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ABSTRACT

Talk about global democracy seems to be fixated on a Reform-Act model of democracy, with 'one person one vote for all affected by the decisions' as for example in a second popularly-apportioned chamber of UN. Politically, that seems wildly unrealistic. But remember that the Reform Acts came very late in process of democratization domestically. The first steps in the beginning that eventually led to full democratization of that sort were: a) limiting the arbitrary rule on the part of the sovereign; and (b) making the sovereign accountable to others (initially a limited set of others, which then expanded). Globally, there are moves afoot globally in both those directions. And once those pieces are in place, there are good reasons for expecting the circle of accountability basically only to expand and virtually never to contract.

JEL Classification: F53, F55, H11, K33, N40

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When we think of democracy nowadays, we tend to think of it primarily in terms of 'one person one vote' – and perhaps (if we're particularly sophisticated) 'one vote one value'. We tend to think in terms of enfranchising all affected interests. For reasons that will become apparent, I will call that the 'Reform-Act model of democracy', in honour of nineteenth century British expansions of the franchise.¹ The Reform-Act model of democracy is, at root, an electorally-oriented, vote-centric vision of what democracy is all about.

Academic political theorists are of course infinitely subtle. When discussing democracy among themselves, they introduce many important complications, qualifications and elaborations. They find all sorts of reasons for thinking that merely voting is not all that democracy is about. But I am not going to talk about any of that today. Suffice it to say that the Reform-Act model is the thumbnail version of democracy that is most readily available both for popular consumption and for political implementation.

That is, for example, the model of democracy that neo-conservatives strive to impose on the rest of the world, by force of arms if necessary. Look to the National Endowment for Democracy, the neo-con holding company founded under Reagan and still much in favour. In its 'Statement of Principles and Objectives', the first thing it says under the heading of 'Democratic Governance' is that: 'Democracy requires a system of representative government in which leaders are chosen in freely contested fair and periodic elections...'²

Nor is this election-centric model of democracy peculiar to neo-cons. Recall how Jimmy Carter, arguably America's last remotely left-wing president, spent his post-White House years. When awarding him the Peace

¹ More in principle than in practice, of course: only a small proportion of the population was actually enfranchised by those acts; what those acts really did was establish the principle that would be progressively implemented over the next century.

²National Endowment for Democracy 2007.

Prize for 'his decades of untiring efforts to... advance democracy', the Nobel Committee pointed primarily to Carter's service 'as an observer at countless elections all over the world.'³

Similarly, within international law discussions of the emerging 'right to democratic governance, ... a preoccupation with elections is a striking feature'.⁴ As one pair of distinguished commentators wryly say, 'to raise the question of democracy in international law [just] is largely to raise the question [of] whether international law requires states to hold periodic and genuine elections.'⁵

The same Reform-Act emphasis on fully-enfranchised electoral democracy characterizes discussions of how to democratize international institutions themselves. That has long been the preferred model of strong internationalists.⁶ Recall for example how in 1945, when discussing the shape the new United Nations should take, British Foreign Secretary Ernest Bevin urged consideration of 'a house directly elected by the people of the world...'.⁷

The most common suggestion along those lines nowadays is for a Second Assembly of the UN, apportioned according to population, as a

³ Norwegian Nobel Committee 2002. Carter's activities in support of democracy were only one aspect of his more general human rights promotion that were grounds for the award.

⁴ Crawford and Marks (1998, p. 80), referring to arguments such as those in Franck (1992)

⁵ Crawford & Marks 1998, p. 80.

⁶ By which I mean 'people who believed in strong international institutions'. They contrast with 'weak internationalists' who prefer strong states linked through international institutions with only weak authority. They also contrast with 'anti-statists' who eschew strong institutions, national or international, in favour of a strong civil society. Much of the current discussion of global democracy is among theorists of vaguely that latter persuasion (Gould 2004; Kuper 2004; Dryzek 2006; Bohman 1999; 2007), although strong internationalists see an important role for strengthening global civil society as well (Held 1995, ch. 12; Falk 2000). By incorporating NGOs and others more closely into the work of the UN General Assembly and Economic and Security Council, the Boutros-Ghali *Agenda for Democratization* (1996, sec. 77-103) contributed, fitfully, to that process.

⁷ Speech in the House of Commons, 23 Nov 1945. Strictly speaking, all he said was that 'there should be a study' of that.

counterweight to the General Assembly's 'one country one vote'.⁸ That Second Assembly might initially be indirectly elected, consisting of representatives elected by existing national legislatures; it might initially be a mere 'talking shop'. Eventually, however, the Second Assembly is envisaged as being a directly elected Peoples Assembly with law-making powers.

That proposal was first floated in its current form a quarter century ago (at a UN Special Session on Disarmament, of all places).⁹ Since then, it has attracted the support from a bevy of NGOs, from the United Nations Development Program, and from a range of public intellectuals.¹⁰ Conspicuous among them is Richard Falk, who (with Andrew Strauss) wrote an influential article in support of the proposal in Foreign Affairs, the semi-official organ of the US foreign policy establishment from which he is such a notable dissenter.¹¹

In that article, Falk and Strauss make the case for what they explicitly describe as a 'popularly elected global assembly' – one that 'would represent individuals and society instead of states'.¹² Among the things that they say that would involve are:

- the establishment of electoral districts throughout the world...;
- global voter rolls...;
- a system of campaign finance and other election rules; and
- [safeguards against] attempts to manipulate or undermine elections....¹³

⁸ But see Patomäki and Teivainen (2004) for the wide array of other proposals for democratizing global institutions that have been floated.

⁹ Segall 1982; 1991.

¹⁰ Preeminent among the NGOs are the International Network for a UN Second Assembly (INFUSA) and its spin-off the Campaign for a Democratic United Nations (CAMDUN). UNDP's endorsement came in the 1999 Human Development Report.

¹¹ Falk & Strauss 2001. See similarly: Franck 1995, p. 483; Held 1992; 1995, pp. 273-4; 1998, p. 25; Galtung 2000, pp. 156-8; Patomäki and Teivainen 2004, pp. 30-3 and ch. 8.

