Deliberative Global Governance and the Question of Legitimacy: What Can We Learn from the WTO?
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> 'The WTO as trade regulator, is at the heart of global governance ... the international trading system and its benefits belong to us all – it is an international public good and the WTO is the only instrument that can be used to deliver the global public good of non-discriminatory multilateral trade.'
> (Pascal Lamy, 'Humanising Globalisation', Santiago, January 30, 2006)

Introduction

For some, the concept of global governance is something of an oxymoron, or at best the fantasy of scholars. Realist scholars accept no understanding of governance beyond the level of the state; the principal characteristic of the international system has been, and remains, 'anarchy' (Waltz, 1979). Liberal interdependence scholars argue that we can do better. We may live in an anarchical society, but one with recognised norms and rules of behaviour (Bull, 1977; Keohane and Nye, 1977). Current day cosmopolitian democratic theorists, more optimistically, argue that the seeds of a global society are emerging (Held, 2004). But in all theoretical contexts global governance continues to become a salient, albeit contested, political concept (see Pattberg, 2006). Moreover, the debate is now no longer just the play thing of scholars. "The dilemma of global governance" (Wolf, *Financial Times* 24, January, 2007: 7) casts long policy shadows.

The integration of the global economy through the liberalization of the trade regime, the deregulation of financial markets and the privatization of state assets has led to what we now commonly call 'globalization'. But this has not been accompanied by a comparable development of the global polity and it is increasingly recognised in policy circles that without the development of norms, institutions and processes to manage globalization many of the advantages it has brought the world could be undone by a failure to mitigate the excesses and

negative consequences (especially for large sections of the world's poor) that emanate from it. This is not only the position of the 'alter' or anti-globalization movement (*pace* Bello, 2005 and Khor; 2003) but also impeccably credentialed defenders of globalization who recognise that without proper processes of regulation, globalization has within it the seeds of its own downfall. This is now a well understood conundrum for advocates of globalization (see Bhagwati, 2004; Stiglitz, 2002; Wolf, 2004).

The questions at hand are thus twofold: Firstly, at a conceptual level, what we might understand by the idea of global governance in an era of increasingly 'contested globalization'? (Higgott, 2000) Most scholars and practitioners today agree that international political institutions suffer from a legitimacy deficit and that prospects for democracy beyond the state need to be addressed in this context. Concerning economic institutions, however, global governance is still predominantly seen as effective and efficient collective action problem solving. Proponents claim that 'effective' and 'efficient' governance is not a normative but an empirical matter. Against this view we argue that effective and efficient decision-making has important normative implications, and consequently, international economic institutions must address questions of democratic legitimacy.

Secondly, what role might international organizations might play in this democratic endeavour? Hence, we look at the WTO not only as a vehicle for trade liberalization but also for enhancing the development of norms and institutional processes that can also adapt its structures and new instruments, such as the Dispute settlement Mechanism (DSM), in such a way that it contributes to a more democratic governance of the contemporary global order. What role the WTO could play in such a normative context is dependent on how we answer these questions—and especially what we understand by 'global governance' and what we mean by 'better'.

The article elaborates these two sets of questions in order to sketch out the contours of a theory of legitimacy of global governance institutions. In doing so it chooses a path different from cosmopolitan democratic theory; not only for pragmatic but also for normative reasons. In the absence of a liberal cosmopolitan political order, it argues that an adequate notion of legitimacy in a global context is one which promotes certain basic democratic values, and that global

governance institutions are more legitimate (i.e., better) the more they promote those values. Moreover, we argue that deliberative democracy offers some fruitful theoretical tools in this endeavour. It does so not only for normative reasons but also because it is a theory with increasing policy resonance. Deliberative democracy helps reveal coerced decision-making and inequitable outcomes where they exist in power politics. Extreme power asymmetry within global institutions is a serious impediment to fair negotiations promoting democratic values. No matter how developed formal global representation might be, it says little about influence over decisions. Deliberative theory can address the qualitative problems of international decision-making and scrutinize rules of procedures from a normative standpoint.

