

BARGAINING SOVEREIGNTY: STATE POWER AND NETWORKED GOVERNANCE IN A GLOBALIZING WORLD

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In the 1990s, much of the burgeoning globalization literature suggested that the state was under siege and declining. Globalizing forces, it was said, undermined the state because such forces were beyond the control of any single political entity.¹ However, the one-two punch of 9/11 and serial economic crises across the developing world which lasted from 1998 to 2002 swiftly shifted that discourse. In terms of national defense and economic crisis management, the state not only remained unchallenged, but seemed both indispensable and more powerful than ever. In fact, the current global financial crisis, which began in late 2008, has enhanced the power of major industrialized states. Given these circumstances, now is an opportune moment to examine the changed nature of state power in an age of globalization. Are traditional ideas of sovereignty becoming irrelevant? Will the supposed decline of the state be accompanied by a correlated rise of sub-national and supranational institutions? In a world where states, communities, and people are becoming more interconnected and interdependent, even networked, what will become of sovereignty? Will authority be the more relevant construct when sovereignty has been diluted, delegated, disaggregated, networked, and even "sold?"² How will the loss of sovereignty affect those citizens who have ceded some of their personal sovereignty to a state? This study offers tentative answers to these questions, and suggests that a new networked form of global governance will allow the state to retain its central role in international relations.

All countries aspire to the traditional idea of sovereignty, that is, to either obtain domestic legitimacy and authority or to be recognized by the international community as equals among states, or both. Yet in many instances long-existing and newly created states have delegated authority and sovereignty to supranational transnational global governance institutions (e.g., France, Germany, and Italy and their relationship to the EU is representative of the former; Kosovo and East Timor are examples of the latter). Some states (e.g., Afghanistan and Iraq) have seen their sovereignty forcibly violated or removed entirely by military means, while others (e.g., Indonesia), though not physically coerced to recognize external authority, realistically have had no choice. Other states have effectively diluted or degraded their sovereignty and authority by using it, in effect, as a tradable resource (e.g., Lichtenstein's offshore banking operations, developing countries which trade votes in international organizations in exchange for aid, and Central American and African states

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that have recognized Taiwan in exchange for aid). In an ironic twist, some states are selling off rights granted by their sovereign status, if not outright selling their sovereignty itself. The irony is that, just as these states have made some headway in terms of asserting their independence and sovereignty, they are auctioning it to the highest bidder. Many micro-states, which are vulnerable to natural disasters and global economic shocks, and have limited resources, are selling their country-code top-level domain names (CCTLDN) of the World Wide Web to multinational advertising agencies. By doing so, they willingly relinquish much of the control that they would otherwise exercise over Internet functions within their borders. To be sure, this allows those governments to raise money, but at the same time it dilutes state sovereignty. This situation is similar to celebrities who endorse too many products; if someone sells the rights to their image to too many different entities, they ultimately may lose control over their own image or their endorsements. By flooding a market with so many endorsements, the overall value of any particular celebrity as an endorser becomes tainted or diluted. It is no different with states. Micro-states, such as the Cayman Islands, the Turk and Caicos Islands, and Bermuda, are selling-out their sovereignty by establishing unregulated financial centers that appear to be ultimately designed to attract organized crime, terrorists, and others needing to launder money.³ This gradually decreases and dilutes at least one key aspect of sovereignty, namely, the effective population control policies of these states. This, in turn, increases their perceived lack of authority and control.

State sovereignty is generally considered as the right to rule, involving an inherent independence from external authority and implying the legitimate authority to govern. Sovereignty has always been a contingent idea, a notion that is dynamic and socially constructed. In today's thickening globalization, not only are trade and culture increasingly globalized, but so, too, are criminal and terrorist activities. To combat such problems, the world community looks to networks of global governance to address issues of global importance. In the process, the idea and constructed realities of sovereignty are changing.

In today's world, there are several definitions of sovereignty: domestic sovereignty, international legal sovereignty, Westphalian sovereignty, and interdependent sovereignty. Domestic sovereignty refers to the legitimate authority within a state. One common definition of international legal sovereignty is mutual state recognition that entitles states juridical status in international relations. Some states have internationally recognized sovereignty on a juridical basis but lack the economic or military might to enforce this empirically. In contrast to juridical sovereignty, there is the traditional idea of Westphalian sovereignty, which refers to the exclusion of all external authority, enforced empirically by economic or military strength. In an international context this is the form of sovereignty that most people are familiar with. It is based on the principle of non-intervention concerning domestic state matters or governmental structure. Interdependent sovereignty revolves around the flow of goods and ideas across territorial borders. Westphalian sovereignty and international legal sovereignty, according to international relations scholar Stephen D. Krasner, focus on authority, not control; interdependent sovereignty is more concerned with control, and domestic sovereignty is concerned with both.⁴ International legal sovereignty, then, is but a formal legal distinction, though without it states have a difficult, but not impossible, time as actors in the international arena.

None of these conceptualizations of sovereignty are mutually dependent on the others. States can have Westphalian sovereignty but exercise little domestic control. States can be recognized by the international community but have neither domestic, interdependent nor

Westphalian sovereignty (e.g., Somalia has international recognition but no control over its borders or its people, or power to prevent external influences from intervening in its affairs). States can have domestic authority and control over borders as well as within a political community but have neither Westphalian sovereignty nor international recognition.⁵

Is having absolute sovereignty in all respects the best possible stance? North Korea is one of the most, if not the most, sovereign states in terms of all aspects of the concept of sovereignty. It has international recognition as a state, exercises complete control over its citizens, holds near absolute control over the flow of information and goods across its borders, and completely and vehemently rejects any external authority. The UN sanctioned North Korea in 2006 and 2009 for disavowing nuclear non-proliferation treaties and for testing ballistic missiles and nuclear weapons, yet North Korea has shown nothing but contempt toward these sanctions. Pyongyang's complete rejection of external authority has had clear costs, however, as it possesses one of the world's weakest economies and is constantly in need of food from South Korea and China.⁶ At the other extreme, Taiwan is recognized as a state by only a few Central American and West African countries, yet it exercises all the sovereign and economic power of its universally recognized East Asian neighbors.⁷

Though absolute sovereignty and control might appear to be a desirable condition for states, there are clear repercussions for those that refuse to comply with accepted international institutions that can make participation in the international system problematic at best. In contrast to the example of North Korea, most liberal Western democracies have comparatively little control over the flow of goods, legal or illegal. If this were not the case, there would be no illegal drug problem in Western societies. But by definition interdependent sovereignty is a shared sovereignty. The United States could not control its borders to the extent that it does without cooperation from Canada and Mexico. The same holds true for isolated states such as North Korea. Major and middle powers like China, Russia, and South Korea all share this burden.