¹² Falk & Strauss 2001, p. 217.

¹³ Falk & Strauss 2000, p. 219. Held (1995, p. 273) similarly says, 'The establishment of an independent [UN] assembly of democratic peoples, directly elected by them and

Clearly, what they are proposing amounts to nothing short of a 'Global Reform Act'.

As an ultimate goal, that is one with which I have considerable sympathy. Philosophically, enfranchising all affected interests surely is the right way of constituting the demos from a democratic point of view.¹⁴ And in today's world, just about everyone is potentially affected by just about everyone's decisions and choices, in ways that ought entitle them to a say in those decisions. So a Global Reform Act is precisely what democratic principles would require.

In practice, however, such suggestions are hopelessly visionary – or so self-styled realists insist. They see them as, at best, very long-term aspirations that are not remotely realistic in any near future.¹⁵ In the words of Joseph Nye, 'Alfred, Lord Tennyson's "Parliament of man" made for great Victorian poetry, but it does not stand up to contemporary political analysis.'¹⁶

Now, generally I am pretty skeptical about the claims of self-styled realists. They tend to be too realistic – too quick to fold their highest moral

accountable to them, is an unavoidable institutional requirement' of cosmopolitan democracy.

¹⁴ Or so I argue elsewhere (Goodin 2007; cf. Gould 2004, ch. 7).

¹⁵ There are also, of course, doubts whether it is desirable at all: many share Kant's (1795) concern with what might happen if we instituted a global government that then turned dictatorial.

¹⁶ Nye 2001, p. 4, referring to a line from Tennyson's 'Locksley Hall'. See further: Dahl 1999; Keohane and Nye 2002. Even sensible critical theorists agree. Commenting on the Habermasian ideal, Scheuerman (2006, pp. 95-6) writes: 'If applied to the global arena, this normative ideal would probably have revolutionary consequences. It seems to require the reconfiguration of global and economic power so that every one of the planet's billions of inhabitants might possess equal and uncoerced chances to determine, via free-wheeling deliberation resulting in a binding rule, the character of any decision influencing his or her activities.... [But i]mmediate problems present themselves to defenders of this approach. It seems fundamentally utopian given present economic and political conditions. Can anyone really imagine the United States peacefully surrendering its dominant military position within the international state system, or for that matter the privileged rich countries acceding to a fundamental global redistribution of economic resources? Thus far, they have aggressively resisted even relatively modest (and relatively inexpensive) efforts to reduce global starvation.' Habermas (2001, pp. 107-9) agrees.

aspirations in the face of obstacles that might well have been eminently surmountable, had only they tried.¹⁷ In this case, though, I am afraid the realists are almost certainly right. It is simply too early to be thinking of democratizing the global order along Reform-Act lines.¹⁸

But remember – and this is my key point – the Reform Acts came very late in the process of democratizing the domestic polity. Those were the very last steps, not the first steps, in that long process.¹⁹

When it comes to the global polity we are still very much in the early days – both of developing a global polity, and still more of democratizing it. What we should be looking for in that context are 'first steps', not final steps. It should be no cause for despair that we are not (yet) in a position to undertake the sorts of reforms that would mark the culmination of democratization on a global scale.²⁰

When looking for a template for democratizing our emerging global institutions, we should not be looking at how democracy has developed 'at

¹⁷ Goodin 1992. As Edvard Hambro put it during his time as president of the UN General Assembly, 'Politics should be the art to make possible tomorrow what seems impossible today' (quoted in Kuper 2004, p. 45). Or as Weber (1919/2004, p. 93) says at the end of his lecture on 'Politics as a vocation': 'Politics means a slow, powerful drilling through hard boards, with a mixture of passion and a sense of proportion. It is absolutely true, and our entire historical experience confirms it, that what is possible could never have been achieved unless people had tried again and again to achieve the impossible in this world.'

¹⁸ Although the Commission on Global Governance's (Carlson and Ramphal 1995, ch. 7) proposal for a 'Forum of Civil Society' representing NGOs accredited to the General Assembly is getting some traction, with backing from UN Secretaries General and various panels of eminent persons (Boutrol-Ghali 1996; Annan 2002, paras 134-41; Cardozo 2004; Panyarachun 2004, para. 243).

¹⁹ Some places – conspicuously including the American South – it took another century to realize the Reform Act ideal fully, of course.

²⁰ There is of course a chicken-and-egg issue of democratic legitimacy, here. The only way to make international institutions democratic is to cede some power to them and then hold them increasingly to account for how they exercise it. But in the very first instance, before they yet very democratically accountable, that amounts (at least for countries that are themselves genuinely democratic in their internal governance) to transferring power from a more democratic regime to a less democratic one (Rabkin 2005). I would myself regard that as a 'democracy-democracy tradeoff', i.e., trading less democracy now for more in the future. Even in the short term, working through international (or even just multilateral) regimes can help in important ways to make domestic regimes that are all inevitably imperfectly democratic more democratic (Keohane, Macedo and Moravcsik 2007).

the end of the day' (the 'end of history', if anyone still believes Fukuyama²¹). Instead, we should be looking at how democracy developed 'in the beginning'. Modeling like-on-like, we should be looking at domestic developments, not in the nineteenth century, but instead five or six centuries earlier.²²

I. Democratization Before the Vote, Domestically

Pulling ourselves out of that nineteenth-century Reform-Act mindset, and casting our minds back to those earlier periods, what were the key developments that contributed most crucially to what democratization in the very beginning?

Two steps stand out:

- The first was curbing the arbitrary exercise of power.²³
- The second was rendering power-holders accountable to someone or another.²⁴

Of course, the way in which we eventually came to curb the arbitrary exercise of power was to make power holders accountable. So nowadays those two steps have come to be conflated. But note well: that was a later

²¹ Fukuyama 2006.

²² A trick that Hui (2001) taught me.

