

International regimes and democratic governance: political equality and influence in global institutions

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Proponents of ‘cosmopolitan democracy’ face a paradox, indeed one that has increasing empirical force. Even as more and more polities at least claim that they are democratic, the scope of even the best democratic government is becoming more and more limited owing to the consequences of globalization. Indeed, talk of a ‘global democracy deficit’ comes from many quarters, most notably with regard to the global economy and new regional forms of government. Particularly destructive of democratic order are instabilities of global capital markets that can be tamed neither by ‘Keynesianism in one country’ nor by the neo-liberal policies guiding major world financial institutions.¹ The potentially wide impacts of the Asian financial crisis and the hedge fund fiasco show not only the increasing ineffectiveness of such national economic policies, but also that international monetary policy has been largely ineffective in stemming the cascading effects of interdependent financial markets. While transnational political communities like the European Union could potentially widen the scope of democratic governance, their law making is at the moment less tied to conditions of democratic consent than are nation-states. These experiences of inadequate global governance lend credence to calls for more ‘cosmopolitan democracy’, if only in response to the need to ameliorate the effects of economic crises and to make emerging transnational institutions more accountable. Such governance cannot, however, be achieved in the usual ways; there exist no institutions or set of institutions which could exercise anything like the centralized authority and capacity to command obedience analogous to the nation-state’s regulation of domestic markets or its exclusive rule of law within its territories.

In this situation, we cosmopolitan democrats seem to have two options. First, we could seek to create such institutions by analogy to the nation-state and attempt to give them sufficient power to enforce the regulatory laws that are the

¹ James Crawford and Susan Marks, ‘The global democracy deficit: an essay on international law and its limits’, in D. Archibugi, D. Held and M. Köhler, eds, *Reimagining political community* (Cambridge: Polity Press, 1998), pp. 72–91.

outcome of some democratic process.² It is at present hard even to imagine a process by which such powerful institutions could emerge, even given the increasing weakening of nation-state sovereignty. The second option seeks a practical foothold in the myriad responses to the anarchy of the international arena: the many current, cross-cutting, non-territorial and more or less decentralized forms of governance that succeed in organizing and regulating certain activities of governments and firms.³ Rather than enlarging existing organizations as the basis on which to exercise political authority, this approach seeks to overcome the democracy deficit through a strategy of building up transnational agreements (and their resultant international 'regimes') as emergent norms and institutions. If the first option sees global markets and their anarchic effects as the outcome of the absence of political authority and the enforcement of laws, the second approach sees the problem of regulation in terms of distributive effects of continuing institutionalization. I defend the second option as best, but with the important addition that such a decentralized process must also be democratic. Such democracy is a necessary condition not only for cooperative governance, but also for global distributive justice.

As it has developed in the past few decades, regime theory seeks to explain two facts: the order of international society and, more recently, the increasing importance of non-governmental organizations and of transnational public spheres consisting primarily of informal networks of association and communication at the transnational level. According to the common definition, regimes are 'sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'.⁴ Thus, the agreements reached in the form of a 'regime' constitute rules and norms that regulate specific activities or domains of activities: commercial whaling, the rights of children, trade, nuclear accidents, and so on. At the same time, it is important to note that regimes are social institutions, and as such are practices that define roles, rights and the degree of organization surrounding issues of enforcement or compliance.⁵ Forming a regime not only creates new norms, but it is also a process of institutionalization, the creation of practices of decision-making, rule change and enforcement. If such institutionalization is most responsive to emerging problems of order in international society, access to such a process becomes a crucial feature of democracy at the international level. Such political equality

² Jürgen Habermas, 'Kant's "Perpetual peace": with the benefit of two hundred years hindsight', in James Bohman and M. Lutz-Bachmann, eds, *Perpetual peace: essays on Kant's cosmopolitan ideal* (Cambridge, MA: MIT Press, 1997), pp. 113–54.

³ James Rosenau, 'Governance and democracy in a globalizing world', in *Reimagining political community*, pp. 28–57.

⁴ Stephen Krasner, 'Structural causes and regime consequences: regimes as intervening variables', in S. Krasner, ed., *International regimes* (Ithaca, NY: Cornell University Press, 1983), p. 2.