Several international relations scholars have identified various challenges to state power in the age of globalization. Susan Strange, a leading scholar in international political economy, has called attention to the constant tug of war between markets and political authorities, and the gaps between territorially-centered states and lack of inter-governmental cooperation. She asserts that the technological and financial changes that have "accelerated integration of national economies into one single global market" have reduced the capacity of the state as non-state actors (e.g., big business and organized crime) have whittled away state authority.⁸ Sociologist Saskia Sassen has examined the ongoing reorganization of capital in developed countries that has produced a new system of labor management uncontrolled by the state.⁹ Anthony Giddens, the British sociologist known for his theory of structuration of society, maintains that while globalizing forces create massive opportunities for economic development, the process of globalization affects the whole world and can upend individual lives instantaneously.¹⁰ Fellow sociologists John Boli and George Thomas have highlighted the role of nongovernmental organizations (NGOs) in erecting a new form of global polity, involving global institutions and values such as individualism, rationality, and progress.¹¹

This is what sovereignty has become today, but it has been held to mean different concepts to different people at different times. In the emerging world of global governance, how does the shifting nature of sovereignty affect individuals? If sovereignty and authority have been aggregated into states by the consent of the governed, how will those governed by global means address policy issues and resolve disputes? One of the hallmarks

of democratic self-rule is the right of a country's citizens to challenge laws and regulations and the bodies that establish them in an open process. If citizens' personal sovereignty is delegated, they may feel compelled to challenge any laws and regulations that are made through such delegated authority. The response to the current 'Great Recession' will likely provide some answers to these questions.

To understand how the notion of sovereignty may develop in the future, it is important to consider the ways that governance is evolving. Political theorist James D. Rosenau argues that state authority is in decline due to the "framgregation" of authority. Authority, he declares, is disaggregating and migrating upwards toward international and transnational organizations, sideways toward national organizations, and downwards toward local governments and organizations, even to "networked individuals other than public officials [who] serve as new nodes of authority." He further writes that, due to the death of time and distance caused by modern technologies, old spheres of authority are being fragmented and integrated into new ones, or as he puts it, "a messy disaggregating world of framegrative processes sustained by both globalizing and localizing forces." This disaggregation, according to Rosenau, began at the end of the Cold War and the explosion of new technologies, such as cell phones and the Internet, that allow "person-to-person, person-to-many, and many-to-many communication."¹² While he does not believe that this will lead to the demise of the traditional idea of the state, Rosenau concludes that it will mean that state structures and processes will face transformation and diminution.¹³ This, in effect, blurs the demarcation between domestic and international global policy and the lessening of state sovereignty.

Sassen sees a similar disaggregation where authority over monetary, economic or rights policies of a state is given to new entities that have more of a global, as opposed to a national agenda that use historically national structures and jurisdictional means to regulate global policies in new cross-border assemblages of territory, authority, and rights (TAR).¹⁴ She notes the expanding number of cross-border assemblages of TAR that are contrary to the traditional national versus global dichotomy.¹⁵ Territory, according to Sassen, is not merely based on traditional ideas of borders, and authority is not exclusively exercised by a state, nor rights given by state decisions. The notion of TAR is based on common financial, economic or human rights interests. Sassen believes that these assemblages have developed because of institutions and the regulators from, for example, the World Trade Organization (WTO) and the International Monetary Fund (IMF), where "components of the national rule of law that once served to build the strength of the national state are today contributing to the formation of transnational jurisdictions."¹⁶ Interestingly, Sassen does not view such institutions as a new order, but rather as an instrument to that end.¹⁷ Like Rosenau, Sassen does not believe this will lead to the disappearance of the state as a major player in global affairs, but rather as "the site for key transformations, the state will itself be a profoundly changed entity."¹⁸

Many international relations scholars favor the development of multi-layered governance networks comprised of a partnership among state, regional, and global *levels* of actors, and between state, intergovernmental, and nongovernmental *categories* of actors.¹⁹ Whereas Rosenau sees state authority disaggregating upwards toward supranational bodies and downwards toward sub-national institutions, Anne-Marie Slaughter, the current director of policy planning at the U.S. State Department, describes the sideways disaggregation of "component governmental institutions" in which they act "quasi-autonomously" with their foreign counterparts, in what she defines as "positive sovereignty."²⁰

Slaughter argues that in the international system, component government institutions, regulatory agencies, ministries, courts, and legislatures already function in a network fashion.²¹ For example, the G-20, the International Organization of Securities Commissioners (IOSC), and the International Association of Insurance Supervisors (IAIS) work as a joint network through the Financial Stability Forum, wherein “bankruptcy judges in different countries negotiate mini-treaties to resolve complicated international cases.”²² In showing how networked governance has been achieved, she points out that “national parliamentarians are meeting to adopt and publicize common positions on the death penalty, human rights and environmental issues.”²³ In order for this to be a more effective networking of governance, however, legislative, executive, and judicial sovereignty must be preserved. Slaughter asks, “[w]hy shouldn’t each of these institutions exercise a measure of sovereignty—sovereignty specifically designed and tailored to their functions and capabilities?”²⁴ To the extent that a state is willing and able to engage with other governments and regional governance institutions, the depth and breadth of a state’s connections to an international network of institutions would determine that state’s ability to influence the international system, and, ultimately, its sovereignty, or a networked sovereignty.²⁵ This “new sovereignty” would imply status, membership, and connection to the rest of the world and the political ability to act in it.²⁶