In section one, we propose a *heuristic* definition that identifies two key strands of 'governance'. It shows how global governance, understood as effective and efficient collective decision-making and problem solving, is insufficient for normative reasons and must, in addition, be complemented by global governance understood as the democratic legitimation of policy-making. Our deliberative understanding of legitimacy, seen as the promotion of basic democratic values, is developed in the second section as an example of this latter type of governance. It should be noted that the proposed view of legitimacy could fit a cosmopolitan framework to the extent that we move away from a liberal, legalistic rights-based system of cosmopolitan moral principles and instead steer towards a cosmopolitanism which acknowledges the necessary connection between universal moral validity, communicative action and the exercise of agency. Finally, in section three we highlight both the WTO's strengths and vulnerabilities as an instrument of 'better' global governance in the particular sense given in this article; namely the degree to which it might enhance the values of justice, equality and accountability in global decision-making on trade matters while, at the same time, *pace* the opening quote from Pascal Lamy, upholding the international trade system as a public good.

Global Governance and the 'Legitimacy Deficit'

The main question concerning international organizations as vehicles of global governance pertains to the quantity and quality of this governance in an era where we have an over-developed global economy and an under-developed global polity (Ougaard and Higgott, 2002). There is a strong disconnect between governance, as effective and efficient collective action

problem solving in a given issue-area, and governance as the democratic legitimation of policy-making. This has led to the debate about 'legitimacy deficits' in major international organizations. Moreover, governance has become a hosting metaphor identifying non-traditional actors (non-state actors such as NGOs and networks) that participate as mobilising agents broadening and deepening policy understanding beyond the traditional, exclusivist, activities of states and their agents. The demand for global (and regional) governance is complex and the role of multilevel governance structures in key policy areas, enhanced by the role and functions of both issue-specific and regional specialized agencies, has grown.

Yet in some key areas of the global cooperative agenda, in both the economic and the security domain, we appear to be witnessing the deterioration of collective governance capacity and resistance to its enhancement even. In some issue areas, the utility of institutions as vehicles for sharing information, building trust and enhancing compliance are coming unlearned as global public policy problems resist the technocratic fix and pose major political and ethical questions about the appropriate manner in which policy is made, decisions are taken and implemented and resources are distributed. For many practitioners, advances in global governance are inhibited by assumptions that it must assume the mantle of an ethically neutral activity, removing politics or ethics from problem solving. We thus identify two ideal types of global governance.

Global governance (economic governance) is taken to be those arrangements—across a spectrum from weak to strong in influence—that actors attempt to put in place to advance, manage, retard, regulate or mitigate economic globalization. For a global policy community, driven largely by economic theory, the delivery of public goods via collective action problem solving leads to what we call *global governance Type I* (GGI)—the dominant understanding of governance at the global level. But actors (state and non-state alike) are not ethically neutral; they have political agendas. By contrast, scholarly interest, driven by normative (often cosmopolitan) theory and focusing on issues of citizen representation, justice and democratic legitimacy leads to what we call *global governance Type 2* (GGII). Our thesis is that, without the enhancement of GGII, GGI will become unsustainable (impossible to defend for normative reasons).

> *Global Governance Type 1 (GGI):* An *economic* theory of governance emphasising the enhancement of effectiveness and efficiency in the delivery of global public goods via collective action problem solving. GGI is underwritten by the emergence of a technocratic/managerial elite for which international institutions are instruments of transaction cost reduction, policy coordination and compliance for the mitigation of the risks attendant on an open and global economy.
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> *Global Governance Type 2 (GGII):* A *political* theory of governance emphasising the struggle for systems of representation and accountability that will enhance legitimation and democratization of policy-making in global contexts. GGII reflects an assumption that as the nation state becomes more problematic as a vehicle for democratic engagement, the clamour for democratic engagement at the global level becomes stronger.