²³ Young (2000, p. 174), following Shapiro (1996, p. 582; 1999, ch. 1), chastises 'recent political theory for concentrating on only one aspect of democracy, that of collective self-government. Once we thematize democratic politics as involving some separation between people and power, we must attend to another function of democracy, namely to oppose the arbitrary exercise of power.'

²⁴ The Inter-American Commission of Human Rights identified precisely these two requirements in its 1990 Report on Haiti: 'The concept of representative democracy is rooted in the principle that political sovereignty is vested in the people which, in the exercise of that sovereignty, elects its representatives to exercise political power.... The effective enjoyment of these rights and freedoms requires a legal and institutional order in which the law takes precedence over the will of the rulers and some institutions have control over others in order to preserve the integrity of the popular will (the constitutional state)' (OAS 1990, paras 15, 16).

conflation of two steps that, at the beginning, were clearly distinct. In the very first instance, what was essential was to repudiate the principle that the sovereign's word was law, and to establish instead that the sovereign ruled under law. That, roughly, was the accomplishment of the Magna Carta of 1215, as it was interpreted and reinterpreted over the years.²⁵

Once it was established as a matter of principle that the sovereign could not exercise power in any arbitrary way he (or occasionally she) pleased, discussion could then turn to questions of how best to embed that principle in practice. Making the sovereign accountable to someone or another – requiring the sovereign to give reasons for acting as he or she had done – was seen to be one way of doing that. Establishing that was, roughly, the accomplishment of the Bill of Rights of 1689, as that was interpreted and reinterpreted over the years.²⁶

Those were two distinct steps. Historically, they were separated by over four centuries. Nor was that just a quirk of history. They are logically distinct, as well.

Notice first of all that having reasons (which is all that non-arbitrariness requires) is logically distinct from giving reasons.²⁷ As a purely contingent matter, it may well be true that requiring people to give reasons through some accountability mechanism may be the best practical way of

²⁵ Starting with Bracton and his famous slogan 'law makes the king', rather than the other way around (quoted in Corwin 1928-9/1955, p. 27). See further: Pocock 1957, esp. ch. 2; Jennings 1959, ch. 1; Holt 1965; Berman 1983, pp. 292-4.

²⁶ True, the Magna Carta itself provided, in clause 61, for 'an assembly of barons to secure amends from the royal estate for any transgressions denounced but not corrected within forty days'. Whitehead (2002, p. 92, n.3) sees this as a key step toward 'executive accountability', and in some sense of course it is. Note however that clause 61 only applies to cases in which 'we [i.e. the king], or our justiciar, should be out of the kingdom' (as translated by Holt 1965, p. 335). Of course, establishing accountability mechanisms even for so special a case was important as a first step toward systematic accountability of the sovereign, but the full realization of that ideal did not come until the Bill of Rights of 1689.

²⁷ Another way to phrase this is as a distinction between non-arbitrariness as 'a guarantee of not doing wrong' (or anyway not doing something for no legitimate reason at all) versus accountability as 'a guarantee of doing right'.

ensuring that they actually have reasons, and that that they are actually acting from those reasons rather than on some arbitrary whim. But that is a contingent matter. Requiring that people have reasons and requiring them to give reasons are quite distinct, logically speaking – just as they would have been seen to be, practically speaking, in the early stages of democratization when arbitrary exercises of sovereign power were prohibited but beyond any human power to sanction.²⁸

For a way of seeing clearly how non-arbitrariness and accountability could logically come apart, imagine we imposed a requirement of accountability without imposing any requirement of non-arbitrariness. Our decisions could then manifest a kind of collective caprice. To say that I am accountable to you for my actions is to say that I have to give you reasons for them; and (in a robust accountability regime) those have to be reasons that you yourself accept not only as being my reasons but also as being good reasons. But if there were no 'non-arbitrariness' constraint on what count as good or bad reasons, then any set of reasons that you and I could both accept will count as good enough reasons.²⁹

So if it strikes your fancy as well as mine that we should poison Port Meadow, and if I am accountable to you alone, then the requirement of accountability has been satisfied. But non-arbitrariness, I would argue, has not. The fact that the same thing happens simultaneously to strike the fancy

²⁸ Bracton, again, was clear on this point. In McIlwain's ((1947, pp. 72, 82) gloss: 'The king is under no man (*non sub homine*), even if he is under God and the law.... Obviously, the king can do wrong, even if the penalty can, in Bracton's phrase, be exacted by none but God the avenger'. Hobbes (1651, ch. 21) would have his sovereign say to God, 'to Thee only have I sinned', as David said to God after killing Uriah (II Sam. 11). For many years after the Magna Carta, that was precisely the case with British sovereigns: requirements of non-arbitrariness and standards of 'wrong' were in place, but accountability mechanisms (to any human agents, at least) were not.

²⁹ The point generalizes to the case in which everyone is accountable to everyone. It could be a mere whim, universally shared. The reasons we all have for doing something can be objectively groundless or objectionable reasons, even if no one subjectively objects to them.

of everyone linked in the chain of accountability does not make that any the less an arbitrary flight of fancy.

Those familiar with T.H. Marshall's famous analysis of the evolution of social citizenship will recognize the story I am telling, here. It is just his tale the first two stages of social development. First come civil rights, then come political rights. (And then come economic and social rights, but that last bit is outside my scope of here.³⁰)

Critics of Marshall complain that his account simply ossifies certain contingent facts into iron laws social development, treating accidents of British history as if they were necessarily true for all places and all times.³¹ Doubtless Marshall did just that, to some extent or another (doubtless we are all guilty, to some extent or another, of over-generalization). Doubtless Marshall's generalizations hold true only of 'liberal democracy': Stalin's so-called 'democracy', like Schmidt's, proceeds along a different developmental path.

But at least as regards liberal democracies, the relationships here in view are not all pure contingencies that might have turned out otherwise. Certain political rights really do presuppose – certainly practically, if perhaps not necessarily logically – certain civil rights. A right to vote pragmatically presupposes a right of habeas corpus: no election is free and fair if rulers can simply lock up opposition supporters to prevent them from voting; and giving people a right to demand that they be charged before a court of law is a guarantee against using arbitrary arrests in that way to alter election outcomes. More generally, unless the sovereign is bound by the rule of law,

³⁰ Marshall 1949/1963. Even those who would 'start with rights', and who are anxious to have a robust human rights regime in place alongside majoritarian democracy, must recognize the preeminence of the 'rule of law'. Only if that is in place will there be a venue in which rights claims could be heard.

