international organization, the European Union, is run more through intergovernmental cooperation (and discord) than by supranational bureaucrats.⁶ Despite messianic prophecies to the contrary, the nation-state continues to be highly robust and adaptive, as many recent studies have shown.⁷ Attempts by self-conscious groups to form states – from Palestine to Bosnia – testify to the continuing power of the statist model.⁸

Precisely because they were weak devices for cooperation, dominated by states, these institutions were largely invisible to publics. They operated as **clubs** of negotiators, often technically trained, bargaining with one another within specified issue areas. The regimes smoothed the rough edges of policy by reducing the costs of making and enforcing agreements, but only as long as the fundamentals of policy, which were largely determined domestically, were cross-nationally consistent. Trade regimes linked advanced capitalist countries, but never included the centrally planned economies and did not include major developing countries, such as Mexico, until the 1980s. Security regimes connected allies, not adversaries; regimes for air and sea transport governed relations among countries that traded extensively with one another; and so on.

Because these institutions seemed peripheral and were largely invisible, they attracted little attention from legislators and less from publics. Except perhaps occasionally in Europe, elections were not won or lost in the 1960s, 1970s, and 1980s on the basis of policies toward

⁵ See Lisa L. Martin, "Social and Economic Pressures at Odds: Governance in Tourism and Foreign Direct Investment," unpublished paper (June 2000). Martin has a lucid summary of what we are calling the governance dilemma in terms of externalities and heterogeneity.

⁶ Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press, 1998).

⁷ For instance, Geoffrey Garrett, *Partisan Politics in the Global Economy* (New York: Cambridge University Press 1998); and Torben Iversen, *Contested Economic Institutions: the Politics of Macroeconomics and Wage Bargaining in Advanced Democracies* (New York: Cambridge University Press 1999).

⁸ For an interesting overview emphasizing this point as well as the issue of externalities and heterogeneity, see Miles Kahler and David Lake, "Globalization and Governance," unpublished paper (June 2000).

international regimes. As Tip O’Neill put it, “all politics is local.” The indifference of politicians and publics gave governmental elites space in which to weave the webs of interdependence a little tighter.

It is, of course, not just international regimes that have contributed to the thickening of networks that we refer to as globalization. The conversion of formerly socialist economies to market practices; the closely connected phenomena of international competition and technological change; and the widespread, if thin, adherence to principles of liberal democracy have clearly played major roles. Whatever the exact pattern of causality – not explored here – the consequence is clear: networks are thicker than twenty years ago. Most notably in the European Union and with respect to trade, international rules have also been strengthened, although such a pattern is not evident with respect to monetary relations or social policy and is only incipient at best on environmental questions.

The strengthening of international regimes, combined with globalization, creates a double effect: the impact of stronger rules is magnified by higher levels of interdependence. With respect to developed countries, the most salient example of this increased impact is undoubtedly the World Trade Organization (WTO); for developing countries, the role of the International Monetary Fund (IMF) is also substantial and controversial. Not surprisingly, those international organizations that seem to wield substantial authority are those that have become most controversial – the targets of demonstrations such as those at Seattle in October 1999 and at Washington, D.C., in April 2000. With respect to these organizations, the classic political issue of legitimacy has been raised with increasing insistence. The club model has come under challenge.

In this paper we consider both descriptive and normative aspects of legitimacy as it relates to international institutions. We take the WTO as our chief example. Among major global regimes, the trade regime has been the most successful at achieving its announced objectives (liberalization and nondiscrimination), while continuing to widen its scope – from tariffs to nontariff barriers, from goods to services. It has also become the most legalized of the major international economic regimes, with the most elaborate formal procedures.⁹

We will first describe the club model and how, in a stylized sense, it has operated for the past half-century on issues such as international trade. We then turn to a more detailed normative analysis of democratic legitimacy. The legitimacy of institutions is affected both on the “input” side – in particular, through procedures for accountability – and on the “output” side, in terms of effectiveness. In the third section of the paper we return to the WTO, since it provides a good example of the general issues that we discuss. We focus on the challenges to the legitimacy of the WTO that are posed by NGOs and by democratic theory.

I. The Club Model of Multilateral Cooperation and Recent Challenges to It

⁹ On legalization, see the Summer 2000 special issue of *International Organization*, entitled *Legalization and World Politics*.

International institutions have facilitated cooperation by reducing the costs of making agreements, through established rules and practices, and by providing information, particularly about the extent to which governments were following these rules.¹⁰ In the club-like institutions that emerged, cabinet ministers or the equivalent, working in the same issue-area, initially from a relatively small number of relatively rich countries, got together to make rules. Trade ministers dominated GATT; finance ministers ran the IMF; defense and foreign ministers met at NATO; central bankers at the Bank for International Settlements (BIS). They negotiated in secret, then reported their agreements to national legislatures and publics. Until recently, they were largely unchallenged.

These traditional international regimes can be seen, in Herbert Simon's terms, as "decomposable hierarchies."¹¹ The parallel here is with the nation state as a hierarchy, so that individuals within each state only interact politically with people in other states through their governments. In the decomposable hierarchy model of international regimes – characteristic of the second half of the 20th century, at least in formal terms – international regimes, with particular states as members, were established to govern "issue-areas," defined in terms of clusters of issues. Some of these regimes were open to universal membership, others were selective or required meeting a set of standards imposed by the original participants. These regimes, thus defined by membership and issues, were "decomposable" from the rest of the system, in the sense that they operated without close links to other regimes in other issue-areas. Their members constructed rules – either in the form of traditional international law or as sets of established but less obligatory practices known as "soft law" – to govern their relationships within the issue-area.

The club model was very convenient for officials negotiating agreements within issue-areas, since in two ways, it kept outsiders out. First, officials in other government bureaucracies, and in international organizations defined as working in different issue-areas, were excluded from the negotiations. Environmental, labor rights, and finance officials did not participate on a regular basis in WTO negotiations. In general, they did not object to their exclusion. After all, they were able to exclude outsiders from *their own* negotiations. Secondly, the public was confronted with a series of *faits accomplis*, making domestic politics easier to manage. It was difficult for outsiders to understand the actual positions taken in negotiations, how firmly they were held, and the bargaining dynamics that produced compromises; therefore, it was hard to hold negotiators accountable for their actions. From the standpoint of negotiators oriented toward reaching solutions, these were positive features of the negotiating situation. They could develop close working relationships with their colleagues from other countries, limiting the disruptive force of parochial concerns emanating from domestic politics. Keeping their internal deliberations confidential was in the collective interest of the negotiators. Under such conditions, as Michael Zürn comments, "the opportunity of strategic manipulation of information is wide open to decision-makers."¹²

¹⁰ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

¹¹ Herbert A. Simon, *The Sciences of the Artificial*, 3rd ed. (Cambridge, MA: MIT Press, 1996), pp. 197-207.

¹² Michael Zürn, "Democratic Governance Beyond the Nation State: The EU and other International Institutions," *European Journal of International Relations*, v. 6, no. 2 (June 2000): 193-194.

Under the club model a *lack of transparency to functional outsiders* was a key to political efficacy. Protected by lack of transparency, ministers could make package deals that were difficult to disaggregate or even sometimes to understand. For instance, after the United States Congress deconstructed the trade agreements made during the Kennedy Round (1967), implementing unilateral modifications to bargains that had been reached, America's trade partners demanded modifications in internal U.S. practices as a condition for the next trade round. The political response in the United States was a "fast-track" procedure, agreed to by Congress, that limited its power to pick apart agreements. In effect, Congress agreed to "tie itself to the mast" as it sailed past specific protectionist sirens. Congress has voted many times for such procedures since its disastrous experience of unfettered participation in earlier years, culminating in the Smoot-Hawley tariff of 1930. It agreed to immunize international bargains from disaggregation, in return for European, Japanese and Canadian willingness to negotiate further reductions in trade barriers. Cooperation on international trade benefited; but labor and environmentalist interests whose power was reduced by the practice have reacted strongly against it and the associated international institutions.