Richard Kirkham, a professor of philosophy, and Paul James Cardwell, a legal expert, who also argue in favor of a networked society, believe that in the current climate of thickening interdependence the contingent realities and needs of states are changing as crime, terrorism, and environmental degradation have grown beyond a single state’s ability to control these problems within its own borders.²⁷ This has led to an increase in the number of transnational institutions dedicated to addressing issues that concern individual states but are regional or global in scope. In institutions of regional economic integration, some delegation of sovereignty is granted to a specific body representing the interests of all member states. The North American Free Trade Agreement (NAFTA), the North Atlantic Treaty Organization (NATO), the European Union (EU), the Andean Community (AC), and the Caribbean Community (CC) are some of the more prominent examples of such institutions. Each of these transnational organizations is inter-state in nature, and, in some cases, decisions or resolutions have to be ratified by member states’ legislators. A few, such as the EU and the AC, are supranational in their scope, and sovereignty is diluted because their acts and decisions have “direct applicability” to member states. For example, in the AC all decisions of the Council of Ministers, the Commissioner, or resolutions issued by the General Secretariat automatically become directly applicable to member states without having to be approved by national legislatures.²⁸ International relations scholars often suggest that these regional transnational governance institutions, acting in concert with other states, will become nodes in a network of global governance, and this will directly affect how future sovereignty will be defined or perceived.²⁹

Two issues in 2008-2009 have demonstrated effectively the extent to which some domestic issues no longer can be addressed by domestic policy alone: the global economic crisis and the outbreak of the H1N1 swine flu virus. The current financial crisis has shown definitively how most states have become actors in the international economic system and that decisions by a few economic actors can affect the entire global economy. In arguing for global financial governance and avoidance of stimulus spending, French President Nicolas Sarkozy stated that there is a strong need for an unspecified “global regulator” of financial markets. This would impinge on traditional domestic sovereignty,

but Sarkozy believes that this may be required in a more deeply connected world.³⁰ Sarkozy's remarks were not taken seriously by either the United States or Great Britain, as shown by U.S. Treasury Secretary Timothy Geithner's response. However, the London G-20 Summit gave the IMF three times more money than it had requested.³¹ This illustrates the importance of an international financial institution which previously had been criticized as the chief cause of many of the developing world's economic problems. The key question now is how will the IMF use the resources it has been given to combat the economic crisis?

The H1N1 flu virus is another example of how the world community has become increasingly interconnected. The virus spread to many countries and most continents within a few weeks, even to relatively isolated places such as Australia. The problem has been addressed by the World Health Organization (WHO) in a networked fashion with individual countries and regional organizations working together to fight the spread of the virus. This illustrates how domestic and international policies are becoming one and the same.³²

Even as states cooperate in networks, they use transnational institutions to gain international recognition. This is particularly true for new states such as Kosovo or East Timor, which seek UN membership, and established states such as Serbia, which desire membership in regional groupings such as the EU. In a sense, having sovereignty is no longer enough for these states; sovereignty must be gained from participation in key international organizations. This process has been accelerated by the "thicker" layers of international and supranational organizations created in the post-World War II era. Working with other states also increases freedom of action by heads of state. Examining regional transnational institutions in Africa, Fredrick Soderbaum, a global studies scholar and a Research Fellow in the Comparative Regional Integration Studies program at the UN University in Belgium, observes that many post-colonial states in Africa, obsessed with the idea of Westphalian or absolute sovereignty, use regional institutions "to boost the official status and sovereignty of their governments."³³ Since many African states are considered weak, giving them at least the illusion of absolute sovereignty and protection from external intervention strengthens their standing at home and, by extension, their ability to remain in power. Joining regional transnational governance institutions, even if, in reality, they are nothing more than glorified interest groups, lends credence to their governments as actors on the international stage. Thus, the idea of a networked sovereignty is a perceptual image meant to be projected onto a country's citizens, enforcing the idea of sovereignty by the scope of their international connections -- the more institutions/networks that recognize these leaders, the more authority they are deemed to have, and the more power they gain domestically.³⁴

Several concerns have been voiced by observers of the rise of global governance. How do those governed have access or address the institutions that are setting the agenda and creating policy? Moreover, how can aggrieved parties seek justice, and how can they be deemed legitimate? International relations specialist Angela Crack argues that new abilities in global communication and the increase in social networking sites can produce networks based on communication.³⁵ This would allow local activist groups to deal directly with global governance institutions and link with other national and foreign activist groups to form networks that have the ability to address global governance issues.³⁶ NGOs can also play an important role in global governance; they have been granted observer status at the UN and have standing in human rights courts to act on behalf of those whose rights may have been violated.³⁷ Some argue that NGOs are the appropriate

institutions to negotiate social contracts between transnational institutions and those citizens affected by their decisions.³⁸ Such arguments favoring NGO intermediation may be bolstered by the ongoing debate over the “democratic deficit” in the EU.³⁹

Dispute resolution in international relations has historically been inter-state in nature, but in reality a state’s governing capacity is only somewhat diminished. Robert Keohane, Andrew Moravcsik, and Anne-Marie Slaughter contend that transnational dispute resolution institutions and models generally offer individuals greater access to courts and tribunals. Interstate dispute resolution models show that enforcement of rules and practices in interstate relations and public international law occurs between states as unitary actors (i.e., actors synonymous with a state or single organization), but ultimately states have control of the legal process or act as the gatekeepers of access.⁴⁰ Is having complete sovereignty in all respects the best possible position? In transnational dispute resolution models, “access to courts and tribunals and subsequent enforcement are legally insulated” from government control, with the ideal situation being that states lose their gatekeeper status, but in reality it is only attenuated. Restraining states’ gatekeeper status would allow individuals and groups greater access to transnational tribunals. In the ideal type of transnational dispute resolution models, adjudication, agenda setting, and enforcement are substantially independent from national government influence and, therefore, are better suited to meet the needs of individuals or groups than traditional interstate dispute resolution in which all factors are controlled by the state.⁴¹