⁵ See Oran Young, *International cooperation* (Ithaca, NY: Cornell University Press, 1989), p. 193ff. Young criticizes definitions that under-emphasize the institutional component.

is the democratic element of global governance: the equal access to political influence and thus to the process of regime formation. Just as in proposals that ‘associative democracy’ is the best way to promote more deliberation and accountability in the nation-state, a dense network of associations and public spheres best promotes the conditions for more cosmopolitan deliberation. In this respect, I am proposing a non-ideal theory of cosmopolitan democracy under current conditions. It is a non-ideal theory, because these conditions are not now favourable to stronger democratic ideals at the international level.⁶

Cosmopolitan democracy as the equal access to influence and institutionalization

The norms that characterize institutions have many different effects on social life, not the least of which is enabling cooperation and coordination. Such norms have distributional consequences, so that ‘the structuring of the various economic and political institutions can dramatically influence the fundamental distribution of economic and political success and failure in a community’.⁷ This is no less true of democratic institutions that create a normative structure for deliberation and decision-making. This structure offers opportunities for deliberation and assures a wide distribution of power and influence over decision-making, at least to some extent, through mechanisms such as one person, one vote. Without such a structure, pre-existing asymmetries of power and information would make it impossible for each citizen to have the reasonable expectation of being able to influence decisions in favourable ways.⁸ In the absence of any normative constraints, the worst off and least effective participants would invariably lose out. Decisions are made beyond their reach by others; this puts many choices in life not only beyond their control but also beyond any real possibility of exercising influence over them.

The effects of both centralized and decentralized mechanisms on the distribution of power and influence depend on their wider normative structure and institutional environment. In the case of a national government, we would surely say that such a democracy is illegitimate if its worst-off citizens are required to obey laws and decisions over which they had no effective influence. Similarly, actors in unconstrained political situations can use asymmetries in material resources to their advantage. In such cases actors typically exert influence and even control over a decision-making process via threats and promises: threats to withhold resources from others or promises in the way of bribes or benefits given to citizens in exchange for influence or even control

⁶ My use of the term is derived from Joshua Cohen and Joel Rogers, ‘Secondary associations and democratic governance’, *Politics and Society* 20: 3, 1992, pp. 393–472.

⁷ Jack Knight, *Institutions and social conflict* (Cambridge: Cambridge University Press, 1993), p. 26. For example, Knight shows how even ‘the establishing of conventions of measurement can affect the distribution of economic and political benefits’.

⁸ James Bohman, *Public deliberation* (Cambridge, MA: MIT Press, 1996), ch. 1.

over decisions.⁹ The prevalence of such forms of influence shows the widespread absence of normative constraints necessary for the reasonable expectation of influence, so much so that such inequalities of influence not only shape the capacity to contribute to deliberation but also become authoritative in decision-making even when power is decentralized and located outside of political institutions. For example, advantages based on asymmetric information produce the common phenomenon of market failure and undermine the functioning of the market as a decentralized mechanism for coordination.

Despite the effects of the unequal distribution of resources and power, political equality should not be defined simply as equal political influence. For all the appeal of such a strong and substantive conception of political equality, it is open to the following objection made by Dworkin and others: equal political influence is not an achievable standard that any actual democratic decision could meet, and indeed one that would have too high a cost in relation to other values such as liberty or epistemic quality.¹⁰ 'Real' political influence of all citizens over each decision is not feasible for normative reasons, not merely owing to the fact of existing inequalities and non-democratic modes of decision-making such as markets. The problem is the pervasive uncertainties of the democratic process itself that political equality is not meant to eliminate.

The uncertainty of democratic decision-making is not a defect, but precisely its normative strength. When democratic norms are effective, no citizen or group of citizens possesses sufficient control to determine outcomes or to define criteria that determine which reasons ought to be accepted by everyone. Such uncertainty is part of the very idea of democratic deliberation, since it is dependent on the free use of public reason in reaching non-coercive agreements. Given this uncertainty it may be difficult to tell whether some epistemically inferior or morally unfair decision was made for reasons that have to do with systematic advantages that ought to be normatively constrained. For this reason the relevant standard of equality is equal 'access' or 'availability' of political influence within the process of deliberation and decision-making. The failure to gain favourable influence may be due to some group's inability to put forth publicly convincing arguments for reasons that could be freely accepted; but such failure to achieve some outcome in this case is not owing to the lack of effective opportunity to influence, should one's arguments be convincing enough to persuade others and perhaps even change their beliefs and attitudes. Certainly, a group that *never* has such influence is politically unequal in the relevant sense, even given the opportunity to influence.¹¹ In such cases, the lack

⁹ Jack Knight and James Johnson, 'What sort of political equality does deliberative democracy require?', in James Bohman and W. Rehg, eds, *Deliberative democracy: essays on reason and politics* (Cambridge, MA: MIT Press, 1997).