From the perspective of multilateral cooperation, this club model can be judged a great success. The world seems more peaceful, more prosperous, and even somewhat cleaner, at least on some environmental issues, than it would have been without such cooperation.¹³ Admittedly, integration was often relatively shallow. The easier problems were tackled first, so that high rates of observed treaty compliance do not necessarily indicate that noncompliance was a trivial problem.¹⁴ Furthermore, the progress in institutional authority that did occur – as in the move from GATT to the World Trade Organization (WTO) -- was hardly the result of a sudden conversion of governments to the view that international law should prevail over national interests. As Robert Hudec has observed, the willingness of governments to negotiate the more precise rules and more authoritative procedures of the WTO stemmed from the U.S. threat unilaterally to impose trade restrictions under Section 301 of its trade act:

"The change in position seems to have been a choice between two evils: between an almost certain legal meltdown if the United States were to carry out its new Section 301 instructions, and a very serious risk of legal failure, in the somewhat more distant future, if GATT adopted a dispute settlement procedure that was more demanding than governments could obey. In these circumstances, the fact that GATT governments chose the later option does not mean that they were confident it would work."¹⁵

The club model of cooperation, as illustrated in the Uruguay Round, had a political logic of its own. The governments of advanced capitalist countries understood that they would be held responsible by their electorates for the results of trade negotiations. Liberalization would produce overall gains for the economy and for the electorate; but in the absence of compensation, protectionist interests "can be expected to resist, desperately and justifiably, their

¹³ Peter M. Haas, Robert O. Keohane, and Marc Levy, eds., *Institutions for the Earth: Sources of Effective Environmental Protection* (Cambridge: MIT Press, 1993).

¹⁴ George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News about Compliance Good News about Cooperation?" *International Organization* 50-3 (Summer 1996): 379-406.

¹⁵ Robert E. Hudec, "The New WTO Dispute Settlement Procedure: An Overview of the First Three Years," *Minnesota Journal of Global Trade, Inc.*, 8-1 (winter 1999): 14.

unhappy economic fate.”¹⁶ These groups, whose interests are more concentrated than those of consumers, could derail liberalizing trade measures unless they were “paid off” with rents from “voluntary” export restraints or subsidies of one type or another. Hence the characteristic domestic politics of trade, most notably in the United States, as each administration seeking liberalization, bought off enough protectionist sectors (for example, textile manufacturers in the 1960s and 1970s¹⁷) to pass liberalizing legislation.

In each round, these negotiations were tedious, and fraught with anxiety for liberal trade forces. Yet each trade round, which increased openness, decreased the political weight of protectionist interests, and increased the influence of their export-oriented opponents, and of multinational firms allied with export interests.¹⁸ Furthermore, as globalization progressed, the pro-liberal forces were more and more concentrated, since the largest firms in each country were highly multinational. Hence the core political fact creating protectionism – that protectionist domestic producers were more concentrated than the far more numerous but less concentrated consumers – had been reversed. Exporters and multinationals were much more concentrated than the smaller, more scattered, import-competing producers. Hence liberalizers were playing a winning game, in which each round of liberalization strengthened their own coalitions, and weakened their opponents, for the next round. Armed with stronger mandates as a result of liberalizing domestic coalitions, the governments could negotiate with one another on the basis of reciprocity. Reciprocity took two complementary forms: specific reciprocity, since very precise deals were built into the agreements at the end of each trade round; and diffuse reciprocity -- the belief that in the end, everyone would benefit from liberalization, even if not all of the specific deals worked out as expected.¹⁹ The result was a series of liberalizing trade agreements between the inauguration of GATT and the Uruguay Round.

Challenges to the Club Model

If the “club pattern,” under which small numbers of rich-country trade ministers controlled the agenda and made deals, could continue in trade, so would this spiral of liberalization. However, in a rather dialectical fashion, the club arrangements are, we believe, being undercut by their very success. The failure of the Seattle meetings of the WTO, indicates some of the reasons for the weakening of the old club system of trade politics.

It might appear that steady increases in trade, relative to GDP, would be a source of stress. Over thirty years ago, Richard Cooper pointed out that what he called the “natural, political and psychological barriers to trade” were falling; and that the results included more sensitivity of trade flows to disturbances within national economies, or the world economy. His policy conclusion was that either there would have to be more effective international policy coordination, or actions would be taken by governments to reverse the growth in

¹⁶ Ronald Rogowski, *Commerce and Coalitions: How Trade Affects Domestic Political Alignments* (Princeton: Princeton University Press, 1989), p. 172.

¹⁷ Vinod Aggarwal, *Liberal Protectionism: the International Politics of Organized Textile Trade* (Berkeley: University of California Press, 1985).

¹⁸ See Rogowski, *Commerce and Coalitions*, cited; and Helen V. Milner, *Resisting Protectionism: Global Industries and the Politics of International Trade* (Princeton: Princeton University Press, 1988).

¹⁹ Robert O. Keohane, “Reciprocity in International Relations,” *International Organization* 40-1 (Winter 1986): 1-27.

interdependence.²⁰ One way to express Cooper's point is that natural barriers created what from a strictly economic point of view could be considered an "inefficiency." From a political-economy perspective, these barriers created what could be termed a "useful inefficiency" that provides a buffer for domestic political differences while allowing openness to the global economy. Adjustment is an economic good but a political bad: it causes distress to many people, usually including potentially influential constituents to politicians. It is difficult to force adjustment quickly; hence barriers that reduce the pressure, or slow down the process, are often politically welcome.

It has therefore been fortunate for politicians that national borders matter for trade. Toronto trades ten times as much with Vancouver as it does with Seattle.²¹ The barriers that produce this effect may be, in Cooper's words, "political and psychological" more than natural in a geographical sense; but they surely help to explain why national policy autonomy in fiscal and regulatory policy has not disappeared. As Geoffrey Garrett has shown, "globalization has not prompted a pervasive policy race to the neoliberal bottom among the OECD countries, nor have governments that have persisted with interventionist policies invariably been hamstrung by damaging capital flight."²²

With time and market integration, this useful inefficiency is being gradually eroded. Trade to GDP ratios are much higher now for almost all countries than in 1968. Capital moves much more freely across borders than it did then. Sensitivity has increased during the last thirty years, and can be expected to continue to do so.

If this were the only major development, however, its consequences might not be so great. Cooper pointed out in his classic study that increasing sensitivity not only created the likelihood of imbalances in international payments, but would make such imbalances easier to deal with, since small policy changes would have larger effects.²³ Indeed, increased interdependence within issue-areas alone could in some ways *reinforce* the club system. Admittedly, increased sensitivity would lead to greater public pressure on policy, which could disrupt international negotiations. On the other hand, increased sensitivity would require quicker and more intensive policy coordination within issue-areas; and for that purpose, the club format was particularly effective. Three other developments, however, seem clearly to have undercut the club system.

The first of these changes is that the organizations formerly run by clubs of rich country ministers have expanded their memberships to include many developing countries, which demand participation. Their leaders are often ambivalent about the regimes, suspicious about the implications of rich country leadership, and resentful of the existence of club rules, made by the rich, that they did not help to establish. Current hopes for a revival of serious trade negotiations depend, in part, on agreement to new rules from developing countries, many of whom have been excluded from the clublike negotiations of the WTO. India's Commerce and Industry Minister was quoted by the *Financial Times* earlier this year as complaining that only about 30 countries

²⁰ Richard N. Cooper, *The Economics of Interdependence: Economic Policy in the Atlantic Community* (New York: McGraw-Hill, 1968), especially chapter 4 and p. 173.

²¹ John Helliwell, *How Much do National Borders Matter?* (Washington: Brookings Institution, 1998).

²² Geoffrey Garrett, *Partisan Politics in the Global Economy* (Cambridge, UK: Cambridge University Press, 1998), p. 183.

²³ Cooper, *Economics of Interdependence*, cited, p. 77.

were authorized to participate in the WTO's consultative process in Seattle at the end of November, 1999. That process, he declared, "eliminated 100-plus countries from any participation at all, and some could not even enter the premises" where the negotiations were taking place.²⁴ Governments of developing countries have their own agendas for trade negotiations. These agendas are at odds both with the agendas of rich governments – because the developing countries demand more access for their exports that may be politically sensitive in the rich countries, such as apparel – and with the agendas of rich-country NGOs. At the same time, the LDCs do not want to destroy the club; they want to join it and have more power within it. The challenge they pose is not to the legitimacy of the club concept per se, but to its implementation. They are not pressing for the inclusion of environment ministers or non-governmental actors. On the contrary, the LDCs have led the opposition to such changes in Geneva. They are happy to have an intergovernmental club of trade ministers. The problem they pose is their number. As Harlan Cleveland once put it, how do you get everyone into the action and still get action? In principle, representative working groups with transparent processes, might help to alleviate their concerns about legitimacy if such processes could be worked out.