³¹ Somers 1994.

there is no pragmatic point in anyone else's having the right to vote to determine the content of that law.

So the civil rights are not merely temporal precursors to the subsequent development of democratic political rights along more recognizably Reform-Act lines. They are not merely things that contingently happened to come first. There is some logic, or anyway some strong practical necessity, dictating why they must come first.

Whether there is some similarly inexorable logic dictating where it all must necessarily end up – whether it is somehow inevitable that curbs on the arbitrary exercise of power and institutions holding the powerful to account must necessarily end in democracy of the fullest Reform-Act sort – is a question to which I will return later.

II. First Steps Toward Global Democracy

Before that, however, I want to return to my official topic – global democracy – to note that similar things are happening in today's international order as happened centuries ago in the domestic sphere to curtail the arbitrary exercise of power and to make it accountable.

Of course, there is no reason to suppose that these developments must necessarily follow exactly the same path internationally as they did domestically. But, interestingly, things do seem to be following uncannily similar paths.³²

³² And maybe necessarily so, after all, insofar as the quasi-logical relations I was just discussing obtain.

A. Curbing Arbitrary Exercises of Power

UN Secretary General Kofi Annan used to be fond of quoting a remark of President Truman's to the closing session of the San Francisco conference founding the United Nations. There Truman said, 'We all have to recognize – no matter how great our strength – that we must deny ourselves the license to do always as we please.'³³

Doubtless the UN Secretary General was so fond of those words for a reason. US presidents (and power-holders more generally) clearly need to be reminded of that home truth at least once every generation. However often forgotten, the principle was nonetheless clearly established back then, and it is increasingly being enshrined in international law and international political practice today.

At the level of international practice, we can easily point to a plethora of treaty regimes with increasingly strong enforcement mechanisms. Emblematic of this is the shift from the voluntary dispute settlement mechanism found in the General Agreement on Trade and Tariffs to the mandatory one found in World Trade Organization.³⁴ One could equally well point to the International Criminal Court as acknowledgment (at least among

³³ Truman 1945. Quoted in Annan 2006.

³⁴ PatomUaki and Teivainen 2004, p. 71. Furthermore, it is no mystery why the shift has occurred: it is in the interests even of the very strongest. As Krasner (2000, p. 234) explains: 'Why did the United States, the most powerful country in the world, enter into an arrangement that involves a decision-making process with international panels whose jurisdiction cannot be denied? Why not stay with the GATT process in which submission to the dispute settlement mechanism was voluntary and in which the US had more leeway to pursue regional and especially unilateral strategies through Section 301 actions against individual countries?... One answer is that the Clinton administration is infatuated with global governance and mandatory law-like international arrangements. But an alternative and perhaps more persuasive explanation is that ... other countries might have been very, very leery about entering into arrangements in which they would have remained vulnerable to unilateral action by the US that could not clearly be marked as violating the agreement. In the area of trade broadly conceived, more law-like international arrangements... [are] in the interest of the United States.'

the treaty's signatories) of norms of international law that are binding even on the notional sovereigns in the state system.

Treaty regimes are just the formalized tip of the international legal iceberg, however. If our concern is with the emergence of norms curbing arbitrary exercises of power by state actors, an even better place to look might be to what international lawyers call jus cogens. Treaties are things that sovereign states negotiate among themselves, and they bind only those that sign them. Jus cogens, in contrast, does not require the consent of any particular state to be legally binding on it. Relying on jus cogens rather than treaties marks a 'shift from consent to consensus as the basic source of international law'.³⁵

Thus, in addition to international conventions and international custom, sources of international law also include 'the general principles of law recognized by civilized nations' (even if this particular nation does not recognize that particular principle) and 'judicial decisions and the teaching of the most highly qualified publicists of the various nations' (even if states fail to recognize them).³⁶ Prohibitions on the use of force, on genocide, and on gross violations of human rights would all generally fall under those latter categories. They apply even to states that have not ratified treaties on those topics.

More generally, there is movement toward a 'rule of law' within the international sphere.³⁷ That does not necessarily presuppose any centralized

³⁵ Although Bull (2002, pp. 150), whose phrase this is, himself doubts that sufficient international solidarity exists for that to be presently practicable. I take May's (2005) point that grounding jus cogens in international custom, as is typically done in this literature, encounters the problem of the 'persistent objector': why should a state be bound by the customary practices of or consensus among other states, when it has always objected to that custom or consensus? It may well be that jus cogens must ultimately be grounded in universal moral norms, of the sort I shall discuss next.

³⁶ ICJ 2007, Art. 38.1. As Brownlie (1990, p.3) says, this 'is generally recognized as a complete statement of the sources of international law'.

³⁷ Goodin 2005. Archibugi and Young 2002. The Report of the Special Representative of the UN Secretary-General on Business & Human Rights provides a most interesting discussion of how this expanding rule of law might even be stretched to make

law-giver. Instead, the rule of law emerges out of customary international law in the same dispersed way the common law did domestically. It is inevitably 'soft law', at least in its early stages, based on vague norms rather than precise enforceable edicts with authorized interpreters.³⁸ And in the very first instance it is far from being universally acknowledged. But as norms of cooperation increasingly take hold among certain states, others join in and the cooperative network spreads.³⁹ That is not always the case.⁴⁰ But it is often enough to make soft law largely stick. The more states that are party to those arrangements, the more advantageous it often is for others to join in those arrangements and the more disadvantageous it is for others to remain outside them.⁴¹

Of course, when it comes to imposing rules of international law on powerful states who insistently do not want any part of them, questions of enforceability inevitably arise. In an analogous domestic setting, an early US president once remarked, 'The Supreme Court has made its decision; now let's see the Supreme Court enforce it.'⁴² Internationally, the US famously took just the same stance toward the International Court of Justice's 1986 decision in Nicaragua v. United States.⁴³ So a global superpower that is hell-bent on throwing its weight around in completely arbitrary and illegitimate ways can still do so, even in the face of all this emerging jus cogens and international rule of law.

business corporations responsible for respecting international human rights (Ruggie 2007, pp. 14-18).