One explanation why GGII is met with scepticism and resistance is that global economic governance is seen as a subject of 'empirical investigation'. The defense of GGI draws on the argument that the efficient and effective delivery of public goods is not a normative but a factual matter. For example, 'politics' in the global public goods literature is seen largely as the effective and efficient making of public policy, where the enhancement of property rights and the reform and development of institutions is the key to success. In global public goods theory, politics is about the 'rediscovery of institutions'. These innovations are important but insufficient. To the extent that they privilege efficiency over democratic accountability and legitimacy they isolate the institutions of global governance from Lasswellian (who gets what and how) style politics. This is a problem for institutions (such as the WTO) working with an assumption that the liberalization of trade is an uncontested public good. For many global 'rule takers' this is not self evident. The struggle over the continued pace of economic liberalization is a *political* struggle about the distribution of global wealth, not merely a *technical economic* one about how best to produce that wealth. The struggle has become increasingly vocal since the growth of the anti-globalization backlash in the closing years of the 20th century. Global governance is no administrative 'science' to accompany economic 'science'. It is a contested political process.

Even if proponents of GGI could agree that what counts as a public good is a political rather than a technical matter, GGI is still anchored to the presumption that this is one thing (normative); and the effective and efficient production and delivery of public goods another (empirical). Such a modified understanding of GGI, however, reveals other problems. Although it might be (internally) coherent, it leans on premises that are questionable. To illustrate why this is the case we need to look at when something could be regarded as factual and not. For example, we might view good governance as the effective and efficient delivery of goods, and define effective and efficient as quick and cheap. Then we can reasonably claim that the effective and efficient delivery of water from purification plant X to village A and B is not a normative but a factual matter. But it is only factual within a normative framework where effective and efficient are defined in this way. Other possible definitions are at hand, and the choice between them is a normative question with normative implications. Let's say there are twice as many people living in village A, thus requiring more water. If good governance consists in the delivery of water to every person equally, effective and efficient would mean to construct a thicker pipeline to village A, even though this is neither quick nor cheap. By contrast, if good governance meant the delivery of water to every village equally we would not have to build such a pipeline. What is effective (e.g., quick delivery) and what is the object of that effectiveness (e.g., water) is a normative question.

This simple case illustrates how concepts such as effective and efficient are difficult to interpret in a meaningful way outside a normative framework. When combined with the complexities involved in global governance this becomes even more conspicuous. It does not hold to say that global economic governance is an empirical and not a normative matter. In order for GGI to be sustainable it needs to be complemented by systems that also allow for enhanced democratic legitimation in global policy-making (GGII). What kind of GGII is most appropriate for this task, however, is intensely debated in the political theory. Below we sketch out a particular deliberative democratic understanding of GGII, which draws on both cosmopolitan and statist theories of democracy but follows in neither of their footsteps.

Towards a Deliberative View of Legitimacy

The development of a better understanding of GGII will be central to the delivery of real global public goods. Assumptions about how to advance the GGII agenda, emanating from essentially cosmopolitan views of global civil society, have simply assumed an extension of the 'domestic analogy' to the extra-territorial, or global, context. That is, the extension of the model of democratic accountability that we have come to accept in the advanced countries of the developed world to the wider global context. The weakness of the domestic analogy is that all but the most minimal of democratic constraints present within a domestic polity are absent at the global level (Dahl, 1999.) There is no serious institutionalized system of checks and balances at the global level. Institutional constraints that do exist have little purchase on the behaviour of major powers, especially a hegemon, should it choose to ignore them and to speak of a global public sphere, in either a legal or a sociological sense, has little meaning.