Second, globalization has generated a proliferation of non-state agents, including business firms, business associations, labor unions, and NGOs, all clamoring to make their voices heard, and broadening the agenda of WTO from trade policy.²⁵ In the last decade of the 20th century, the number of international NGOs grew from 6,000 to 26,000, ranging in size from the Worldwide Fund for Nature with 5 million members to tiny network organizations.²⁶ The Seattle meetings of the WTO, in November 1999, demonstrated the variety of such organizations and the intensity of many of their members' feelings about the real or imagined links between trade and issues such as labor rights and environmental protection. Seen from a trade-specific transgovernmental perspective, the WTO is a club of trade ministers working with rules that have served well in that issue area. But it becomes more problematic when one considers issue linkages, the "trade and." issues. Environment and labor ministers, for example, do not have a seat at the table. In other words, some relevant publics have no direct voice – only an indirect voice through national legislatures and executives. Thus some demonstrators at Seattle, incoherent and self interested though they were, had a point. They wanted more direct access to the arena where their interests were being affected. In principle, this could be solved by linkages between the WTO and other international organizations, such as the UN Environmental Program or the International Labor Organization – but they do not have direct authority over trade policy nor do they have as strong constituencies as does the WTO. Of course, there was not a single consistent NGO position at Seattle on these issues. Some NGO demonstrators wanted to weaken the WTO to protect sovereign regulation of the environment: others wanted to borrow the power of the WTO to overcome sovereign regulation of labor conditions.

The explosion of NGO activity in recent years can be viewed as a **pluralization** of world politics. This is more complicated than the sheer increase in the number of NGOs, as if they were antithetical to nation-states. On the contrary, our reference to environment and labor *ministers* suggests that we should not view NGOs and their networks as a monolithic opposition

²⁴ Murasoli Maran, interviewed in the *Financial Times*, February 2, 2000, p. 5.

²⁵ Wolfgang H. Reinicke, *Global Public Policy: Governing Without Government* (Washington: Brookings Institution, 1998).

²⁶ *Economist*, December 11, 1999, p. 21.

to unitary states. Different NGOs will participate in different transnational-transgovernmental coalitions with governmental officials,²⁷ often pitted against other transnational-transgovernmental networks with different purposes. Mixed coalitions are becoming more common in world politics.²⁸ Agents will be connected to one another in networks, and will work through a variety of competing and cooperating coalitions, but none of the components will be subordinate to another. Trade politics in the future is less likely to be dominated by multilateral intergovernmental cooperation, within a “decomposable” issue-area. Involvement of NGOs, the formation of transnational-transgovernmental networks, and linkages among issues are inherently connected processes.

This evolving pattern of transnational linkage politics intersects not only with the old club politics but with the change that we listed previously: the increasing assertiveness of governments of developing countries. . At Seattle, pressure from NGOs, including politically influential U.S. trade unions, led President Clinton to demand that WTO should incorporate labor standards in its trade agreements, and even to threaten sanctions to enforce them.²⁹ The reaction of India’s commerce and industry minister was not only firm but scornful: “The threat of sanctions,” said Murasoli Maran, “was the last straw. It was a nakedly protectionist act by a clique of developed countries behaving like a ‘kangaroo court.’”³⁰ Seattle made very clear the difficulties that a combination of heterogeneous state objectives, and activism by NGOs, can create for international trade negotiations.

The third force undermining the club system of 20th century trade regime is the increasing spread of democratic norms – to more and more countries – and attempts to implement them at the international level. There is more to the Seattle and Washington protests than the “protest envy” of a younger generation, whose parents demonstrated against the Vietnam War. Behind the protestors’ annoyingly naïve or even ignorant characterizations of the WTO, IMF and World Bank, and their frequent failure to understand even elementary economics, lies a deep concern with democratic procedures. If one talks to students involved in these protests, here is where the core issues lie. They may concede ignorance on how the World Bank is organized, or whether it has changed its policies to seek to help the poor. Pressed on their economics, and on issues of fact, they come back to their normative base: that global institutions are “undemocratic.” Lori Wallach attributes half the success of the Seattle coalition to “philosophically, the notion that the democracy deficit in the global economy is neither necessary nor acceptable.” When it was pointed out that Mike Moore was appointed by democratically elected governments, she replied, “Between someone who actually got elected, and the director general of the WTO, there are so many miles that, in fact, he and his staff are accountable to no one.”³¹ As we argue below, this claim is debatable, but a similar point is argued by many social democrats in Europe, and by a

²⁷ Keohane and Nye, *Transnational Relations*.

²⁸ Wolfgang Reinicke refers to coalitions including governments, multilateral organizations and NGOs as “trisectional.” See “The Other World Wide Web: Global Public Policy Networks.” *Foreign Policy* no. 117 (winter 1999-2000): 44-57

²⁹ *Financial Times* (London), December 2, 1999, p. 1.

³⁰ *Financial Times* (London), February 2, 2000, p. 5.

³¹ “The FP Interview: Lori’s War,” *Foreign Policy* no. 118 (spring 2000): pp. 37, 47.

large and growing literature claiming that international institutions do not meet the procedural standards of democracy, particularly that of transparency.³²

All of these pressures on international institutions are, ironically, reflections of their success. If international institutions were unimportant, as so-called “realists” claimed until recently,³³ no one would care about their legitimacy. But it is now recognized that the policies of the IMF, the World Bank, and the WTO make a difference. Hence they are judged not only on the quality of the results that these policies yield, but on the procedures through which the policies are developed.

In the rest of this paper, we will focus on issues of democratic legitimacy raised by the pluralization of world politics and the spread of democratic norms. These issues raise more novel issues of political theory than the demands of governments of developing countries to have their voices heard within the club. In what sense does the club model of international regimes fail to meet democratic standards? Insofar as it does fail, what changes toward greater democracy would be feasible? And what tradeoffs – for instance, with liberalization and international cooperation in general – could we expect to encounter as democratization increased?

In Section II, we directly address these questions of legitimacy and accountability. In Section III, we use the example of the WTO as a way to deepen our understanding of challenges to the legitimacy of the club model, and to reconsider democratic theory as it may apply to issues of international governance.

II. Democracy, Legitimacy and Accountability in Global Institutions

In a book written right after the last great period of “creedal passion,”³⁴ Jane J. Mansbridge explored two types of democracy, which she called “adversary” and “unitary.”³⁵ Adversary democracy assumes conflicting interests, and employs established procedures to make decisions in the face of such conflicts. Unitary or direct democracy assumes that people have the same interests, but may not know, individually, what is best to do. Face-to-face deliberation, as in the New England town meeting, is, in this view, the democratic way to reach decisions.³⁶ Mansbridge asks how both forms of democracy could be employed in a large country such as the United States. Admitting the decision-making advantages of adversary democracies, she asks

³² Michael Zuern, “Democratic Governance Beyond the Nation State: The EU and Other International Institutions.” *European Journal of International Relations*, v. 6, no. 2 (June 2000). Zuern seeks to refute the arguments of social democrats such as Claus Offe that international and supranational institutions are undemocratic and therefore should that their further growth should be resisted.

³³ John J. Mearsheimer, “The False Promise of International Institutions,” *International Security* 19-3 (Winter 1994/95): 5-49. For responses, see *International Security* 20-1 (Summer 1995).

³⁴ Samuel P. Huntington, *American Politics: The Promise of Disharmony* (Cambridge, MA.: Belknap Press, 1981).

³⁵ Jane J. Mansbridge, *Beyond Adversary Democracy* (New York, Basic Books, 1980; Chicago, University of Chicago Press, 1983).

³⁶ Unitary democracy has a clear affinity with Jurgen Habermas’s theory of communication, in which the persuasiveness of speech acts depends on the intersubjective ties between speaker and listener, as well as on the propositional content of the speech. See Jurgen Habermas, *Communication and the Evolution of Society*, translated by Thomas McCarthy (Boston: Beacon Press, 1979), chapter 1.

her readers to appreciate the values of equal respect, or equal status, of unitary democracy. “The task confronting us,” she says, “is to knit together these two fundamentally different kinds of democracy into a single institutional network that can allow us both to advance our common interests and to resolve our conflicting ones.”³⁷

Knitting these two forms together is a daunting task, and one that the United States certainly has not managed to accomplish in any coherent fashion. Indeed, evidence strongly indicates that participation in civil society in the United States, on a wide variety of dimensions, decreased during the second half of the 20th century.³⁸ At the international level, with six billion people in the world, unitary or direct democracy appears a utopian dream. Nevertheless, it is important to recognize that adversary democracy does not have the inherently normative appeal that direct democracy often has. It may be true, as Oscar Wilde is supposed to have said, that the trouble with socialism is that it “takes too many evenings.” But it also true that the desire to play a role in one’s own fate – to govern as well as to be governed – as been a recurring theme of democracy since Aristotle. And belief in the importance of direct participation was reflected, however, naively, when a student described to one of the authors the efforts of police to keep him and other Washington demonstrators away from “their own building,” in which the IMF was meeting. For him, his exclusion from participation in decisionmaking revealed how undemocratic international institutions are. From the standpoint of representative, or adversary, democracy, such a claim makes no sense; but it resonates with the ideals – if not always the practice – of direct, or unitary, democracy.