³⁸ Abbott and Snidal 2000. Abbott et al 2000.

³⁹ That is the defining feature of a 'network externality': it is more valuable for you to be connected to the network (e.g. the internet, or a telephone system) the more others who are already connected (Katz & Shapiro 1985; Grewal 2008, pp. 25 ff.).

⁴⁰ Assuming increasing marginal harm to the environment from each extra increment of pollution, the more other states curb their pollution the less important it is for your state to do so, for example.

⁴¹ Reus-Smit 2003.

⁴² Paraphrasing Andrew Jackson (Warren 1926, vol. 1, p. 759).

⁴³ ICJ 1986.

But before we despair too deeply about that, remember that we were in broadly the same position domestically for a century or two after the Magna Carta. The arbitrary exercise of power had been repudiated. It had been accepted that the sovereign's word was not itself law; it had been accepted that, instead, the sovereign ruled under law. It simply took a little more time before any practical way was found for mortal men to (as was said back then) 'put a bridle on him'.⁴⁴ Still, the point having been established, the path was set.

So too at the international level, 'almost all nations observe almost all principles of international law and almost all their obligations almost all of the time', even if there is no one who can strictly make them do so. There is every reason to hope that that may continue to be true even as the scope of international law expands from the strictly contractual to the more broadly consensual.⁴⁵

B. Mutual Accountability via Networked Governance

I shall say more about those path dynamics shortly. Before doing so, however, just let me note that in international society today there is also a flowering of accountability mechanisms analogous to that in the earlier stages of domestic democratization.

The early thought, domestically, was that the sovereign must consult 'his curia..., and the earls and barons who are his associates there'. And as one early slogan put it, 'one who has an associate has a master'⁴⁶ – or anyway he has an equal to whom he is accountable.

⁴⁴ McIlwain 1947, p. 69.

⁴⁵ Henkin 1968, p. 42. Koh 1997.

⁴⁶ Attributed to Bracton, although it was almost certainly a latter annotation. Ibid.

The basic idea there was one of mutual accountability among associates joined in cooperative networks to pursue shared (or anyway parallel) purposes. That same sort of mutual accountability within networks is increasingly what characterizes relations among states, Non-Governmental Organizations and Inter-Governmental Organizations in today's increasingly globalized world.⁴⁷

Policy networks, epistemic communities and professional associations all 'create and maintain transnational norms to which NGOs, IGOs and government officials can be judged accountable'.⁴⁸ These networks involve non-state actors ranging from 'international NGOs such as Amnesty International, Transparency International and Greenpeace International' all the way to private actors such as Moody's and Standard and Poor's. Those networks in effect serve as 'private overseers of national governments'.⁴⁹

Networks have no hierarchy. No one stands in authority over anyone else. So, strictly speaking, no one has to answer to anyone. Networks are voluntary. They operate purely on the basis of trust and the reputation for trustworthiness. That is the defining feature of cooperation among agents who do not have to cooperate with one another.⁵⁰

Networks also lack any formal mechanisms for sanctioning members. They rely instead on more informal processes of 'naming and shaming' or withholding resources.⁵¹ Participants do indeed value the esteem of others in the network, however, and they want to continue doing business with them. So long as they do, those seemingly weak sanctions can actually suffice to

⁴⁷ This is sometimes called 'peer accountability' (Grant and Keohane 2005), 'horizontal accountability' (Bovens 2007) or 'horizontal responsiveness' (Kuper, 2004, p. 103). While this is the form of accountability I emphasize here, there are of course several other sorts of accountability at work in world politics that are surveyed in Grant and Keohane (2005).

⁴⁸ Keohane and Nye 2002, pp. 239-40.

⁴⁹ Scott, 2002, p. 60.

⁵⁰ Kreps 1990. See further Sørensen and Torfing (2007).

⁵¹ Braithwaite and Drahos 2000. Castells 2000.

facilitate productive collaboration. Thus, as one UN report acknowledges, 'global policy networks have significantly influenced policy, shaped public opinion and helped to resolve disputes on such issues as debt, landmines, small arms, conflict diamonds, big dams and crimes against humanity...'⁵²

Networks link people and organizations who share common concerns and values. Mutuality is their hallmark. Each participant internalizes the perspective of the others. Naturally, differences of opinion still exist within any given network. Confident that they all share some important purposes in common, however, participants in networks are more likely to respect one another's opinions, to explore the bases of their differences and to make good-faith efforts to find common ground.⁵³

To a hard-bitten realist, all that may seem pretty airy-fairy. Such skepticism notwithstanding, that is precisely how networks do often work. Gunnar Myrdal was Executive Secretary of the United Nation's Economic Commission for Europe. That organization eventually gave rise to increasingly strong organizations – the European Economic Community, and thence the European Union itself. But in its early days, when Myrdal was its Executive Secretary, it was only a very loose intergovernmental organization, rather like the semi-formal networks I have just been discussing here. Here is how Myrdal describes it functioning:

[Once the] organization ... settles down to a tradition of work, ... the same state officials come together at regular intervals.... Certain substitutes for real political sanctions can then gradually be built up. They are all informal and frail. They assume a commonly shared appreciation of the general usefulness of earlier results reached, the similarly shared pride of, and solidarity towards, the 'club' of participants at the meetings, and

⁵² Cardoso 2004, p. 33, para. 51.

⁵³ March and Olsen, 1995: ch. 2.

a considerable influence of the civil servants on the home governments in the particular kind of questions dealt with in the organizations. Not upholding an agreement is something like a breach of etiquette in a club.⁵⁴

That is accountability of a sort. It worked in the medieval king's curia, after a fashion. It is working, after much the same fashion, internationally today, through networks within and between states, NGOs and IGOs.