¹⁰ Ronald Dworkin, 'What is equality? Part IV, political equality', *University of San Francisco Law Review* 22: 1, 1988, pp. 1–30. Dworkin here cogently argues against a norm of equal influence, for the simple reason that it cannot distinguish good from bad forms of influence. Equal *access* to political influence answers this objection, since it is based on the normative constraint of equal influence on the reasons proposed in deliberation.

¹¹ James Bohman, 'Deliberative democracy and effective social freedom: resources, opportunities and capabilities', in Bohman and Rehg, eds, *Deliberative democracy*, pp. 321–48.

of fair opportunities undermines access to or the availability of political influence, and even some specific advantages of power and resources are subjected to normative constraints.

Access to political influence is then not merely a matter of opportunity, since 'influence' here also means something like the effective use of free public reason. Being effective in the public sphere is not a matter of agency (of bringing about a specific outcome), but of having the reasonable expectation to be able to influence deliberation about decisions that affect one's lives. This is not just a matter of having particular opportunities or resources (however important they may be), but of capability. Citizens must possess the capability for adequate functioning; that is they must possess the capabilities necessary to make full and effective use of their public freedom, so that all citizens possess a minimum level of capability for public functioning. This minimum level, I have argued elsewhere, is that citizens are able to avoid being included in decisions over which they have had no influence; moreover, they must be able to avoid being excluded in the sense that their public reasons do not receive effective uptake in the course of deliberation. Given this minimum level, the problem of the uncertainty of the democratic process can be more easily identified. Certainly, communicative interaction is marked by uncertainty, especially in situations of initial communication.¹² But repeated interaction that would be typical among free and equal citizens in a polity would decrease such uncertainty over time, so that conditions of relatively unrestricted communication would lead citizens to have the reasonable expectation of influencing decisions in their favour and indeed common knowledge of when their proposals are likely to succeed.

In situations of communication distorted by asymmetries manifested in repeated interaction such an expectation is not formed, and repeated interaction does not decrease uncertainty. This effect is the result of implicit restrictions on public expression, whether due to inadequate development of public capacities and powers or to the lack of social recognition of one's reasons or the way in which one makes one's claims. A speaker capable of full public functioning need not expect to be able to determine the outcome of deliberation. However, all must successfully be able to initiate communication about interests and needs. Such expressive restrictions are typical in cases of inequalities of status, race, and gender and lead to the often implicit and publicly unrecognized exclusion of participants in public life dependent on receiving uptake from others, affecting opportunities to speak in implicit norms of turn-taking, interruptions and topic changes. In all such cases, some dominant group's control over 'the means of interpretation' restricts the socially acceptable possibilities of expression and uptake needed to create mutual obligations. Here we say that they lack access to political influence and thus to the public sphere directly related to decision-making.

¹² On this sort of analysis, see Frank Sunnafrank, 'Predicted outcome value during initial interactions: a reformulation of uncertainty reduction theory', *Human Communication Research* 13: 1, 1986, pp. 3-33.

Such a notion of capability equality can also be expressed in terms of equal political freedom. Here we do not mean the freedom to achieve one's preferences, given a set of alternatives and the availability of resources to pursue one of them. Capability here indicates the extent of public freedom and not merely the means to freedom and thus identifies freedom here as 'the set of accomplishments that one has the power to achieve' rather than the particular goals that one has achieved.¹³ Thus, the capability conception of equality severs the usual connection between freedom and agency. Indeed, Amartya Sen distinguishes between 'effective freedom' and control, and this distinction is useful particularly in public and institutional contexts where it seems unlikely that we could claim that citizens directly control the outcomes of decisions that affect them, if only for reasons of size and complexity. Even if I do not actually control the decision-making process, the outcome could be one that I endorse. 'As long as the levers of control are systematically exercised in line with what I would choose and for that exact reason, my "effective freedom" is uncompromised, though my "freedom as control" may be limited or absent.'¹⁴ Such a distinction entails that institutions are structured in such a way that they are responsive to the sort of goals and reasons that might be goals that the agent would otherwise seek to achieve through the use of her resources. When opposed to such goals, the agent must expend even greater resources to achieve different goals in an institutional environment that is not responsive to his or her reasons.