Even adversary democracy seems a utopian ideal on a world scale. Democracy is government by officials who are accountable to the majority of the people in a jurisdiction, albeit with frequent provisions for supermajority voting and protections for individuals and minorities. For democracy to work well, “the people” have to regard themselves as a political community. The key question for global governance in a largely democratic world is who are “we the people” when there is little sense of political identity or community, and the political world is organized largely around a system of unequal states. In a nondemocratic world in which international institutions merely facilitated interstate cooperation, such a question would be irrelevant. But in the contemporary world, democratic norms prevail, and are increasingly applied to international institutions as a test of their legitimacy. If international institutions are to be legitimate, therefore, their practices and the results of their activities need to meet broadly democratic standards. But it is improper to adopt what Hedley Bull once called the “domestic analogy,”³⁹ since the world as a whole lacks a coherent public, a corresponding public space for discussion, and institutions linking the public, through elections, to governing organizations.

In thinking about legitimacy, it may be helpful to separate the inputs and outputs of democratic government. Democratic governments are judged both on the procedures they follow and on the results they obtain. President Nixon was forced to resign due to his violations of law, despite having been, on several dimensions, quite an effective president. Conversely, President Clinton’s successes in managing the economy, and the high level of public appreciation of his

³⁷ Mansbridge, 1980/83, p. 7.

³⁸ Robert D. Putnam, *Bowling Alone* (New York: Simon and Schuster, 2000).

³⁹ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977).

performance in this realm, helped to rally support for him during the impeachment process in 1998. Both inputs and outputs affect legitimacy at the international level as well, and it is useful to consider them separately.

Inputs: Procedures and Accountability

On the input side, the key issue is one of accountability. In democracies, publics hold elites accountable for their actions through elections, which can result in removal from office. Accountability is by no means perfect: governing elites can sometimes manipulate publics, by controlling the agenda, through campaign spending, or otherwise. But the competition of elites provides some assurance that in the long run, governments cannot defy the strongly felt will of a majority. “The democratic method,” declared Joseph Schumpeter in 1942, “is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive structure for the people’s vote.”⁴⁰

International institutions lack the key feature that makes democracy possible and that, in democracies, facilitates accountability: an acknowledged public, operating within a political community in which there is a general consensus on what makes public decisions legitimate. What are the boundaries of the relevant electoral constituencies in which votes are held? If the moral claim for democracy rests on the worth and equality of individuals, then a basic rule is one person: one vote. One state: one vote is not democratic because a Maldivian would have 1000 times the voting power of a citizen of China. On the other hand, a cosmopolitan view that treats the globe as one constituency, implies the existence of a political community in which citizens of 198 states would be willing to be continually outvoted by a billion Chinese and a billion Indians. As Pippa Norris has shown, there is no evidence that national identities are changing in a manner that would make that feasible for a long time to come.⁴¹ In the absence of such a community, the extension of domestic voting practices to the world scale would make little normative sense, even if it were feasible. Most meaningful voting, and associated democratic political activities, occurs within the boundaries of nation states that have democratic constitutions and processes. Minorities are willing to acquiesce to a majority in which they may not participate directly because they feel they participate in some larger community. Such a sense of community is clearly absent at the global level, and creates severe normative as well as practical problems for the input side of global democracy.

However, as we have noted above, accountability is not assured only through elections. Indeed, it is a multidimensional phenomenon. One can distinguish electoral accountability and non-electoral accountability. At the interstate level, three types of mechanisms can be identified that can strengthen electoral accountability.⁴² The simplest is to strengthen state control, through chains of delegation, and at the same time to ensure that sufficient transparency exists so that members of the public can judge whether their government, operating within the international

⁴⁰ Joseph S. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper’s, 1942). Harper Torchbook edition, 1962: p. 269 (chapter XXII).

⁴¹ Pippa Norris, “Global Governance and Cosmopolitan Citizens,” in Joseph S. Nye Jr. and John Donahue, eds., *Governance in a Globalizing World* (Washington, D.C.: Brookings Institution Press, 2000 [forthcoming]).

⁴² Here we rely on a synthesis by Professor Anne-Marie Slaughter of a number of points made by herself and others, notably Andrew Moravcsik, at a conference on accountability and international institutions, Duke University, May 7-8, 1999.

institution, is carrying out its mandate. It is not inherently any more undemocratic for the U.S. President to delegate authority to the US Trade Representative to negotiate at the WTO, than for the President to delegate authority to the attorney general to deal with organized crime. As long as the public knows what actions the delegated agent took, it can reward or punish the President, and his party, for its deeds. The key, as noted above, is transparency.

The second means of increasing the democratic accountability of international institutions is to strengthen mechanisms of *domestic* accountability. Indeed, many of the problems of actions within the EU, than are other member governments.⁴³ The third mechanism is to increase legislative control over policy at the supranational level, although this has been accomplished only through the European Parliament, and there only in a rather halting and limited way.

Voting, delegation, and parliamentary action are not the only ways in which democratic governments are held accountable to publics. There are also important non-electoral dimensions to accountability. Many democratic theorists would argue that elections, and the long shadows that elections cast, do not exhaust the voice that people should have on issues that affect their lives. Intensity of feeling also matters; and people should be able to exercise voice in the long intervals between elections, and even if their representatives do not speak up on their behalf. The mechanisms of adversarial democracy stretch from polls to protests.

The boundaries for this non-electoral type of input are less clearly defined than are those of electoral politics. A public space is an identifiable set of issues within a communicative environment in which people can speak to one another in comprehensible ways. The public is the group of people who communicate and agitate over their shared externalities in that space – sometimes at local and sometimes at transnational levels. In this sense of shared externalities, and a degree of shared understanding, there may be some global publics even if there is no global community. NGOs contest and ally with each other and with parts of governments to set agendas and press for preferred actions by governments. The media play an important role both as a target for NGO action, and as means to hold NGOs themselves to some standards of accountability.

A second form of non-electoral accountability is to professional norms and transnational networks, whose activities we have mentioned above. As Arthur Applbaum has argued, professional ethical standards can be used to hold adversaries accountable.⁴⁴ Lawyers care about the opinion of the bar; academic economists about their standing in the eyes of some colleagues. Epistemic communities increasingly take the lead in raising the issues and constructing the

⁴³ Lisa L. Martin, *Democratic Commitments: Legislatures and International Cooperation* (Princeton: Princeton University Press, 2000).

⁴⁴ Arthur Applebaum, *Ethics for Adversaries: The Morality of Roles in Public and Professional Life* (Princeton: Princeton University Press, 1999). Applbaum is a strong critic of the view that adversary institutions necessarily create morally acceptable equilibria even if participants engage in unethical behavior. He is by no means sanguine that, in practice, adversaries will be held to high moral standards through the use of professional standards, although he thinks they should be held to such standards.

domestic and transnational conversations necessary to create a public space.⁴⁵ Their activities, at least to some limited extent, may keep governing elites accountable, corresponding to the way in which networks of legal scholars or economists make the Supreme Court or the Federal Reserve accountable: through reasoned criticism and discussion, rather than through elections.

Finally, markets provide a third form of non-electoral accountability. Obviously, people have unequal votes in markets depending upon the wealth they bring to the table. Thus competitive markets are not a form of pure democratic accountability. Nonetheless, corporations and governments that fail to perform well are held accountable by markets. And markets are often more rapid and effective than through electoral practices. Rating agencies help to consolidate and publicize a number of market judgments about firms. Governments that are closed and corrupt find it more difficult to attract capital and maintain the confidence of transnational investors. In the aftermath of the Asian financial crisis, accountability to markets may have led to more increases in transparency than any formal intergovernmental agreements did. However, this does not imply that accountability to markets is democratic: in markets, capital, distributed unequally, counts as “votes.”