Of course the accountability is imperfect.⁵⁵ NGOs and IGOs depend upon the support of states in myriad ways, making them less independent loci of accountability than ideally we would wish. But so too were medieval barons dependent upon the king for all sorts of things, at the same time as he depended on them for others.

Of course networks can pursue evil purposes as well as noble ones. Organized crime and terrorist cells work through networks of mutual accountability. And climate-change deniers find plenty of governments, NGOs and IGOs to bundle into an effective network of mutual accountability for their own nefarious purposes. But the same was historically true in the domestic case: the king's curia often constituted a conspiracy against the interests of the larger public lacking a seat in that chamber.

And of course, the agents and agencies to whom today's international actors are accountable might not (yet) be particularly democratic. But remember, the unreformed seventeenth-century Parliament to which the Bill of Rights made William and Mary accountable was not all that democratic, either.

The first step is to get the accountability regime in place. The second step is to democratize it. And there are indeed steps afoot to do just that in

⁵⁴ Myrdal 1955, 8, 20.

⁵⁵ Esmark 2007.

the UN and EU, both of whom enter in formal consultative relationships only with groups that themselves have democratic internal governance structures.⁵⁶

III. Dynamics of Democratization

If the analogies I have been suggesting are valid, democratization of the global community seems to be up to about where democratization of the domestic order was around the seventeenth century. So far, so reassuring. But what grounds have we for thinking the rest of the process will play itself out internationally in the same democratic way as it did domestically? Why think that we might end up with anything remotely resembling a Global Reform Act with one-person-one-vote worldwide?

I cannot pretend to predict particular paths – still less the pace – of global democratization with any precision.⁵⁷ What I can do is sketch a process that might push the system in that direction.⁵⁸ Here again, the processes I shall identify are modeled on the domestic analogy.⁵⁹ Once again, I shall be

⁵⁶ The UN Economic and Social Council (1996, § 12) establishes 'consultative relations' with non-governmental organizations only on this condition: 'The organization shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes.' See similarly the White Paper on *European Governance* of the European Union's Commission (2001, pp. 4, 16-17). The UN Panel of Eminent Persons, however, recommends 'removing those restrictions' so as to 'open the United Nations to vital contributions from other constituencies and increase their sense of ownership of global goals' (Cardoso 2004, p. 32, para. 41).

⁵⁷ We have only pretty sketchy outlines of available 'transition paths' toward democratization domestically (Linz and Stepan 1996, ch. 4). The pace of global democratization need not be as slow as it historically was, domestically, however: that the ideas are already well-established at some other level of governance might (or might not) make global democratization easier to bring about more quickly.

⁵⁸ I think of this more as a projection than either a prediction or, still less, a prescription (pleased though democrats should be if the projected outcome eventuates).

⁵⁹ Wary though we must always be of false analogies, extending the domestic to the international (Suganami 1989).

operating a couple degrees of abstraction above any particular historical experiences, hoping to identify some generic features of the democratization process as such.

Basically, the model I shall be offering is that of a 'slippery slope in one direction'. There are two particularly salient features of the process I shall be discussing:

- First, from time to time there emerges some crisis, to which expanding the range of people to whom power-holders are accountable is sometimes a solution.⁶⁰
- Second, accountability mostly only expands, it almost never contracts.

To illustrate, think of the history of expansions of the franchise. At first, the monarch was answerable to only a handful of barons. Over time, more and more people were drawn into that circle, and eventually universal adult suffrage was achieved. It was not achieved because of any great good will on the part of those already within the charmed circle. (Mill was quite wrong to expect that.⁶¹) There were just crises, from time to time, to which extending the vote to additional groups was a solution.⁶² And – here is the crucial point – once expanded, the franchise virtually never contracts.⁶³

⁶⁰ Acemoglu and Robinson (2000) offer empirical evidence, Meyerson (2008) an elegant formal model.

⁶¹ John Stuart Mill looked forward in October 1831 to a time when "the whole of the existing institutions of society are leveled with the ground". After the first reformed Parliament "the ground will be cleared", he wrote. *The Poor Man's Guardian* announced on 26 May: "We cannot think so ill of human nature as to think that those who will... have gained their own freedom will not aid us to gain ours." But as it turned out, 'Middle-class people, once given the vote, wanted to conserve institutions which they had formerly been inclined to attack. Most of the new voters wanted, not to challenge the aristocracy, but to win recognition from it: once they had their rightful position they did not favour further adventures' (Brock 1973, pp. 315, 319).

⁶² Wars and the need for support during them is a notable one: during World War I the German Emperor had to make his peace with trade unions and social democrats, on the grounds that 'in a castle under siege you have to see to it that everything inside it is harmonious'. Similarly, economic elites eventually come to see the benefits of giving the working classes the vote, 'institutionalizing class struggle' within the political realm and thus removing it from the economic (Lipset 1963).

⁶³ The usefulness of the franchise might contract, as for example when state power ekes out into the market under regimes of neoliberal economic reform.

Of course, we can think of exceptions.⁶⁴ Perhaps the most glaring was the way blacks in the American South won voting rights during Reconstruction, only to lose them again once the federal forces withdrew. But that is very much the exception that proves the rule. Historians of that episode are emphatic on that point, one going so far as to say:

No major social group in Western history, other than African Americans, ever entered the electorate of an established democracy and then was extruded by nominally democratic means⁶⁵..., forcing that group to start all over again. In Europe, Latin America and elsewhere, liberal democracies never sponsored disenfranchisement. Once previously excluded social groups came into any established system, they stayed in.⁶⁶

That may be overstating the point a little, but probably only a little.⁶⁷

Here is an analogy that might help in explicating the basic structure of the model I have in mind. Imagine a deep hole, such that once you fall into it you can never get out. People are not particularly drawn into the hole. They just pass by from time to time, and occasionally fall in. But since everyone passes the hole from time to time, and on some occasion or another eventually

⁶⁴ My focus here is narrowly on political rights, and more narrowly still (in this paragraph anyway) on voting rights. Thinking of rights more generally, there certainly has been a certain amount of ebb and flow over time: just think of the status of women's rights in Iran and Pakistan, for example.