The problem of legitimacy of global governance institutions or networks is a serious concern. Without a conferred legitimacy, which is actually nothing more than a perception of reality, governance institutions will find it difficult to retain any authority (i.e., the right and power of a government to enforce its decisions and compel obedience). Transnational global governance institutions cover a diversity of multilateral entities, including the WTO, IMF, various environmental institutions (i.e., the climate change regime built around the Kyoto Protocol), judges’ and regulators’ networks, the UN Security Council, and the new International Criminal Court (ICC). Though they are not government institutions in the state sense, these organizations issue rules, impose penalties for non-compliance, and “claim the authority to do so.”⁴² Despite exercising powers and asserting such a claim, each of these organizations face major questions about their legitimacy (The EU and AC are supranational governance institutions that confront similar problems.). If states are expected to delegate some sovereignty – and, by extension, authority – to these institutions, there are several obstacles that need to be overcome. Allen Buchanan and Robert Keohane offer their ‘complex standard of legitimacy’ as a partial solution to overcoming obstacles to promoting global governance institutions.

The term ‘complex standard’ partly involves considerations of moral disagreement and uncertainty. Buchanan and Keohane state that there is not only a great deal of moral disagreement about the proper goals of an institution, what global justice requires, and what role an institution should play in seeking global justice, but there is also moral uncertainty about how the division of labor for international justice should be allocated.⁴³ Determining whether legitimacy can help achieve coordinated support among members of global governance institutions can be difficult. One must ask on what basis is that legitimacy conferred? As a social function, is it on a moral basis or is it more self-interest that applies? According to Buchanan and Keohane, transnational global governance institutions are valuable because “[t]hey can reduce transaction cost, create opportunities for states and other actors to demonstrate credibility, thereby overcoming commitment prob-

lems, and provide public goods, including rule-based, peaceful resolutions of conflicts."⁴⁴ A global governance institution can accomplish this if the states that its rules address consider those rules binding and whether others within the "domain of operation" at the very least do not interfere with its functioning. This involves a "higher-order coordination."⁴⁵ Once a global governance institution has been established, and assuming that it achieves coordination or other utility that, at minimum, the most powerful actors believe to be valuable, support is simply a matter of self-interest.⁴⁶ But this legitimacy may not be viewed as optimal or fully just by some actors. Consequently, there is a "need [for] a standard of legitimacy that is both accessible from a diversity of moral standpoints and less demanding than a standard of justice."⁴⁷ Buchanan and Keohane write that for an institution to be perceived as legitimate by its members, it requires that "...legitimacy, understood as the right to rule, is a moral condition that cannot be reduced to rational self-interest."⁴⁸ To say that an institution is legitimate implies that it has the right to rule even if it does not act in accordance with the rational self-interest of everyone subject to its rule.⁴⁹ Though there is much disagreement about the moral design of a global governance institution, there must be sufficient agreement on the types of moral considerations that are relevant for evaluation.⁵⁰ Still, judging legitimacy is a complex problem. "[Global governance institutions] can be worthy of our support even if they do not maximally serve our interests and even if they do not measure up to our highest moral standards," and must be conferred by more than just mutual benefit that implies "content-independent" reasons for compliance.⁵¹

Buchanan and Keohane offer three possible standards for legitimacy, and argue that while all are necessary to achieve legitimacy, none of them alone is sufficient. State consent, or the 'International Pedigree View,' is insufficient though necessary for achieving legitimacy because it includes all states, not just those that are democratic. Because many states are non-democratic, do not show any respect toward human rights, and are themselves illegitimate, state consent in and of itself fails to render a global governance institution legitimate. Buchanan and Keohane further note that while consent of democratic states is a necessary and more plausible and appropriate measure of legitimacy, it, too, is insufficient. One problem is the concept of bureaucratic discretion that blurs the chain of accountability (or chain of delegation) concerning domestic policy in democratic states; this problem is only exacerbated at the global level. Another problem is that weak democratic states' "voluntary" participation in institutions of global governance, such as the WTO, is hardly voluntary since those states would suffer serious economic consequences by not participating. In conceding that not all democratic states respect human rights, Buchanan and Keohane allow that a "*strong presumption*" of legitimacy could be conferred by the consent of rights-respecting democratic states, and that ongoing consent comprises the "*democratic channel* of accountability."⁵²

Global democracy is the last competing standard. Though the "Global Democracy View" of establishing legitimacy relies on the premise that since global governance institutions affect the welfare of people everywhere, there needs to be a process whereby all peoples affected by these institutions have some say in their operations. At present, global, social, and political conditions are not conducive to global democracy, and the global political community does not recognize a common domain and is far from achieving a consensus on a framework in which to deliberate a common global interest.⁵³ The EU has partially overcome this problem with each member state electing its representatives to the EU Parliament, though turnout in such elections has been chronically low.⁵⁴

Buchanan and Keohane offer what they describe as “plausible presumptive substantive requirements” for a global governance institution to be considered legitimate: minimal moral accountability, comparative benefit, and integrity.⁵⁵ Minimal moral acceptability is based on what the authors define as the least amount of injustice an institution is allowed to commit, based on not violating the “least controversial human rights.” This includes “the rights to physical security, to liberty (understood as at least encompassing freedom from slavery, servitude, and forced occupations), and the right to subsistence.”⁵⁶ Admitting the difficulty in defining “minimum moral acceptability,” Buchanan and Keohane appear to be saying that this is the minimum amount of human rights abuses liberal societies will tolerate, balanced with the maximum amount of basic human rights that the most repressive countries will permit.