Thus the problem of accountability for governance at the international level is not due to the complete absence of mechanisms for accountability. The problem is that the mechanisms are *disarticulated and elitist*. In a well-functioning domestic democracy, the various aspects of political inputs – popular activity, media attention, pluralist interest-group lobbying, parties, elections and formal legislation – are articulated together. There is a clear pathway by which laws can be created; and when laws are enacted, regular procedures and organizations exist to implement, amend and change those laws. Publics, not just elites, participate, at least to some extent, in the institutions that define these pathways. Public participation and articulation of accountability procedures provide the procedural basis for democratic legitimacy. Internationally, however, the link between popular activity and policy is severely attenuated, both by limited public involvement and the disarticulation of accountability procedures themselves.

In a well-functioning domestic democracy, popular politics and the organization of interest groups lead through fairly well defined pathways to legislation, and to the implementation of such legislation. Since governing elites work hard to anticipate reactions to their actions, through such pathways, the effects of anticipated criticisms and electoral consequences can be even more important than *ex post* punishment. These connections are lacking at the international level. As we have seen above, those intergovernmental organizations that do make binding rules often lack the democratic legitimacy that comes from having transparent procedures, institutional arrangements that facilitate accountability, and activities by politicians seeking re-election by appealing to publics. At the same time, the private and NGO sectors which agitate political issues internationally, do not have any greater claim to democratic legitimacy. Despite their claims to represent civil society, they tend to be self-selected and often unrepresentative elites. The disjunction between international arrangements facilitating such public involvement, and multilateral cooperation on binding decisions, leads to disputes over

⁴⁵ Peter M. Haas, “Introduction: Epistemic Communities and International Policy Coordination,” *International Organization*, vol. 46, no. 1 (winter 1992): 1-36. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

legitimacy and dangers of stalemate in intergovernmental institutions. And as we have seen, this disjunction cannot be solved simply by adopting the domestic voting model at a global level. On the input side, mechanisms for accountability exist, but they are not joined into a coherent system with mutually reinforcing components.

Outputs: Effectiveness

The legitimacy of governments is not determined solely by the procedures used on the input side. Substantive outputs also matter. Citizens are concerned about issues of security, welfare and identity. When these substantive outputs are missing, procedural democracy on the input side is often not sufficient. Conversely, however, their past successes on the output side may give them some space for reform.

We can think of effectiveness as enhancing legitimacy in both “macro” and “micro” ways. On the macro side, the overall accomplishments of an international regime, in producing a collective good, may be appreciated. WHO’s eradication of smallpox gave it substantial legitimacy as an organization effective in dealing with global health problems, whereas its slowness in focusing on AIDs may have had the opposite effect. Critics of the IMF’s performance in the world economic crisis of 1997-99 emphasize how much worse the crisis was because of the IMF’s misguided actions.⁴⁶ Its defenders, on the other hand, argue that its actions, while leading to pain at the time, account for the rapid recovery during the past year in most of Asia. They therefore seek to turn the crisis into a success for the IMF, enhancing its legitimacy.⁴⁷

On the macro side, the legitimacy of the WTO rests on its fostering of trade liberalization. Since trade liberalization has been a fairly consistent policy of most rich country governments during the last half-century – and recently a policy of many developing countries as well – WTO’s dedication to trade liberalization probably enhances its legitimacy in general. Trade liberalization is regarded as being a good thing. Hence, being “on the side of the angels” may have conferred some legitimacy on the WTO even in the absence of procedures assuring transparency and participation.

At the micro level, the activities of international organizations build coalitions of individuals, firms, or groups that support them on the grounds of self-interest. For many international organizations, such coalitions are weak, because the beneficiaries of the organization’s actions are weak and fragmented, or because the organizations are easy scapegoats for domestic politicians. Insofar as the World Bank seeks to help the poor, it ensures that it will have a weak political base, since neither powerful transnational capitalist interests, nor the governments of many developing countries, give priority to the interests of the poor in their own policies, or their lobbying. For the IMF, the micro-political problem is that its strong medicine usually is administered after the government of the country has – through either political opportunism or incompetence – made substantial policy blunders. Blaming the IMF is the obvious strategy for politicians seeking to avoid being held accountable for their own failed policies.

⁴⁶ For a particularly biting critique, see Joseph Stiglitz, “The Insider: What I Learned at the World Economic Crisis,” *The New Republic*, April 17 and 24, 2000, pp. 56-60.

⁴⁷ Reply to Stiglitz by Rudiger Dornbush, *The New Republic*, May 29, 2000, pp. 4-5.

At this level the WTO has one advantage over the World Bank and the IMF, since the WTO has a powerful constituency: multinational corporations that seek to expand their own exports and investments abroad. These firms, and related industry associations, have influential voices in policy councils at home, and strong interests in continued liberalization, and by and large, they seem to have prevailed over those labor unions that have advocated protectionism.. Hence the WTO should have some coalitional support against more generalized, and symbolic, criticisms that focus on the input side – on accountability. If appealing changes can be made on the input side, the WTO may be able to recover more readily than international organizations that have less to show for their efforts.

Some Suggestions about Legitimacy

The vast differences in political context between domestic and international governance suggest the need for a more appropriate measure for judging democratic legitimacy than the so-called democratic deficit based on the domestic analogy. The development of appropriate normative theory for judging global institutions will be an important part of the development of global governance. It is unlikely that the literature based on the European Union with its close links to the domestic analogy is appropriate for global institutions. Nor will new theories based on the potential for direct voting in cyberdemocracy be sufficient. One can imagine technology making it possible for the votes of vast numbers of people to be easily collected in frequent plebiscites; but it is more difficult to envisage the effective processes of deliberation in the absence of community that would make such voting meaningful. With time, such obstacles may be overcome and practices gradually develop, but it will be quite some time, even under the most optimistic assumptions, before a genuine global public space will emerge.

Another optimistic view is that transgovernmental relations, or “government networks,” will help to solve problems of global governance. Transgovernmental networks such as the Basle Committee of Central Bank Governors of rich countries, or the International Organization of Securities Commissioners, act informally, aided by strong personal contacts among participants. They can often operate more quickly and effectively than formal bodies. However, they are not open to a broad range of participants, they are often secretive, and they are typically only accountable to a small set of relatively powerful elites. “The informality, flexibility, and decentralization of networks means that it is very difficult to establish precisely who is acting and when.”⁴⁸ Hence, serious issues of accountability arise. Nevertheless, as Anne-Marie Slaughter argues, the critics often miss several key points: that legitimacy may derive from performance as well as process; that governmental networks typically operate through persuasion rather than authoritative decision; and that these networks may actually empower democratic politicians and their governments, by promoting cooperation among them, when the alternative could be leaving decisions to markets.

Another possibility is to supplement the work of the WTO with policy networks involving a variety of entities – governments, multilateral organizations, and nongovernmental

⁴⁸ Anne-Marie Slaughter, “Governing the Global Economy through Government Networks.” In Michael Byers, ed., *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press 2000): 177-206; quotation on pp. 193-94.

groups, both profit and non-profit -- which Wolfgang Reinicke calls “trisectional networks.” For example, the World Commission on Dams, originally stimulated by the World Bank, consists of four members each from the public, private and non-profit sectors. It has been conducting detailed analyses of the effects of large dams, and is developing a set of standards for dams which it recommends to governments and the Bank.⁴⁹ One could imagine creating a similar group to work through some of the thorny issues of the club model and the trade regime. It is unlikely that states will turn over major decisionmaking activities, creating hard law, to transgovernmental and trisectional networks, but what Sylvia Ostry calls “hybrid governance,”⁵⁰ involving such networks, is likely to be an increasingly important part of the global policy process. Insofar as it is effective, hybrid governance will be welcome as a supplement to other forms of governance. The legitimacy of government and trisectional networks, however, will depend both on whether they produce widely accepted outcomes, and whether their processes appear sufficiently transparent and accountable to elites and publics in civil society.