⁶⁵ The French revolution enfranchised many people who were subsequently disenfranchised – but given the character of the new regime, that was not by even 'nominally democratic means'.

⁶⁶ Valelly 2004, pp. 1-2. See further: Therborn 1977; Freeman and Snidal 1982; Mackie and Rose 1991.

⁶⁷ There are other smaller-scale instances: for example, convicted felons are often disenfranchised sometimes for life, with racially differentiated consequences in the US (Western 2006); and commonwealth citizens resident in the UK enjoyed voting rights there until they were withdrawn by the Immigration Act of 1972.

falls in, and since no one can get out once they have fallen in, everyone eventually ends up in the hole.⁶⁸

Two things make that model work. The first is the risk of falling in; the second is the impossibility of getting out. Both are obviously necessary for the working of the model. The way I have set up this model, however, it is the second rather than the first that does most of the work.

I emphasize that point because models of democratization usually take the opposite tack. Their emphasis is more ordinarily upon factors that push institutions in democratic directions: having a strong middle class or a strong union movement or whatever.⁶⁹

I do not want to deny any of that. I want merely to ask, 'Just how strong do those forces need to be, in order for democratization eventually to be fully accomplished?' On the ordinary account, they need to be pretty strong and pretty persistent. On the model I am here suggesting, they can be pretty weak and pretty intermittent. All my model requires is that power-holders occasionally get themselves into jams, and that expanding the circle of accountability is one (perhaps among many) ways of getting themselves out of those jams.⁷⁰

My model can allow the pressures toward democratization to be just that weak, because on my model the 'stickiness' of democracy is strong. If democratization is basically a one-way process, and the circle of accountability only expands and almost never contracts, then institutions will over time become increasingly democratic even with only very weak pressures in that direction.

⁶⁸ This is a special case of Alastair MacIntyre's (1972) 'general theory of holes'. Claus Offe wryly replies, 'Of course elites will try to build a fence around it...' Try as they might, they will not always succeed; and all this model requires is that there be occasional gaps in the fence.

⁶⁹ Lipset 1960. Jackman 1972. Geddes 1999.

⁷⁰ War, xenophobia and repression are other ways, from time to time. I do not deny that they will sometimes be used, with brutal effect. I merely claim that they are not enduring and cumulative, in the way that democratic reforms tend to be.

So why should that be so? I would point to three mechanisms – one cultural, one psychological and one sociological – that work hand-in-glove to produce that result. The first mechanism is simply the cultural shift that comes simply from acknowledging each other as equals: once that has been done, it is virtually impossible to recreate the culture of a status-differentiated society of 'my station and its duties'.⁷¹ The psychological mechanism is 'loss aversion': people are invariably much more sensitive to the prospect of losing something they already have than they are to the prospect of gaining the same thing if they do not already have it.⁷² The supporting sociological mechanism is just this: it is hard to demobilize people after they have once been mobilized.⁷³ Those three mechanisms, working in tandem, are what make it so difficult to disenfranchise people after they have once won the franchise – and to roll back democratic accountability, more generally, after it has once been expanded.

I am talking here about dynamics within democratic systems of governance. My point is merely that those three mechanisms make it hard for a system that remains even 'nominally democratic' to reduce the range of people to whom power holders are democratically accountable. But of course there can be a breakdown of the democratic system altogether.⁷⁴ Though revolution or counterrevolution, invasion or coup, democratic institutions can be suspended and replaced with others (or in the case of 'failed states', with none). Clearly in those cases, the cumulative progress toward expanding democratic accountability unravels.⁷⁵

I do not suppose there is any predicting what the future might hold for catastrophically failed states, or even for ones suffering long periods of

⁷¹ Bradley 1876. Shklar 1991.

⁷² Kahneman and Tversky 1979; Tversky and Kahneman 1991.

⁷³ Tilly 1997. McAdam, Tarrow and Tilly 2001.

⁷⁴ Linz and Stepan 1978.

⁷⁵ Valelly (2004, p. 2) conceded that 'disenfranchisements certainly took place...when the type of regime changed', as happened several times in nineteenth century France.

foreign domination.⁷⁶ But let us focus on democracies that have less dramatic interruptions to their democratic development, such as military coups.

Clearly, with a coup, democracy takes a step backwards. Elections are suspended, democratic rights are abrogated. Notice, however, this crucial fact. When democracy is eventually restored after the coup, it tends to pick up where it left off. The country does not 'Return to Go' and start all over again on the long and tortuous route that had led it to the stage of democracy it enjoyed before the coup. Instead, the old constitution is simply restored holus bolus. Everyone who used to have voting rights gets them back again. The old constitution is typically restored, typically without further amendment. The same old rules apply once again, more generally. Democracy picks up where it left off.⁷⁷ And the same might be true even with more dramatic interruptions to democratic development.

Someone who knows more comparative political history than I do will doubtless come up with some counterexamples to that generalization.⁷⁸ The Basic Law of the Federal Republic of Germany is arguably less democratic than the Weimar constitution, for example, since Article 21 empowers the Constitutional Court to ban political parties for being anti-democratic.⁷⁹ Accordingly, I phrase my generalization in weasel-worded terms, saying the

⁷⁶ It took millenia to restore democracy in Athens.

⁷⁷ That is clearly the case where democracy is restored under the old constitution that the coup suspended. But it is also most typically the case in 'successor states' that are not official continuers of some previous one. This is certainly true at the level of basic policy structures, anyway: the same basic social insurance structure, for example, persisted in Germany from Bismarck through the Nazi period to the FRG and the DDR; Heidenheimer, Hecllo and Adams (1990, p. 231) rightly say this continuity 'remarkable... in light of the vast upheavals in twentieth-century Germany'.