Such effective freedom is social in two senses. It is social in that it constitutes the ability to influence cooperative activities such as public deliberation and the capability to participate in a democracy, including the social dimensions of civil society or the public sphere. But it is also social precisely in the sense that no agent or group of agents can take over the levers of power or control without violating democratic norms. Even if I do not control the outcome, however, my freedom is effective when institutions produce decisions based on the sort of reasons that I *could* endorse. While they may not be the exact reasons that I actually endorse now, they must be ones that I would recognize as one of the possible candidates for the agreement of everyone affected. In this respect my acceptance of policies that are the result of such reasons is not a result of domination or subjection to the arbitrary will of another even though these reasons are not exactly my own. The reasonable expectation that I may influence a decision-making process that is responsive to reasons and the discipline of reasons is sufficient for a minimal criterion of freedom as 'non-domination'.¹⁵ I could very well not be interfered with by various macro-economic policies (and thus my negative liberty would remain intact); but the consequences of those policies could put me under the arbitrary will of

¹³ Amartya Sen, *Inequality reexamined* (Oxford: Oxford University Press, 1992), p. 34.

¹⁴ *Ibid.*, pp. 64–5.

¹⁵ On freedom as non-domination rather than non-interference, see Phillip Pettit, *Republicanism: a theory of freedom and government* (Oxford: Oxford University Press, 1997), p. 52ff.

economic experts and firms that are in no way open to my influence or accountable to my reasons.

On the international level, many decisions are made for reasons that many of those affected do not recognize or could not endorse, as is often true for profit-maximizing firms or in international monetary institutions. This lack of access to political influence presents a particular role for international political institutions. While such institutions do not generally have the agency to steer such processes themselves, they open up the possibility of public accountability and accessibility to the political influence of all those affected, even if those affected are not members of the same politically organized community or nation-state. Such institutions do not create the conditions for public freedom as control; they make possible only a political space in which effective freedom emerging in the public sphere and civil society can be exercised transnationally. This norm of legitimacy further requires that institutions promote the effective social freedom of all their members, often by providing opportunities for influence in what are often struggles over the distribution of such opportunities. But institutions have an equally important role as an audience to whom political communication is directed and a public sphere in which the effective social freedom is exercised by all those affected. Such a role suggests minimal legal conditions that such organization will embody and seek to establish. Such conditions are primarily negative and concern the violations of basic human rights related to freedom of communication understood very broadly to include most forms of political violence. Given a vibrant transnational civil society, international organization may not only function as forum and audience for democratization, but also eventually institutionalize such minimal conditions in the form of international law whose domain would be the violation of basic human rights that make minimal conditions of access to global public spheres impossible.

Publicity and the emergence of international cooperation

The account of freedom and equality in a democracy that I have developed so far has presupposed that normative constraints and hence institutions exist that shape and regulate social life and the distribution of goods to a significant degree. What if such constraints and institutions are absent as they are in international contexts? Are equal access to political influence and effective social freedom still appropriate norms at all? At least as I have formulated them so far, the answer is obviously 'yes'. Influence is distinguished from power only through institutional constraints, and effective freedom is possible only within the context of institutions that operate some degree of control over some features of social life. Should we say that such ideals are not applicable to international politics or that they are utopian at best? It is certainly true that political institutions are not entirely absent from international politics, even if they lack enforcement powers and control. However weak they may be, the normative standard of legitimacy for institutions developed in the last section

therefore still applies to such institutions. Indeed, no international institutions exist which are capable of controlling or even steering most global economic processes, especially the global markets in capital. In such cases, we should say that there is no political influence to be gained, since there is no location in which to exercise this influence or target to address. In such cases I propose that we should use a rather different standard: *equal access to institutionalization*.