As experiments continue with governance and trisectional networks, it will be important to develop more modest normative principles and practices to enhance transparency and accountability not only of IGOs, but of corporations and NGOs that constitute global governance today. For example, increased transparency is important to accountability, but transparency need not be instantaneous or complete – witness the delayed release of Federal Reserve Board hearings or the details of Supreme Court deliberations. Similarly, accountability has many dimensions, only one of which is reporting up the chain of delegation to elected leaders. Markets aggregate the preferences (albeit unequally) of large numbers of people, and both governments and transnational corporations are accountable to them. Professional associations create and maintain transnational norms to which IGOs, NGOs, and government officials can be judged accountable. The practice of “naming and shaming” of transnational corporations with valuable brand names by NGOs and the press also provides a sort of accountability. Similarly, the naming and shaming of governments engaged in corrupt practices by Transparency International helps create a type of accountability. While trisectional cooperation and government networks can be productive, competition among sectors and among networks continues to be useful for transparency and accountability.

With respect to the WTO, greater cooperation with NGOs might help to alleviate the concern about accountability. For example, some NGOs might be given observer status at WTO Council meetings where rules are discussed; as suggested above, non-state parties might be given greater rights to file amicus briefs in dispute settlement cases. It would be problematic, however, to give NGOs the right to participate in trade bargaining sessions, since consummating deals may often require a certain degree of obfuscation of the tradeoffs being made. Otherwise, the greater intensity of activity by groups threatened by losses, than by groups likely to reap gains, could foster deadlock.⁵¹ A greater role for NGOs has its own problems. For one thing, many LDCs object not only because of their devotion to the doctrine of sovereignty, but because the Northern origins of most NGOs overweighs the Northern agenda. In addition, from a normative point of

⁴⁹ Wolfgang Reinicke, “The Other World Wide Web: Global Public Policy Networks.” *Foreign Policy* no. 117 (winter 1999-2000): 44-57.

⁵⁰ Sylvia Ostry, “WTO, Institutional Design for Better Governance,” unpublished paper (June 2000), p. 28.

⁵¹ For an interesting discussion of the effects of information on trade negotiations, see Judith Goldstein and Lisa L. Martin, “Legalization, Trade Liberalization, and Domestic Politics,” *International Organization* 54-3 (Summer, 2000).

view, there is the problem of the lack of transparency and accountability of NGOs themselves. In principle, the WTO could set requirements of transparency of budgets and membership for NGOs that wish to participate, and as more NGOs develop in the South, the opposition of the LDCs may diminish.

The World Bank has been relatively successful in working with NGOs. More than 70 NGO specialists (mostly from technically proficient organizations) work in Bank field offices. “From environmental policy to debt relief, NGOs are at the center of World Bank policy...The new World Bank is more transparent, but is also beholden to a new set of special interests.”⁵² Environmental NGOs have played effective roles at UN conferences. It was notable in April 2000 that Oxfam, an active NGO, did not participate in the demonstrations against the World Bank, declaring instead that it sought to continue to promote reform of the Bank rather than to agitate for its dissolution.

Whether involving – or co-opting – selected NGOs would work for the WTO or other international organizations is an open question. The democratic legitimacy of NGOs is not established simply by their claims to be part of “civil society.” Obviously, the legitimacy of favored NGOs could be called into question by co-optation; and excluded NGOs are likely to criticize those that are included for “selling out.” Political battles among NGOs will limit a co-optation strategy. Nonetheless, without some form of NGO representation, it seems unlikely that the institutions involved in multilateral governance, and in particular the WTO, will be able to maintain their legitimacy.

III. The WTO and the “Democratic Deficit”

Whether global regimes can be accused of having a “democratic deficit” is more ambiguous than addressing this question for the European Union, because the domestic analogy is less plausible for global regimes. Indeed, one could say, “what’s the fuss?” International institutions are weak relative to the governments of rich, powerful states. They operate formally according to democratic principles of delegation. And they are established in formal ways that correspond to the requirements of international law.

To analyze the democratic deficit issue, and its implications for legitimacy and accountability, we will focus specifically on the WTO, which we have noted is both a particularly powerful, and notably legalized, international organization. We will begin by considering the three defenses of international institutions such as the WTO suggested above: they are weak, they are formally democratic, and they are legally constituted. Then we will examine more closely claims of a “democratic deficit.”

No international institution operating on a global scale has anything like the authority of the EU, much less that of a state. Among international organizations, the WTO stands out as having quite authoritative and precise rules, and a relatively good record of eventual compliance with those rules by governments. So far, WTO has avoided outright refusals through a combination of diplomatic finesse and compromise. The US Helms-Burton legislation, for

⁵² “The Non-Governmental Order,” *The Economist*, December 11, 1999, p.21.

instance, did not lead to a formal case at the WTO, precisely because both the United States and the EU feared that any decision by the WTO against the United States could lead to an anti-WTO backlash in this country. The WTO decisions on beef hormones and bananas strained EU support for the WTO; and the recent WTO decision on US export tax benefits for corporations, may undermine corporate support for it in the United States. The authoritative dispute settlement procedures of the WTO were, as Hudec has argued, a gamble. Despite successes so far, it remains unclear whether the WTO will have the ability to implement decisions that are strongly opposed by powerful states or the EU.

The WTO-centered trade regime does compare favorably with the non-regime for exchange rates, with the fragmented international environmental regimes, and with the very weak regimes for international labor standards. The nominally central international organizations for environment and labor – the United Nations Environmental Program (UNEP) and the International Labor Organization (ILO) are ineffective in comparison to the WTO. However, the reason for the WTO's relative strength is not that it has a powerful bureaucracy. On the contrary, the WTO has a weak bureaucracy that is kept on a short leash by its 135 member states. It has a secretariat of about 500, and a modest budget of \$80 million. It decides by consensus, not by majority voting, and the autonomy of its management is severely limited compared to the IMF or the World Bank. The WTO must be highly responsive to the (mostly) elected governments of its member states.

The relative success of the WTO is not due to its organizational strength but to both the weakness of its competitors and the strong support of most major governments for relatively open trade. Hence, its dispute settlement procedures have been designed to produce determinate rules while still providing space for both diplomatic settlements and national democratic processes. As in the case of Helms-Burton, diplomatic agreements can head-off the appointment of a panel. After a panel ruling, the losing government typically appeals to the Appellate Body, which is certain to take into account political constraints and potential opposition when making its final decision. If pressures within a democracy cause a country to derogate from its agreements, the WTO does not have the authority (unlike the European Court of Justice) to enforce its rulings through national courts. What it can do is to authorize compensation for others – punishing the noncompliant country and providing some measure of justice for its victim. Unlike a truly powerful organization, the effectiveness of the WTO, in limiting trade conflict, lies partly in its *inability* to enforce its wishes on recalcitrant governments. Instead, it serves the political function of providing a “circuit breaker” against a downward spiral of retaliation. Better for the lights to go out than for the house to burn down. Better to make some concessions to the domestic politics of trade than to precipitate a “feud” involving tit for tat retaliation, making everyone worse off. In a world of shallow integration, the existence of escape clauses and procedures may be the optimal institutional arrangement for reconciling global economic efficiency with national democratic processes.

Not only is the WTO weak relative to governments; in a formal sense its negotiations meet democratic principles, insofar as member governments are themselves democratic. Negotiators are appointed by governments, and the final agreements have to be ratified through domestic procedures. Representative government always relies on delegation. Rousseau and subsequent advocates of direct democracy have railed against representative government as keeping people

“in chains” – but no one has figured out how to make unitary democracy work at a scale larger than the city-state. Admittedly, even though international organizations are ultimately accountable to (mostly) democratically elected member governments, the international bureaucrats are more remote than national bureaucracies, and the chain of connection to elections is more indirect. But the chain of connections between elections and the actions of an Undersecretary of the Treasury, an independent Congressional commission, or a federal court is at least as indirect; and except by utopians, they are rarely accused of being, for that reason, undemocratic.

The WTO also conforms better to the rule of law than did the GATT. Its Appellate Body set out detailed rules of procedure at the outset, and its opinions have included more rigorous legal analysis than was customary in GATT.⁵³ Compared to traditional diplomatic negotiations, the WTO’s procedures are perfectly lucid. Democracy is not identical to the rule of law, but certainly depends on it; so in this regard also, the WTO could be considered a democratic advance on its predecessors.

So what is the problem? From one democratic perspective, the WTO is almost the ideal design of an international institution. The international bureaucracy is weak; the organization is responsive to (mostly) elected governments. The escape clauses and dispute settlement procedures allow domestic political processes to prevail when severely challenged by international integration without at the same time destroying all rules and procedures. Thus the WTO contributes to the preservation of the embedded liberal bargain which has allowed to welfare state and increasing economic openness to co-exist.