⁷⁸ The generalization is only meant to apply to instances of indigenous, not externally-imposed, democratization. When a conqueror imposes democratic forms that have no domestic roots in the country upon which they are imposed, it is less uncommon for those forms to be repudiated when the conqueror departs. The post-Reconstruction history of the American South – blacks gaining the vote under Reconstruction but losing it again as soon as federal troops departed – is a case in point. Another is the racially-restricted franchise introduced as the Union of South Africa gained independence from Britain.

⁷⁹ Such is the argument of Allemann (1956), or so Claus Offe tells me.

circle of accountability 'almost never contracting'. But unless there are many more counterexamples than I realize, that looks pretty reliable as a 'stylized fact', at least as regards domestic politics.

How applicable is it at the international level? Again, I must leave it for others more specialist in the subject than I to say for sure. But I observe, for example, that the OECD has only ever expanded; it has never contracted. I note that the range of NGOs with official consultative status at ECOSOC has basically only expanded and never contracted (even though particular NGOs might of course lose that status if their character radically alters). The United Nations picked up pretty much where the League of Nations left off. And so on.

IV. First Find a State

Let me close with some reflections on a point of disanalogy between democratizing domestic institutions and international ones.

The thought is encapsulated in the phrase 'first find a state'. The thought is that, in order to democratize a state, you first have to have a state to democratize.⁸⁰ Before you can democratize central institutions of authority, you have to have some central institutions of authority. In the domestic case, we had them. In the international case, we do not – or anyway not yet.⁸¹ If we define democratization in terms of 'a transfer of sovereignty from the

⁸⁰ Linz and Stepan (1996, p. 17) for example say that 'without a state, no modern democracy is possible'.

⁸¹ All democracies are 'successor states', as is clear from the large literature on democratic transition and consolidation (Linz and Stepan 1996). Global democracy would have to be 'self-founding', which is something much harder. I am grateful to Claus Offe for this formulation.

prince to the people', then we need a prince possessed of sovereignty before he can transfer it to the people.⁸² Or so the thought might go.⁸³

Of course, as historians of state formation will immediately interject at this point, the central institutions of authority in the state were themselves awfully thin in the early period that is most analogous to today's international order. Maybe the king could claim a territory, but what the putative sovereign could do by way of ruling over it was in practice pretty circumscribed (to claim authority is one thing, to exercise it is quite another...).

It is perfectly true that no one even claims sovereignty over the whole globe, as yet. But that is not to say that there are no institutions, international in scope, which could be subject to a push for democratization. Obviously, there are many. These institutions exercise global authority in piecemeal fashion, functionally defined. But whoever said – whoever would think – that only central authorities with a perfectly general remit admit of being democratized? Notwithstanding its functionally delimited scope of authority, a school board can be made more democratically accountable (by, for example, making its members be popularly elected). So too the WTO: its authority is functionally delimited, but that constitutes no conceptual barrier to its exercising that authority in a more or less democratic fashion.⁸⁴ And so on down the list of functionally-delimited international power-holders.

⁸² Goodhart 2007, p. 574.

⁸³ Nage (2005, p. 146) puts this point particularly forcefully: 'Unjust and illegitimate regimes are the necessary precursors of ... progress toward legitimacy and democracy, because they create the centralized power that can then be contested, and perhaps turned in other directions without being destroyed. For this reason, I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global institutions of power that are tolerable to the interests of the most powerful current nation-states. Only in that way will institutions come into being that are worth taking over in the service of more democratic purposes, and only in that way will there be something concrete for the demand for legitimacy to go to work on.'

⁸⁴ Minimalist proposals for democratizing WTO include measures for greater transparency (restricting access to fewer documents, opening WTO meetings to the public, etc.) and to broaden the range of agenda-setters (by including new states, perhaps on a

Would democratizing the partial and piecemeal institutions of global governance amount to a contribution toward global democracy? Surely it would.

The only reason for doubting that that is so might be that we can easily fail to notice that two dimensions are in play here. First, political institutions can be strong or weak; second, they can be democratic or not. If we have some strong central authority, and we democratize it, we end up with a strong democratic institution. If we have only weak central authorities with limited remits, and democratize them, we end up with weak democratic institutions with limited powers. But the institutions are no less democratic for being weak in that way.⁸⁵

That leads to one final speculation, on which I shall close. Perhaps democratizing institutions paves the way for strengthening those institutions.⁸⁶ That was certainly the case with kings and parliaments. Maybe it will be so with global institutions. But that is a much larger story for another occasion.⁸⁷

rotating basis, in the group of Quad or in the work done in the Green Room). For such proposals, see: Krajewski 2001; Patomäki and Teivaninen 2004, pp. 83-4.

⁸⁵ Dahl and Tufte 1973.

⁸⁶ Having a robust 'global civil society' (the sorts of accountability networks discussed above) is a necessary but – *pace* some deliberative democrats (Gould 2004; Kuper 2004; Dryzek 2006; Bohman 2007) – not sufficient condition of robust global democracy. Ultimately, that will require more institutional structure.

⁸⁷ How to build global institutions, and to do so in a democratic fashion, is a large topic on which much has been written. Roughly speaking, the options seem to be these. First, you can rely on 'democratic politics from the outside' to hold international institutions that are not themselves internally democratic externally accountable to civil society (that is the NGO strategy of Transparency International et al.). Second, you can run Marshall (1949) in reverse: start with global welfare-state redistribution, which gives everyone reason to try to acquire civil and political rights to help shape its future of a regime in which they now have a stake. Third, you could start by democratizing supranational regional organizations and expand from there, either through a 'demonstration' effect or through expanding the catchment of the regional organizations. Fourth, you can try to expand the scope of nonpolitical, technical international policymaking, what Habermas calls 'global domestic policy making': policing (oceans, the drug market, protection of species, etc.) can be seen as a non-political matter to be left to technical experts; being initially perceived as non-political allows transference of these responsibilities to an expert community worldwide; but as these tasks subsequently become clearly politicized, that leads to demands for

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grater global democratic control of them. (I am grateful to Claus Offe for discussions mapping out this rough catalogue.) Obviously, all the classical work on state-building (Rose 1976; Tilly 1990; Rokkan 1999) is relevant here. But it is obviously, a much larger issue than can be properly canvassed here.

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