The social foothold for this democratic norm is already present in current national and international political institutions and in national and transnational public spheres and civil society. Market instability and inaccessible large-scale institutions can be avoided only if some form of institutionalization creates access to and influence over the social processes of globalization themselves. Such access can only be obtained through making more democratic potential or actual mechanisms of cooperation among previously unrelated actors in these processes. Since they are indeed intentional, they can become institutionalized so as to allow access to political influence by a wider group of new actors. Thus, regimes may have an egalitarian distributive effect: they can at least widen the range of political actors with access to influence. If regimes are the currently most effective and most democratic form of global governance, such access will primarily be a product of new and decentralized institutions generated by global interactions among various associations in cosmopolitan public spheres.

By fostering communicative interaction, such transnational public spheres and civil society have already produced self-regulating forms of cooperation among those affected by global processes. Even in the absence of clear centralized institutions, international agreements or 'regimes' aiming at accountability could be the outcome of interactions under the norms of cosmopolitan publicity. Many such agreements (which include general principles and rules as well as decision procedures) already exist in areas as diverse as environmental policy, human rights, communication and the regulation of trade and financial markets. They employ diverse strategies for promoting cooperation, from tit-for-tat measures in arms control to self-limitation of consumption; they are enforced primarily by the power of international publicity which makes violations of such agreements known to everyone around the globe. In so far as the extent to which such publicity has cooperation-inducing effects, actors in civil societies have opportunities to create egalitarian conditions for collective influence and accountability.

International civil society only becomes a public sphere through the emergence of institutions around which the public sphere is organized and which actors in civil society can oppose or support. For now, the nation-state continues to be a focus for a cosmopolitan public sphere even as publicity expands beyond it: because of new possibilities for international cooperation and agreement. 'Democracy and democratization may be sought *across* states as well as *in* the state and *against* the state.'¹⁶ The greatest impetus for more

¹⁶ John Dryzek, *Democracy in capitalist times* (Oxford: Oxford University Press, 1996), p. 150.

democracy in the international arena lies in a vigorous civil society containing oppositional public spheres, in which actors organize against the state or appeal to it when making violations of agreements public. As various international institutions emerge, they, too, can become the focus of a critical public sphere as actors in transnational civil society expand and maintain their public interaction across various political, cultural and functional boundaries. The conditions for such cosmopolitan publicity are still being worked out, so that we do not have anything like the sort of accountability that public access to global processes requires. Such accountability is not the same as political control; it operates on the force of public opinion and through democratic institutions and public spheres that already exist on more local levels. Given the many problems that require the cosmopolitan uses of public reason (from global warming to economic regulation to widening disparities in well-being), establishing the basis for such cooperation in innovative forms of publicity is an urgent task. Cosmopolitan publicity helps solve these problems of cooperation by creating conditions for democratic accessibility to the process of the formation of international regimes and ultimately new institutions. Without such accessibility, there can be no basis for accountability to transnational publics. Thus, political influence over globalization is primarily access to those institutions created first and foremost through international regimes and agreements, whose existence is maintained by self-organized associations in the new global public spheres.

This need for institutions raises a practical problem for democratization. If those institutions produced by regimes are to be democratic, they must be created in a public process of cosmopolitan deliberation governed by the norm of equal access to institutionalization. Whatever enforcement they have, it will be primarily exercised by the political influence of citizens acting in the national and international public spheres and civil associations. Their influence, however, is needed most in arenas in which there is little opportunity to shape decisions or outcomes deliberatively. If this bootstrapping problem is to be solved, the benefits of decentralization should not blind us to the important role for formal organizations and legal institutions at the international level.

Decentralization and the equal access to institutionalization

One standard justification for norms of political equality (such as equal access to political influence) is the fact that even democratic political institutions exercise coercive power. If citizens are to be constrained by the exercise of political power in the form of coercive law and if such a form of law is inevitable in modern complex and pluralistic societies, then equal access to political influence assures a minimum of agreement necessary for democratic legitimacy. Political responses to globalization face quite a different problem: under global conditions, the nation-state and other forms of centralized authority have decreasing significance with the consequence of only increasing inequalities in the distribution

of decision-making power and influence. If anything, globalization is anarchic and fragmentary, with uneven and often contradictory effects in various locales.¹⁷ Nonetheless, the problem of influence remains: decision-making without public authority puts many aspects of social life fully outside of citizens' collective control.