The critics, however, have been emphasizing a different set of issues: direct participation and accountability. They see closed clubs indirectly linked to popular demands by long and opaque chains of delegation.. We focus on three specific sets of issues: 1) a lack of transparency in the WTO process; 2) barriers to the participation of interested groups, which will clamor to be allowed in until institutional changes are made; and 3) the absence of politicians with ties both to the organization and to constituencies.

1. Transparency

Delegates to WTO bargaining sessions, though instructed and accountable to elected officials in democracies, often act in the privacy of the clubs built around their issues and related institutions. It is difficult independently to check their claims about how hard they bargained for particular advantages. Negotiators know how to “wink” – to signal when they are only going through the motions or wish to use a demand as a bargaining chip for something else. If outsiders cannot see the winks, they have a hard time judging how well they were represented in the process. Indeed, one of the great advantages for fostering interstate cooperation is this opaque feature of the negotiations taking place among club members, behind closed doors.

WTO dispute settlement procedures have traditionally not been very transparent, although these practices are gradually changing. It was feared that transparency would lead governments to behave in more adversarial ways in order to appeal to domestic audiences. Both lack of

⁵³ Hudec 1999 (cited above), p. 28.

transparency and restrictions on participation adversely affect the public legitimacy of the WTO, since, in accordance with democratic norms, “the public at large simply does not trust the honesty and legitimacy of secret proceedings.”⁵⁴ It is therefore not surprising that even before the Seattle events, the United States was pressing to open panel and Appellate Body proceedings to the public, and for the right of private parties to submit briefs to panels and the Appellate Body.

The dispute settlement procedure is gradually being opened up. It seems likely as well that there will also have to be more transparency in the trade negotiations themselves. Even adversary democracy requires sufficient information about the process, that those who are not directly involved can hold their representatives, and the institutions themselves, accountable. Even institutions that are deliberately insulated from elections in a country such as the United States – in particular, the Supreme Court and the Federal Reserve Board – routinely publish their deliberations or opinions, so that not only the results, but the reasoning and disagreements involved, can be publicly known. These institutions are held accountable not through elections so much as through criticisms by professional networks – such as legal scholars writing in law journals, and economists writing scholarly articles and offering opinions in the public media. Without transparency, these means of accountability would be eviscerated.

Transparency does not imply governance through elections – as the examples of the Supreme Court and the Federal Reserve Board show. It does mean that not only the formal rules, but the arguments and reasoning, that shape both decisions on trade rules, and the adjudication of those rules, will need to be public. Democratic societies demand this of institutions that allocate very significant values that profoundly affect people’s lives.

2. Participation

In representative democracies, participation is channeled and in many ways limited, but some opportunities are available to make one’s views known. In the United States Congress, for instance, hearings open to spokespeople from a variety of groups, in part satisfy demands for participation. With respect to rule-making in the WTO, only idealistic proponents of unitary democracy would demand that the public be allowed into the negotiating rooms, where deals are being made. The consequences for trade liberalization of doing this, would probably be grave. But allowing a certain number of observers and press at the Council meetings is a different matter. And there might be efficiency gains rather than losses if NGOs were allowed to file amicus curie briefs in dispute settlement proceedings. In addition, the WTO could consider the possibility of institutionalizing public hearings on trade policy – now limited to national forums – and reaching out, particularly through the worldwide web, to individuals and groups around the globe to solicit their views. The *perception* that the WTO is an institution open to participation, rather than a closed bureaucracy, could be an asset to the organization in democratic societies.

At the stage of dispute settlement, a key demand is the democratic one for equal treatment. Under the current system, states are formally gatekeepers to the WTO process,. But they often have incentives to open the gates to powerful actors – such as firms and industry groups – within their societies. GATT, as Hudec has shown, itself became more legalized, and dealt with more

⁵⁴ *Ibid.*, p. 45.

cases, even before WTO came into effect.⁵⁵ Trade lawyers not working for governments, or for powerful clients with access to governments, claim that they are unfairly disadvantaged by not being able to see what happens behind close doors. Groups dedicated to causes such as labor rights and the environment may have neither the financial resources nor the access to the right networks easily to gain information, even if they can, with effort, discover what is taking place. Admittedly, charges of unaccountability and lack of democracy are often used as instruments to pry open access, or to cry “foul” when one has lost on the merits. WTO, however, would be in a stronger position to refute these charges if it could show that its adjudicatory proceedings are open to all who have a combination of competence and interest in the outcome of the case.

Opening up WTO dispute settlement proceedings could well have far-reaching consequences. A recent comparative analysis of different modes of legalized dispute resolution makes the argument – although it does not establish it with a high degree of certainty – that there are systematic differences between “international” and “transnational” modes of dispute resolution.⁵⁶ The essential difference between these two modes of dispute resolution is that in international dispute resolution, access to the adjudication process is limited to states, whereas in transnational dispute resolution, non-state parties can bring cases and file briefs. International dispute resolution is epitomized by the International Court of Justice (ICJ); transnational dispute resolution by the European Court of Justice (ECJ). The major apparent consequence of differential access is that transnational dispute resolution is much more expansive than international dispute resolution. The ICJ has experienced retrogression in the proportion of states party accepting its compulsory jurisdiction,⁵⁷ while the ECJ has become an authoritative interpreter of EU law, whose opinions are regularly incorporated into the decisions of national courts. This dynamic of expansion is fueled by a *de facto* alliance between plaintiffs and their lawyers, on the one hand, and the Court on the other. Ready access to a tribunal creates cases – without which courts wither on the vine. When these cases are decided and the decisions enforced, future plaintiffs are encouraged to bring more cases, and a spiral of positive feedback ensues.

How this dynamic would play itself out, were WTO to become open to cases brought by non-state actors, is an interesting question. Because the EU is unlike other international organizations in its supranational powers, the effects on the WTO could be very different than they have been for the EU and the ECJ. Already in the WTO, legalization seems to have advanced beyond the capacity of the organization to make explicit rules through negotiations.⁵⁸ As a result, ambiguous formal rules have to be interpreted by panels and the Appellate Body, in order to make them operational. The extent of such interpretation is such that in effect, rules are being made through the Dispute Settlement Mechanism rather than in negotiations among governments. When a similar process occurred in the EU, the ECJ came under pressure from governments, but was

⁵⁵ Hudec 1999, “The New WTO Dispute Settlement Procedure,” cited.

⁵⁶ Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, “Legalized Dispute Resolution: Interstate and Transnational,” *International Organization* 54-3 (Summer, 2000). Daniel Esty, “Non-Governmental Organizations at the World Trade Organization,” *Journal of International Economic Law*, 123 (1998).

⁵⁷ Stephen Schwebel, “The Performance and Prospects of the International Court of Justice.” In Karl-Heinz Boeckstiegel, ed., *Perspectives of Air Law, Space Law and International Business Law for the Next Century* (1995).

⁵⁸ This point was made frequently at the conference on “The Multilateral Trading System at the Millennium,” at which an earlier version of this article was delivered. Sylvia Ostry made it particularly well in her paper for the conference: “WTO: Design for Better Governance,” p. 18.

able to adjust its strategy in such a way as to preserve its authority. Most important, the ECJ was able to draw on support from national courts that enforced ECJ decisions. Since national courts were enforcing ECJ decisions, national governments could not rely on extra-legal measures, but “were forced to frame their response in terms that could persuade a legal audience, and thus they became constrained by the legal rules of the game.”⁵⁹

By contrast, WTO rulings are not enforced by national courts but rely on political decisions to comply by governments. And the Appellate Body of the WTO does not have nearly as much elite or public support as the ECJ, which claims to speak for the idea of European union and the rule of law. Hence it would be much easier for a disgruntled government to raise a political challenge against the Appellate Body, than it has been for governments to challenge the authority of the ECJ.

3. Politicians and Constituencies

The club model helps to overcome deadlock that accompanies the diffusion of power. Club-based IGOs can move incrementally, and can gradually reinterpret their mandates – insofar as their secretariats and leading states can build alliances with crucial private-sector and third-sector actors. But they cannot make large formal moves forward in the absence of support either from a broad consensus about their proper purposes, or from political institutions that can give them definitive guidance, based on a wide expression of social views. As a result of the constraints and opportunities that they face, international organizations, like the WTO, tend to be dominated by small networks of professionals, who can modify their informal rules and practices, and sometimes develop a body of case law. Indeed, as noted above, there is a danger of over-reliance on judicial practices as a way to duck difficult political bargaining, with the effect of a hollowing out of institutions.