The second criterion for “plausible presumptive substantive requirements” of legitimacy is comparative benefit. The use of the word ‘comparative’ makes this concept relatively straightforward. According to Buchanan and Keohane, “[t]he legitimacy of an institution is called into question if there is an institutional alternative, providing significantly greater benefits, that is feasible, accessible without excessive transition costs, and meets the minimal moral obligation.”⁵⁷ In this case, legitimacy is not to be confused with optimal performance, but if the institution consistently operates at a sub-optimal level, it would imply ineptness or lack of commitment to offering the benefit(s) that the institution was established to provide. This could erode its legitimacy.⁵⁸

The last criterion for “plausible presumptive substantive requirements” is institutional integrity. Institutions should not serve as window dressing or an enabler of corruption through a lack of institutional integrity. Buchanan and Keohane cite the IMF and WTO to show that if the policies and procedures of an institution undermine goals, the theoretical justification for its establishment is not justified by its real actions.⁵⁹ Failure to incorporate an integrity standard leads to the assumption “that institutional agents are either untrustworthy or grossly incompetent [,and thus] unlikely to be effective in providing goods that would give it a claim to our support.”⁶⁰

Broad transparency and narrow accountability are two important aspects that confer legitimacy. Accountability, Buchanan and Keohane declare, should contain three elements to attain at least a “narrow accountability”: accountability standards, availability of information to the accountability holders, and the ability of these accountability holders to impose sanctions. This does not imply that those institutions lacking accountability are illegitimate or can be made legitimate by imposing accountability, but Buchanan and Keohane believe that the problem is that “existing patterns of accountability are morally inadequate.”⁶¹ To confer legitimacy, accountability must be of the right sort: “there must be effective provision in the structure of the institution to hold the institutional agents accountable for acting in ways that ensure the minimal moral acceptability and comparative benefit conditions.”⁶² Thus, the terms of accountability cannot be known without first knowing what role, if any, an institution should play in pursuing global justice.

Transparency, defined as “the availability of accurate information about how the institution works,” is insufficient for narrow accountability.⁶³ For transparency to serve narrow accountability, the available information must be accessible at a reasonable cost, properly integrated and interpreted, and directed toward accountability holders who must be sufficiently motivated to use it properly when evaluating the performance of relative institutional agents.⁶⁴ Another aspect of broad transparency is that information produced for accountability holders may be “appropriated by external agents of the institution,” like

NGOs, which can use this information to justify more fundamental criticisms of its processes, structure, goals, and pursuit of global justice. Here Keohane and Buchanan discuss what they describe as "responsibility for public justification," which requires public justification of an institution's more controversial and consequential policies to ensure that its justifications are cogent, consistent with current terms of accountability, and whether those justifications require a revision of responsibilities for an institution. "[B]road transparency," Buchanan and Keohane claim, "can serve as a proxy for satisfaction of minimal moral acceptability, comparative benefit and integrity criteria."⁶⁵

Even if international institutions are deemed legitimate, is a new networked sovereignty compatible with constitutional democracy? If in liberal democratic states the people delegate some of their personal sovereignty to a national government, can the state, in turn, delegate that sovereignty and authority to an institution that is not constitutionally sanctioned? Some American observers argue that this is unacceptable, while others maintain that it could be compatible with the U.S. Constitution. Political scientist Jeremy Rabkin contends that "because the United States is fully sovereign, it can determine for itself what its Constitution will require. And the Constitution necessarily requires that sovereignty be safeguarded so that the Constitution itself can be secure."⁶⁶ If the United States can "determine for itself what its Constitution will require," then that governing document can be interpreted to allow for external authority over domestic policy. Some civil liberties organizations and academics believe that Congress's delegation of authority to the executive branch concerning the Emergency Economic Stabilization Act of 2008, which was meant to address the current economic crisis, is unconstitutional.⁶⁷ It was put together by the Treasury Department and submitted to Congress, which quickly passed it and sent it to the president. But there is nothing in the Constitution that specifically requires that such legislation should be written by Congress. Questions of constitutionality arise whenever authority may be delegated to a supranational transnational institution. However, since regulating international trade falls under the jurisdiction of Congress, it can delegate some of its authority to whichever institution it chooses. If Congress has the vested power to legislate, it does not matter who *writes* the legislation as long as Congress votes on the issues, the president signs the bill, and it becomes law.

Another argument put forth by those who advocate 'American exceptionalism' is that the United States should be able to pick and choose the institutions and authority that it will recognize.⁶⁸ This suggests that exceptionalists would not forswear all international engagements, but the decisions of the U.S. government should take precedence over those of transnational institutions, and that American institutions should not become a part of governance networks. Ratified treaties become part of the law of the land, but, according to American jurisprudence, legislation may take precedence if it is "latest in time." Part of the problem is the fear that participation in global governance institutions could result in a kind of "bait and switch," and the scope and reach of these institutions may challenge American interests in the future.⁶⁹ In other words, what appears benign in the general form of an international agreement could emerge as a threat to sovereignty once its specifics become clear. This could produce further tensions between supporters of the U.S. Constitution and advocates of global governance and sovereignty.

The application of international law may help resolve the American case. Allen Buchanan and Russell Powell, both professors of philosophy, have examined the congruence of global governance, which they call Robust International Law (RIL), and constitutionalism. On the surface, they see no problem with the compatibility of constitutionalism

and international law per se, but they point out that this depends on how a constitution is structured.⁷⁰ Partly because of similar commitments to human rights and the betterment of all peoples, the values generally contained in either RIL or constitutionalism are compatible. To be sure, the authors admit that in terms of federalist constitutional structures, RIL and constitutionalism might be in conflict.⁷¹ Part of the problem, Buchanan and Powell declare, is that neither compatibilists nor incompatibilists have conclusive or complete arguments.⁷² The compatibilists fail to address the constitutional changes that may be required to accommodate RIL or the reduction of self-determination the incompatibilists fear.⁷³ Those who argue against the compatibility of constitutional democracy and RIL have failed to show that *any* reduction of self-determination or structural changes to the constitution are, by definition, detrimental to constitutional democracy.⁷⁴