There are of course sophisticated cosmopolitan democratic theories which have problematised the domestic analogy in the attempt to elaborate which elements of 'traditional' democratic theory—that presuppose a national *demos* (people) and a nation-state context—are feasible and desirable on the global level of politics (Held, 2002, 2005; Archibugi, *et al*., 2000, Archibugi, 2000). But in these theories too, feasibility tends to give way to desirability. Liberal cosmopolitan theorists start from the individual as a member of humanity as a whole, rather than the state, and the idea that we as members deserve equal political treatment. They emphasise the importance of individual rights claims and wish to replace the state-based UN Charter with a new set of cosmopolitan principles, laying out a moral standard that sets limits to what people and political authorities are allowed to do. Examples are the principle of inclusiveness and subsidiarity (the all-affected principle), the principle of avoidance of serious harm, and the principle of active agency (Held, 2002: 23-24). According to David Held, these principles constitute an overarching cosmopolitan law for a multilayered system, specifying the organizational basis of legitimate public power. Sovereignty, the idea of rightful authority, is thus divorced from the idea of fixed territorial boundaries and thought of as an *attribute of basic cosmopolitan law* (Held, 2002: 32).

As a candidate for GGII, cosmopolitan democratic theory is faced with both practical and normative problems. In order for GGII to be acceptable to a large group of principal actors in global politics there has to be an understanding of the fundamental differences between unrealisable conceptions of cosmopolitan democratic governance functioning as normative yardsticks for criticism and radical change, and realisable systems of democratic legitimacy that can have political purchase in global public policy in the foreseeable future. We must assume that what constitutes a 'global public good' will most probably be contested. Without practicable reform, resistance amongst global 'rule takers' to hegemonic leadership and order will persist.

Legitimacy needs to be embedded in shared norms (usually of elites, but wherever possible of wider national publics) and be underwritten by judicial instruments (such as the ICC and increasingly the DSM of the WTO). But contrary to many assumptions in both the scholarly and the policy world that excessively privileges an increasingly dynamic role for civil society and non-state actors, the core of any chance for enhancing GGII remains with states as actors and instruments of diplomacy; especially multilateralism, that has been marginalized in recent years. Multilateralism as an instrument for generating legitimacy in the 21st century is and will be 'contingent' (Keohane, 2005). However, giving states a central role in GGII does not mean to yield to a purely statist view of legitimacy. States are not, and ought not to be, the sole actors in global governance. Rather, global institutions involve the perspectives of individuals as well as states. To have the right to rule means that institutional agents are morally justified in making rules and that people subject to those rule have moral reasons for complying with them or at least not to prevent others from doing so (Buchanan and Keohane, 2006: 411). Legitimate global governance must thus understand state actions within a global framework of international law and *common norms of action*. Ascribing states a major role allows us to ask hard questions about the legitimate status of an intermediate institutional global public good such as the WTO.

The liberal cosmopolitan emphasis on the individual as the primary unit of moral concern also tends to transform cosmopolitanism to a moralised democratic theory ascribing priority to moral principles over 'politics' and, in doing so, downgrading the role of the political community (Chandler, 2003; Robbins, 2002; Dallmayr, 2003). In a criticism of Held, Michael Saward points out several problems connected to the cosmopolitan all-affected principle as the principal device

for delineating political units. In his view, it does not measure how strongly and intermittently people are affected, nor does it solve the problem of how to demarcate primary political units. People need a political community to implement and exercise cosmopolitan rights such as the right to participation. Rather than disconnecting the idea of authority from fixed territorial boundaries and think of sovereignty as an attribute of basic cosmopolitan law, we should acknowledge the importance of a territorial basis for political action (Saward, 2000: 37-38).

A role for normative political theory is to point to problems in need of attention. For example, cosmopolitan democratic theory reminds us that exercises to enhance the accountability of global governmental actors that do not take seriously notions of what philosophers call 'procedural fairness' will do nothing to fundamentally alter the asymmetrical structural nature of global power. Facing the problems of the contemporary world, the question is what notion of legitimacy global governance institutions should endorse that is (or at least could be) feasible and reasonably acceptable? From a deliberative democratic standpoint, this question is not only of normative concern. With few exceptions stability is a prioritised issue in international politics. But a deliberative presumption is that *stability* and *legitimacy* are intimately interrelated, which presumes that a social order held together by common norms is more robust than one held together by instrumental and strategic action, alone. Global governance institutions supported by moral reasons rather than, for example, fear of coercion or self-interest, are likely to be more stable (Erman, 2005: 12; Buchanan and Keohane, 2006: 410).