One response to the problem of order is realistic and Hobbesian: its solutions seek to create centralized control and thus to create order through authority with the capacity to command such markets via regulatory law. The problem of democracy is then to limit the scope of coercive power, while retaining its effectiveness to govern. On the global scale where there is no clear territorial basis or location for the exercise and limits of authority, such a solution trades one problem for another, although certainly one for which there are clear and well-tried solutions in the rule of law so long as we accept the analogy between 'cosmopolitan' and coercive civil law.¹⁸ If we look at the areas of the world in which market forces have had the least devastating and fragmenting effects, it is clear that this fact is directly related to the presence of effective institutions and organized political activity in a robust civil society (even a transnational one as the European Union shows). Conversely, if we look at those areas of the world most devastated by the effects of the global market we see that such institutions and civil society emerged only after the consequences of global markets had already been felt. Sen makes a similar point about the politics of famines: in democratic societies food shortages have the least impact, where the free press of a vibrant public sphere can quickly make existing institutions more responsive to the needs of the populace.¹⁹ The relationship is indirect: it does not suggest that economic performance be tied to access to political influence or political authority, but rather that in their absence burdens and externalities will be borne by the weakest and worst off. Thus, the problem of order in global markets can be put in this way: their instabilities and uneven consequences call for the emergence of a dense institutional structure in which market processes should be embedded and out of which indirect democratic influence may emerge.

At any level of organization, a democratic order has to solve two main problems: it must be effective in structuring and steering basic social processes, while at the same time fulfilling normative demands of democratic equality, primarily solving the distributional problem of equal access to political influence. If the nation-state is effective through centralized authority of coercive law, equality is guaranteed through opportunity for influence in the legislative process that generates this form of control. But centralized control fails in both respects here: globalization processes are too large and complex, escaping not only the boundaries of the nation-state, but of all state-like institutions and their mode of exercising power. Wherever the nation-state tries to exert effective control over globalization, economic actors can flee its borders and thus its

¹⁷ Anthony Giddens, *Consequences of modernity* (Stanford: Stanford University Press, 1990), p. 63ff.

¹⁸ Habermas, 'Kant's "Perpetual peace"', pp. 128–31.

¹⁹ Amartya Sen, *Poverty and famines* (Oxford: Oxford University Press, 1981), p. 57ff.

sanctioning power. Even if sanctioning economic actors is one way to maintain a semblance of normative order, nation-states are reluctant to use the power to sanction economic actors at their disposal for fear of loss of competitiveness. Thus, globalization is a dispersed and decentralized process, and as such is not likely to be normatively regulated by anything short of the massive escalation of executive power feared by Weber, a self-defeating solution to the normative problem of democratic order. However, the absence of centralized institutions leaves no means by which public decisions can be amplified and made effective.

Hobbesian solutions do not exhaust the possible mechanisms of social coordination and have inherent limitation of scope owing to scarcity of resources. Centralized authority is only one solution, and it is not even the most effective one despite its claim to 'realism'. In the face of complexity, such a solution requires the escalation of power in order to establish command over such processes; the need for constant intervention in complex processes not only produces unintended consequences but also in turn inevitably lessens the role for democracy, even apart from the problem of territorial scale.²⁰ But the other solution is roughly Kantian, it works by disaggregating complex processes, thereby establishing possibilities for influence or steering the process at various points. In response to the lack of centralized institutions and effective law at the international level, various decentralized and cooperative solutions to the problem of order have emerged. Such disaggregation provides 'a functional equivalent to democracy'.²¹ As various transnational agreements transform associations into institutions by establishing 'regimes' that monitor their effectiveness, the further organization of international interaction becomes possible. These regimes cannot directly control the effects of globalization: they attempt to enable the normative constraints consistent with equality of effective freedom rather than with equal access to agency freedom over the levers of economic processes.