Buchanan and Powell list five reasons that explain why incompatibilists believe RIL and constitutional democracy, specifically in the form of the U.S. Constitution, are not compatible. Their concerns mainly focus on encroachment upon democracy in terms of self-determination, as well as their perception of RIL as a threat to the system of checks and balances and shared authority established under the U.S. Constitution. Incompatibilists, Buchanan and Powell write, believe that accepting RIL is a threat to constitutional authority to create law. Furthermore, incompatibilists maintain that elites, who actually control these institutions, are not accountable to the governed. Thus, ironically, incompatibilists maintain that the chief threat to American sovereignty stems from the U.S. Constitution's structure for creating law.⁷⁵

Article VI of the U.S. Constitution explicitly states that treaty law is equal to legislation enacted by the national government.⁷⁶ Treaties are negotiated by the president and the Senate's advice and consent is required for their adoption. This implies that any global governance institutions to which the United States is party by treaty have legitimacy and authority over areas specifically stipulated in those treaties. The problem would occur when supranational institutions adopt new laws or regulations that would have direct applicability to U.S. federal and state law. Interstate institutions established under international treaties are static in nature, that is, they do not establish new regulations or laws. Rules handed down from supranational institutions would have direct applicability or a direct effect on domestic law. Under these circumstances, the legislative and executive branches of government would be bypassed in the making of federal law in violation of the process set forth in the U.S. Constitution. Interestingly, Buchanan and Powell do not address this issue. In the case of the increasingly supranational EU, the institution which has the most power, makes the most decisions, and possesses the most voting and veto rights is the Council of Ministers, comprised of representatives of member states. Since Council members are selected by the governments of member states, one can argue that this decreases the "democratic deficit" of supranational institutions like the EU. In fact, close scrutiny of the EU reveals that it has continuously sought to reduce the "democratic deficit" to enhance its legitimacy. On the one hand, it is a supranational institution to which member states have granted a measure of decision-making power (e.g., decisions of the EU Court of Justice are supreme over national and local court decisions). On the other hand, the actual power of the EU lies in its Council of Ministers, which consists of representatives chosen by their respective national legislatures who deliberate on issues of concern to the organization. Thus, one can argue that ultimate power in the EU is retained by the member states.⁷⁷

With the rise of transnational global governance institutions that are supranational in scope, is it more appropriate to study authority or control rather than sovereignty? Krasner

believes that authority is more relevant. He maintains that the numerous violations of domestic and Westphalian sovereignty make authority the more relevant concept.⁷⁸ Fellow international relations scholar Mark Beeson agrees with Krasner. In examining the exercise of authority during the post-colonial period in Southeast Asia, Beeson finds that as states in the region tried to consolidate political and economic authority through the end of the Cold War, their security was usually dependent on outside actors in the international community.⁷⁹ The legitimacy of these governments, particularly Indonesia and the Philippines, has been questioned since they "have a compromised and dependent form of sovereignty at best [through which] they have been unable to act independently or resolve regional security issues definitively."⁸⁰

Economically, it is no different. To illustrate his point of how little control some of these states have, Beeson describes the image of former IMF Director Michel Camdessus "standing, arms-folded, over Indonesia's former President Suharto as he signed up for an IMF bail-out package" in 1998. This image captured the realities of Southeast Asia's situation during that financial crisis, and showed that, for much of the region, economic independence and autonomy amounted to a myth.⁸¹ According to Beeson, this could eventually apply to all states, and that "given the transnational forces that constrain the power of all states," the study of "authority provides a more useful and illuminating framework within which to consider the relative power" of states.⁸² He concludes that "we need not look at sovereignty, but at which actors have the power to make authoritative decisions, both internationally and domestically."⁸³ State sovereignty, however, is more than control over a specific policy issue. States would still maintain their overall control, that is, whether to recognize and accept outside authority or be a party to a global governance institution.

What of the countries that choose not to be a part of a network of global governance and not have their sovereignty defined by their network connections? In other words, will the increase in globalization and global governance weaken the modern state? Krasner observes that states have faced similar threats to their sovereignty in the past and survived. He sees no reason to believe that this will change: "Transnational activities have challenged state control in some areas, but these challenges are not manifestly more problematic than in the past."⁸⁴ This will probably hold true for economically strong states. For weaker states, Rosenau's argument regarding "fragmegration" appears to apply. States that need access to external markets or resources, have security concerns, and have already delegated or diluted their sovereignty may have no choice in accepting outside authority. Unless they can find a way to become economically independent, or a pariah state like North Korea, their sovereignty might only be diluted further.

Will anything change with a new construction of sovereignty? In general, this seems unlikely. The current constructs of sovereignty—domestic, Westphalian, interdependent, and international legal sovereignty—have all been violated by the international community so that their construction and use may be considered to be a form of what Krasner calls 'organized hypocrisy.' Krasner uses this term to describe how many powerful states often treat various concepts of sovereignty, as applied to weaker states, as mere constructs that can be defined and applied subject to their own national interests, not those of weaker states.⁸⁵ International legal sovereignty, probably the most benign but important construct of sovereignty, is generally conferred upon entities that have territorial boundaries and formal juridical autonomy, that is, usually upon states.⁸⁶ However, entities that lack any territory or juridical autonomy (e.g., the Order of Malta) or territories that are not independent countries (e.g., Hong Kong or the Palestinian Authority) have been recog-

nized as actors in the international arena.⁸⁷ Even without international legal sovereignty or recognition, an entity can still function as an independent state. For example, Taiwan enjoys special status among states; it is not recognized as a state by most other states, but it is allowed to enter into some interstate and international agreements (at least when the People's Republic of China does not block Taiwanese membership, and when the island state is referred to as "Chinese Taipei," not Taiwan). The recent wars in Afghanistan and Iraq are only the two most recent examples in which most of the aforementioned conceptions of sovereignty have been deeply violated, except for both countries' international legal sovereignty. History is replete with examples of intervention by one state into another state's affairs. All of the different constructions of sovereignty have been violated without regard to the wishes of the violated, save for those states that can withstand or repel challenges to their sovereignty. Since sovereignty has always involved a practice of 'organized hypocrisy,' it can still be said that the more things change, the more they stay the same. Even so, the recent discourse on the international community's "responsibility to protect" in response to ethnic conflicts in Bosnia, Kosovo, and Darfur shows that the concept of intervention and sovereignty is changing as has the whole existence of humanitarian international law and international criminal courts.