What is missing? The legitimating activity of broadly based politicians speaking directly to domestic publics. The absence of effective political leadership may have mattered less in the past when issues were less linked, and accountability of trade ministers to parliaments was sufficient to provide legitimacy. But with the linkage of issues, there is a need for the involvement of politicians who can link specific organizations and policies with a broader range of public issues through electoral accountability. Someone has to take responsibility for making judgments about the relative importance of issues, and how to manage the tradeoffs between them. And in a democratic society, politicians who take this responsibility have to be held accountable for their actions. Indeed, their very accountability is a source of credibility and strength, since policy pronouncements, for accountable officials, are potentially costly, rather than being mere “cheap talk.” If constituents have confidence in their elected officials, they are more likely to support policies endorsed by those officials, even if they do not understand the specifics of those policies. Politicians intermediate between organizations and constituencies in civil societies, strengthening the legitimacy of organizations in return for ensuring that constituencies have influence over the organizations’ policies.

The lack of intermediating politicians is the most serious “democratic deficit” of international organizations in general, and the WTO in particular. Lack of transparency and deficiencies of

⁵⁹ Karen J. Alter, “Who are the ‘Masters of the Treaty’? European Governments and the European Court of Justice. *International Organization*, vol. 52, no. 1 (winter 1998): 121-148; quotation on p. 123.

participation are easier to fix; but without responsible politicians, “solving” these problems could simply create deadlock, as more and more heterogeneous actors compete for publicity and over policy.

It is not easy to fix this type of “democratic deficit.” To do so in the WTO would require creating a strong office of the secretary-general – a move that would surely be resisted by many governments. But having an institutionally empowered secretary-general would not be sufficient. Somehow, that secretary-general would have to identify the constituencies that would be relevant, and develop institutionalized links to them. That is, the functional equivalent of political parties would be needed to perform the functions of interest aggregation and organization of debate that parties perform in democracies. Having done so, the secretary general might have a fighting chance to compete with other political entrepreneurs for influence, and somehow to integrate a variety of concerns – trade liberalization, environmental protection, labor rights, protection for groups disadvantaged by liberalization – in a single policy matrix.

Merely to state the conditions is to suggest how utopian such a prospect is. The notion that functional equivalents of political parties will emerge, on a global basis, to represent constituencies with similar interests, boggles the mind. Even in Europe, with all the successes of the European Union, there are no genuinely transnational political parties, only coalitions among generally like-minded parties in a weak European Parliament. The idea of a WTO parliament is likely to prove even more illusory, although inclusion of more parliamentarians in national delegations might help to sensitize trade officials to the need for public legitimacy. However, such modest measures will not correct the central legitimacy problem of the WTO: the absence of politicians to intermediate between policymakers and constituencies.

We have only managed to state the problem, not to provide a solution. The problem is how to increase transparency and accountability, while enhancing international cooperation and achieving some degree of policy integration. At a minimum, the goal is to be able to reach agreements without subjecting all deals to deconstruction and unwinding. But social globalization, as represented in the explosion in the numbers of NGOs and their activity, works against careful integration, in the absence of collective identity. Lower transaction costs, coupled with a lack of a sense political community or authoritative political institutions, will make it easier to pick packages apart than to put them together.

In the first section of this paper we identified key problems that threaten the club model of multilateral cooperation that has worked relatively well for the past half century. International institutions have become more important, hence more salient in policy terms. The number and heterogeneity of states in the system has increased severalfold. New entities – particularly business firms and associations, labor unions, and NGOs – have become more active participants in the multilateral policy process, and increasingly close linkages among issue-areas pose difficulties for international regimes organized by issue-area. We then turned to broad issues of legitimacy and accountability. Legitimacy does not depend entirely on procedures, or inputs; it also depends on outcomes. Furthermore, insofar as democratic societies demand accountability, such accountability does not necessarily entail electoral practices similar to those in democratic states. The club model indeed suffers from a serious problem of legitimacy, but this problem is less due to the failure of international organizations to replicate national democratic practices,

but to the disarticulation of mechanisms of accountability: they do not work together, and they do not connect sufficiently to publics. In Section III we turned more directly to the WTO as an example, arguing that only politicians, with ties both to constituencies and to governing organizations, can create the linkages that make accountability real. The democratic deficit is the result of insufficiently politicized international organizations, not of excessive politicization.

Conclusions: The Club Model, Legitimacy, and Governance

The compromise of embedded liberalism that created a social safety net in return for openness⁶⁰ was successful in the second half of the 20th century, but is under new pressure. That compromise was the basis for Bretton Woods institutions that (along with other regimes) employed the club model to govern decomposable issue-areas in world politics. For reasons we have suggested above, the club model is under challenge. Rule-making and rule-interpretation in global governance have become pluralized. Rules are no longer a matter simply for states or intergovernmental organizations. Private firms, NGOs, sub-units of governments, and the transnational and transgovernmental networks that result, all play a role, typically in conjunction with central state authorities and intergovernmental organizations. As a result, any sustainable pattern of governance will have to institutionalize channels of contact between international organizations and constituencies within civil society. The international regimes, broadly conceived, must be political rather than technocratic. They must be linked to legitimate domestic institutions.

This conclusion does not imply that the club model must be entirely discarded, but it requires modification. As a general precaution, it will be important not to put more weight on such institutions than they can bear. Rather than pursue strong institutions to foster deep integration at the global level, it is more appropriate to pursue an image of what we have elsewhere called “networked minimalism.”⁶¹ Multilateral institutions do not compete so much with domestic institutions as rely on them. They will only thrive when substantial space is preserved for domestic political processes – what in the language of the European Union is referred to as “subsidiarity.” In this regard, the practices of the WTO in allowing domestic politics to sometimes depart from international agreements without unraveling the whole system of norms provide a helpful model. Putting too much weight on international institutions, before they are sufficiently legitimate to bear that responsibility, is a recipe for deadlock, disruption and failure.

As we have argued throughout this paper, in a world of active NGOs and strong democratic norms, more attention will have to be paid to issues of legitimacy. Some of these issues can be addressed at the level of the multilateral organization’s own practices. But the prime components of democratic legitimacy will remain at the domestic level. Unless domestic

⁶⁰ John Gerard Ruggie, “International Regimes, Transnational and Change: Embedded Liberalism in the Postwar Economic Order,” in Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983). For an early statement of a related set of ideas, see Fred Hirsch, “The Ideological Underlay of Inflation,” in Fred Hirsch and John Goldthorpe, eds., *The Political Economy of Inflation* (London: Martin Robertson, 1978), pp. 284, 278.

⁶¹ Robert O. Keohane and Joseph S. Nye, Jr., “Governance in a Globalizing World,” in Joseph S. Nye, Jr., ed., *Governance in a Globalizing World* (Washington: Brookings Institution), forthcoming.

processes are viewed as legitimate, the regimes that rest on those domestic processes will not be viewed as legitimate.

We have also emphasized that it is important not to think of legitimacy, either at the domestic or international levels, solely in terms of majoritarian voting procedures. Many parts of the American constitution (such as the Supreme Court) and political practice would fail that test. Democratic legitimacy has a number of sources, both normative and substantive. Legitimacy in international regimes depends partly on effectiveness. Insofar as legitimacy depends on processes, accountability is central. But as we have seen, accountability need not take place exclusively through delegation from elected national governments, with parliamentary oversight. Arrangements to ensure other forms of participation from civil society, ranging from protests to the involvement of NGOs in the processes of decisionmaking and dispute resolution, can enhance accountability. Markets and professional networks also play a role. Whatever form accountability takes, transparency will be crucial to assure that accountability is meaningful.

In the absence of political institutions linking governance organizations with constituencies, through politicians and political parties, the legitimacy of global institutions will probably remain shaky for many decades. Indeed, it is possible that the political base of intergovernmental organizations and international regimes will be so weak that effective international cooperation on issues such as trade will decline, or even collapse into deadlock. But the costs of deadlock would be high. If deadlock is to be avoided, international organizations such as the WTO will need to become more, rather than less, political. They will have to balance increased transparency and participation, with opportunities for close ties between public leadership and constituencies, through institutions that somehow aggregate a bewildering array of interests in ways that are democratically acceptable. Devising effective and well-articulated international institutions, which conform to a modified version of democratic norms that is appropriate to them, is indeed a crucial problem of political design for the 21st century.