The democratic potential of such regimes for equal access to institutionalization has to do with cascading effects: as the product of political activity at various levels, regimes provide the basis for a democratic process of institutionalization. Once implemented, further institutions are needed to monitor and organize compliance and cooperation. For example, international human rights enforcement creates transnational actors who appeal to the global public sphere and to national and international political institutions in order to make violations of human rights by signatories public knowledge. In the case of the rights of the child, UNICEF actively formed alliances with domestic groups and provided them with the financial assistance they needed to be more effective against entrenched interests, such as those opposing exploitative child labour practices. Moreover, the procedures that these regimes have established 'are

²⁰ James Bohman, 'Modernization and impediments to democracy: the problems of hypercomplexity and hyperrationality', *Theoria* 86: 1, 1996, pp. 1–20.

²¹ Rosenau, 'Governance and democracy in a globalizing world', p. 40.

open to public inspection and to NGO influence in both standard setting and monitoring'.²²

It is certainly the case that these regime institutions and organizations are often opposed by powerful social actors and other institutions; their effectiveness emerges less with recalcitrant states than with their capacity to provide incentives and influence more dispersed processes, as when the children's rights regime has successfully influenced labour practices involving the amount of time children may work.²³ Thus, the democratizing effect of regimes is not directly the content or even the control over global processes that they produce. Rather it is that they create new structures of accountability and locations for the exercise of political influence and the regulatory effects of accountability. Such accountability is often weak with regard to some agreements, such as the highly abstract agreements over human rights; but with respect to such economic regimes as the restriction of whaling and certain trade practices, it provides a powerful disincentive for self-interested actors to defect from the agreement. In these cases, the regime can only piggyback on the steering powers of other existing institutions, such as the power of states to fine or restrict the activities of violators. Thus, disaggregation is a plausible strategy only if minimally democratic and accountable institutions already exist or can be created.

The problem of non-cooperation and non-democratic institutions is a pervasive one in the international arena. It is a two-sided problem. It certainly has implications for the feasibility of international regimes as problem-solving institutions. This is a general problem for creating conditions for effective social freedom in their absence. In any society there will be a variety of political institutions from churches to clubs, some of which may not be democratic. The possibility of effective freedom by actors in such societies has less to do with making every institution democratic, but in the presence of certain minimal and primarily negative conditions: the absence of force and violation, the presence of exit options, and so on. The normative problem arises for the conception of political equality that I have been defending: when some have social locations in which to exercise their effective social freedom and others do not, asymmetries of political influence will be reproduced even through decentralization. In both cases, some legal mechanisms at the international level seem required both to solve the bootstrapping problem and to test decisions for effects of unequal influence. Most importantly, such legal institutions have deliberative roles in promoting transitions to democracy.²⁴ In order for them to serve this purpose and to promote equal access to institutionalization, the operation of their enforcement powers still requires the emergence of public spheres and civil

²² David Beetham, 'Human rights as a model for cosmopolitan democracy', in *Reimagining political community*, p. 67.

²³ Joel Oestreich, 'UNICEF and the implementation of the Convention of the Rights of the Child', *Global Governance* 4: 2, 1998, pp. 183–98.

²⁴ See David Crocker, 'Transitional justice and international civil society', *Constellations* 5: 4, 1998, pp. 492–517.

society. If not, such institutions will adopt self-defeating policies which once again fail to produce equal access to institutionalization.

Even with the backing of such minimal legal institutions, such a normative order is at best initially a functional equivalent to democracy in producing in the first instance a wider dispersal of power to a variety of actors in international society. Such an order limits the power of some actors in certain institutions by limiting their agency freedom in an interesting way: by increasing the opportunities for influence the agency freedom of every actor is thereby diminished and the asymmetries that produce discrepancies in the extent of freedom for different actors or organizations with it. This multiplication of sources of influence certainly opens up the possibility for democracy and resembles at least one of the salutary effects of democratic equality. But disaggregation is not normatively equivalent to democratic equality, precisely with regard to equal access to political influence. Rather than enforcement or compliance, the role of international institutions in a cosmopolitan democracy is to bring about such enabling conditions. The actual coordination effects are carried out in the dispersed institutional and organizational interaction in global society. But how international organizations and institutions can have democratizing effects is by being a broader public to which local participants can appeal. In the case of a political setting where there is no public to whom appeal can be made or institutions in which voice is important, international institutions and the NGOs that attempt to influence their procedures and standards themselves can function as a public to whom equal access of political influence is guaranteed and open.