Globalization has also challenged the nature of the post-Cold War state. Benjamin Barber, a senior fellow at Demos, president and director of CivWorld, and professor emeritus of political science at Rutgers University, states that the forces of nationalist or tribal identity (Jihad) and the globalized world economy based on control of technology, the environment, communication, and commerce (McWorld) operate against each other. While the former is driven by parochial hatred and disintegrating tribal groups within a state, the latter has made state borders more porous through trade. Globalization's ever-expanding market erodes national sovereignty and leads to increased power in the hands of transnational organizations such as multinational corporations and international banks, which often function beyond the regulatory power of an individual state. This new world, Barber observes, is full of irony: coming together in pop culture and commercial terms, but more clearly divided along religious or ethnic lines (or, as Barber puts it, "integrated, it is more disintegral than ever"). Its tribal groups are more likely to fall into internecine conflict, yet they remain curiously dependent on globalized folkways more than ever (e.g., jihadist groups use of the Internet, cell phones, international bank transfers, and discount airlines to further their cause).⁸⁸

Thus, the advent of globalization has created various paradoxes for the twenty-first century state. It has not created a new state system, but rather a new process by which states and other entities interact. States erected the institutions and international norms that have made globalization possible, but they have been gradually undermined by globalizing forces. Globalization aids the spread of democratic values and cosmopolitanism, yet it engenders national fragmentation and "Neo-Medievalism,"⁸⁹ in which multi-layered governance complicates policy making. Globalization has the potential to bring more people into governance as never before, yet anti-globalization activists are challenging globalization's legitimacy in both developed and developing states. Globalization erodes traditional forms of international order, yet it may be generating a new international order of its own. While states have been fundamentally transformed by globalizing forces, globalized states remain at the center of international order discourse. In all likelihood, then, the new globalized states of the twenty-first century will rewrite the rules of sovereignty and legitimacy rather than discard them.⁹⁰

ENDNOTES

¹See, for example, Joseph Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton and Company, Inc., 2003); Jagdish N. Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2007); Martin Wolf, *Why Globalization Works* (New Haven, CT: Yale University Press, 2005); Thomas L. Friedman, *The World is Flat: A Brief History of the Twenty-first Century* (New York: Farrar, Strauss, and Giroux, 2006).

²Authority refers to "actors or institutions that have ultimate decision or rule-making responsibility." It involves the ability to judge, act, and command which is the source of legal decisions, precedent, and law. See Mark Beeson, "Sovereignty Under Siege: Globalization and the State in Southeast Asia," *Third World Quarterly* 24, no. 2 (April 2003):636.

³Daniel W. Drezner, "Sovereignty for Sale: Why it's never been more profitable to be a nation-state than in today's non-nation-state world," *Foreign Policy* (September/October, 2001):76-77.

⁴Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 3-5.

⁵Stephen D. Krasner, "Sovereignty and Its Discontents," in *Power, the State, and Sovereignty: Essays in International Relations*, ed. Stephen Krasner (London: Routledge, 2009), 179-210; Robert H. Jackson, *Sovereignty: The Evolution of an Idea* (Cambridge, U.K.: Polity Press, 2007), 1-23.

⁶Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crisis* (New York: St. Martin's Press, 2008).

⁷Denny Roy, *Taiwan: A Political History* (Ithaca, NY: Cornell University Press, 2003), 183-226; Richard C. Bush, *Untying the Knot: Making Peace in the Taiwan Strait* (Washington, D.C.: Brookings Institution Press, 2006), 81-106; Ted Galen Carpenter, *America's Coming War with China: A Collision Course over Taiwan* (London: Palgrave Macmillan, 2006), 51-74; T.I. Cheng, "China-Taiwan Economic Linkage: Between Insulation and Superconductivity," in *Dangerous Strait: The U.S.-Taiwan-China Crisis*, ed. Nancy Bernkopf Tucker (New York: Columbia University Press, 2008), 93-130.

⁸Susan Strange, "Political Globalization: The Demise of the Nation-State," in *The Globalization Reader*, eds. Frank J. Lechner and John Boli, 2nd ed. (Malden, MA: Blackwell Publishing, 2004), 224; Susan Strange, *States and Markets: An Introduction to International Political Economy* (London: Continuum Books, 1998).

⁹Saskia Sassen, *Losing Control: Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996).

¹⁰Anthony Giddens, *Runaway World: How Globalization is Reshaping Our Lives* (London: Routledge, 2002).

¹¹John Boli and George Thomas, eds., *Constructing World Culture: International Nongovernmental Organizations Since 1875* (Stanford, CA: Stanford University Press, 1999).

¹²James N. Rosenau, "The Illusions of Power and Empire," *History and Theory* 44 (December 2005):75-76.

¹³*Ibid.*, 86

¹⁴Saskia Sassen. "Neither Global Nor National: Novel Assemblages of Territory, Authority, and Rights," *Ethics & Global Politics* 1, nos. 1-2 (March 2008):61-79.

¹⁵*Ibid.*, 62.

¹⁶Ibid., 65.

¹⁷Ibid., 63.

¹⁸Ibid., 75.

¹⁹Ramesh Thakur and Luk Van Langehoven, "Enhancing Global Governance Through Regional Integration," *Global Governance* 12 (July-September 2006):233-40.

²⁰Anne-Marie Slaughter, "Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks," *Government and Opposition* 39, no. 2 (Spring 2004):159-90.

²¹Ibid., 188.

²²Ibid., 160.

²³Ibid., 160-61.

²⁴Ibid., 186.

²⁵Ibid., 187.

²⁶Ibid.

²⁷Richard Kirkham and Paul James Cardwell, "The European Union: A Role Model for Regional Governance?" *European Public Law* 12, no. 3 (September 2006):403-31.