Given that the distribution of access to political influence operates through mechanisms of social coordination, there is really only one way for such formal and informal international institutions to promote the conditions for access to influence: by enabling and protecting public spheres and civil society and by providing a space for a global public sphere and audience. This latter function both enhances and creates publicity. Indeed, even in the absence of a public sphere, participants in international institutions become the audience to whom those affected by economic globalization can appeal for equal access to political influence. Since the capacity to steer the market requires a dense network of institutions and organized activity within which to embed market transactions, such public sphere and civil society provide at least minimal structural conditions for equal access to political influence. The appeal to the international public is itself an attempt to gain access to institutionalization, in this case to the process by which regimes are informed and their accompanying institutions structured and elaborated. Even if non-cooperators need not consider such appeals in calculating their strategies, cooperators in regimes open themselves to the influences of publics that extend as wide as the net of the agreement, thus to both internal and external publics.

If they are organized to process access to their political influence and if their policies seek to achieve more egalitarian outcomes, international institutions can provide a possible counterweight of socially organized and integrated

activities and practices of public accountability. In this way, they help solve the bootstrapping problem of cosmopolitan democracy: they support the process of institutionalization of public spheres and civil society that make possible influence over the formation and enforcement of regimes. Only through such equality of access to influences does the promise of regimes go beyond the functional equivalent to democracy to the real thing, from the dispersal of power to public accountability and effective social freedom. No less than within the uncertainties over outcomes in pluralist democracies, cosmopolitan democracies are not conceived correctly with an agency notion of freedom and an coercive conception of accountability. Just as in associative attempts to extend deliberation to the economic sphere within nation-states, such effective freedom is exercised not by controlling outcomes but by promoting access to forms of influence that are the result of cooperation and public accountability. As far as influence over processes of economic globalization is concerned, such equality requires institutionalization at the international level to counteract the asymmetries of power and resources produced by market forces that have so far eluded democratic methods of enforcement and control of states, even the most democratic among them.

Conclusion

As the next decade unfolds, such a decentralized account of regime democratization is open to two empirical and historical tests. Just as democracy in the nation-state took decades to come to terms with the destabilizing effects of markets, a good test case for the effectiveness of democratic regime formation will be in softening and even reversing some of the effects of global markets. Markets have been regulated historically in two ways. First, markets can be regulated by coercive laws, as when governments regulate market failure or control externalities. Or, second, they can be regulated by market mechanisms themselves such as restricting money supply or providing pollution credits, and so on. Both of these mechanisms presuppose a particular sort of political institution with centralized political authority, with only weak analogies on the international level. New decentralized forms of market regulation may be more effective and more democratic in increasing their access to mechanisms of public accountability in widely dispersed global contexts. The second test is compliance. It may rightly be objected to my argument that regimes do not have strong enforcement powers and that publicity is a very weak form of control or influence. But the point of decentralized mechanisms is that they produce a dense web of politically organized activities and institutions in which to embed economic activity and thus open it to a variety of forms of influence and accountability. Given the failures of the nation-state and the increasingly spectacular failures of the market itself, some alternative account is needed. As a means of global governance, cosmopolitan democracy of this sort must prove to be more than mere polyarchy. Rather, it ought to seek democracy (and not its

mere functional equivalent) by promoting the conditions of equal access to institutionalization, the purpose of which is to create opportunities and access to political influence and an environment for decision-making in which effective social freedom is more widely distributed in international society.

Such an account of cosmopolitan democracy is not only the feasible extrapolation of current social processes; it is also the normatively desirable alternative to state-based democracy that governs through self-limiting coercive power. Rather than by sovereign authority or by large-scale institutional hierarchies, regulation in cosmopolitan democracy works by dispersing control horizontally and thereby distributing influence more widely and creating locations for the free and equal exercise of political freedom. In order to be more than a functional equivalent of democracy or merely a feasible means for promoting certain social conditions, more is needed: access to institutionalization must become realized in actual institutions. This requires, above all else, the eventual *legal* institutionalization of access to global public spheres. Only then does democracy insure not only a politics of equal influence and interest group pluralism, but also effective voice, contestation and deliberation.