²⁸Ibid., 424.

²⁹Margaret E. Keek and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Relations* (Ithaca, NY: Cornell University Press, 1998), 1-38; Thomas M. Callaghy, "Networks and Governance in Africa: Innovation in the Debt Regime," in *Intervention and Transnationalism in Africa: Global-Local Networks of Power*, eds. Thomas Callaghy, Ronald Kassimir, and Robert Latham (Cambridge, U.K.: Cambridge University Press, 2002), 115-48; John P. Caves, "Globalization and WMD Proliferation Networks: The Policy Landscape," in *Globalization and WMD Proliferation: Terrorism, Transnational Networks, and International Security*, eds. James A. Russell and James J. Wirtz (London: Routledge, 2009), 40-48; Simon Maxwell and Diane Stone, "Global Knowledge Networks and International Development: Bridges Across Boundaries," in *Global Knowledge Networks and International Development*, eds. Simon Maxwell and Diane Stone (London: Routledge, 2004), 1-17.

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³³Frederik Soderbaum, "Modes of Regional Governance: Neoliberalism, Sovereignty Boosting, and Shadow Networks," *Global Governance* 10 (October-December 2004):419-36.

³⁴Ibid., 426.

³⁵Angela M. Crack, "Transcending Borders? Reassessing Public Spheres in a Networked World," *Globalizations* 4, no. 3 (September 2007):341-54.

³⁶Ibid., 345.

³⁷Jost DelBrück, "Transnational Federalism: Problems and Prospects of Allocating Public Authority Beyond the State," *Journal of Global Legal Studies* 11, no. 1 (Winter 2004):31-55.

³⁸Ibid., 43.

³⁹The “democratic deficit” in the EU refers to the process of selection of representatives for EU committees; they are not elected officials but appointed by elected officials.

⁴⁰Robert O Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, “Legalized Dispute Resolution: Interstate and Transnational,” *International Organizations* 54, no. 3 (Summer 2000): 457-88.

⁴¹*Ibid.*, 469.

⁴²Allen Buchanan and Robert O. Keohane, “The Legitimacy of Global Governance Institutions,” *Ethics & International Affairs* 20, no. 4 (January 2006):405-37.

⁴³*Ibid.*, 418.

⁴⁴*Ibid.*, 408.

⁴⁵For an explanation of “higher-order coordination,” see *Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.*, 409.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰*Ibid.*, 410.

⁵¹*Ibid.*, 410-11.

⁵²*Ibid.*, 413-15.

⁵³*Ibid.*, 416.

⁵⁴The European Union On-line, “Welcome to the European Parliament,” <http://europa.eu/> (accessed on August 26, 2010).

⁵⁵Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 424.

⁵⁶*Ibid.*, 420.

⁵⁷*Ibid.*, 422.

⁵⁸*Ibid.*

⁵⁹*Ibid.*, 422-23.

⁶⁰*Ibid.*, 424.

⁶¹*Ibid.*, 426.

⁶²*Ibid.*, 426-27.

⁶³*Ibid.*, 427.

⁶⁴*Ibid.*

⁶⁵*Ibid.*, 428.

⁶⁶Quoted in Peter J. Spiro, “The New Soveriegnists: American Exceptionalism and Its False Prophets,” *Foreign Affairs* 79, no. 6 (November/December 2000):9.

⁶⁷George F. Will, “Under EESA, Congress Gives up too Much Discretion,” *Houston Chronicle*, March 9, 2009, B12.

⁶⁸Spiro, “The New Soveriegnists,” 9. The term ‘American exceptionalism’ has two meanings: First, many Americans believe that the United States has a special role in the world; second, they believe that the United States is a special society that is not subject to the same dictates of power politics as other societies.

⁶⁹*Ibid.*, 10.

⁷⁰Allen Buchanan and Russell Powell, “Constitutional Democracy and the Rule of International Law: Are They Compatible?” *Journal of Political Philosophy* 16, no. 3 (September 2008):326-49.

⁷¹*Ibid.*, 330.

⁷²*Ibid.*, 347.

⁷³*Ibid.*, 348.

⁷⁴Ibid., 327. In fact, arguments that reject a particular aspect of international law are often political in nature (e.g., the refusal of recent U.S. administrations to join the International Court of Justice).

⁷⁵Ibid., 326-27.

⁷⁶U.S. Constitution, art. 6.

⁷⁷See Simon Hix, *The Political System of the EU*, 2nd ed. (London: Palgrave Macmillan, 2005), 27-70.

⁷⁸Krasner, *Sovereignty*, 221.

⁷⁹Beeson, "Sovereignty Under Siege," 357-74.

⁸⁰Ibid., 365.

⁸¹Ibid., 367.

⁸²Ibid., 370.

⁸³Ibid., 370-71.

⁸⁴Krasner, *Sovereignty*, 232.

⁸⁵Ibid., 8-9.

⁸⁶Ibid., 14.

⁸⁷Ibid., 15-16.

⁸⁸Benjamin Barber, *Jihad vs. McWorld: How Globalism and Tribalism are Reshaping the World* (New York: Ballantine Books, 1996), 10-11.

⁸⁹"Neo-Medievalism" suggests that much of the world, especially among weak and failed states, is fragmenting into badly governed units in constant conflict with one another. In developing countries, more effective governance on some issues has resulted from localized activities (local governments acting with NGOs). See Panag Khanna, "The Next Big Thing: Neomedievalism," *Foreign Policy* (May-June 2009):91-92; Bruce Holsinger, *Neomedievalism, Neoconservatism, and the War on Terror* (New York: Paradigm Press, 2007).

⁹⁰See Andrew Linklater, "Globalization and the Transformation of Political Community," in *The Globalization of World Politics: An Introduction to International Relations*, eds. John Baylis and Steve Smith, 3rd ed. (Oxford, U.K.: Oxford University Press, 2005), 709-24; Ian Clark, "Globalization and the Post-Cold War Order," in *The Globalization of World Politics*, eds. Baylis and Smith, 727-40.

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