In the absence of a political structure at the global level even resembling nation-state democracy, and without enough knowledge about the empirical and normative role of the political community for the implementation and exercise of cosmopolitan rights, we argue that an appropriate notion of legitimacy should, instead of following in cosmopolitan democratic footsteps, embrace the idea that global governance institutions could be considered legitimate to the extent that they promote core democratic values. Of course, in order to be feasible and desirable, this would not be a binary (either/or) but a gradual matter. Following John Rawls' idea of counting principles (1971, 1999), other things being equal, a global institution would be more legitimate the higher the degree to which it fulfils some specified normative requirements. Deliberative democracy can be a suitable theoretical tool in this endeavour, not only for

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normative reasons but also because it constitutes an element of modern political theory with increasing policy resonances. Deliberative democracy represents one way of revealing and addressing the manner in which global institutions operate primarily by the conventions of power politics delivering coerced decision-making, false consensus and inequitable outcomes. Enhanced deliberative democracy—developed institutional structures which ensures inclusive, free, rational, symmetrical and non-coercive discussion with no limits on the remit of the discussion—would reduce key elements of the power asymmetries within multilateral trade negotiations and help secure a fairer bargaining process than currently exists. An advantage with a deliberative approach is thus that we can use it to critically examine existing global institutions and ask hard questions about whether changes of rules and procedures within an institution actually would decrease its legitimacy deficit or not.

The use of deliberative democracy in this article suggests an 'elitist' approach to legitimacy, at least in relation to the legitimacy concept we are used to within a nation-state context. In relation to traditional democratic theory, legitimacy on the global level will place some democratic values in the forefront more than others. For example, as will be discussed below, some aspects of participation will be less salient for pragmatic reasons, while the normative burden for justice becomes all the more important. We argue that global governance institutions are more legitimate the more they promote three key democratic values: *justice*, *equality* (equal worth and the equal interests of all people), and *accountability*. The threshold for what can be reasonably accepted as the 'lowest level' for an institution is a political question which cannot be solved within a theory of legitimacy of the kind we are proposing, structured by counting principles. An additional key value that is crucial for legitimacy, namely representation, is not elaborated in detail, but rather, some *ad hoc* presumptions are made.

Justice within a theory of legitimacy of global governance differs from a theory of global justice in several respects. A standard of legitimacy would be less demanding than a standard of global justice since it is unreasonable to view a global institution as legitimate only to the extent it is fully just. As Buchanan and Keohane note (2006: 412) collapsing legitimacy to justice undermines the social functions of legitimacy. Moreover, the improvement of justice demands not only *effective* institutions (GGI) but also *reasonably accepted* institutions (GGII), which is

why we do not follow Buchanan and Keohane (2006: 411) who view legitimacy as a second best option after justice. From a deliberative standpoint the relationship between justice and democracy is an intricate one, where morality is not placed over and above democracy. Rather, the relationship is looked upon as mutually constitutive. Moral norms are formulated and reformulated through deliberative processes (processes of opinion- and will-formation) at the same time as a system of basic rights must be presupposed for these processes to operate within legally institutionalised forms (Habermas, 2005: 4). Moral and social/political functions of legitimacy must 'work together' from a deliberative view.

Indeed, in the absence of a cosmopolitan democratic all-affected principle, ensuring the participation (indirect or direct) of all people affected by a political decision, the traditional idea of legitimacy as the *rightful source* ('the people') of political authority through *actual consent* (or the idea of actual consent) is lost. Within political philosophy this is separate from the question of justification, commonly viewed as the *rightful end* of political authority through some kind of *hypothetical consent*, e.g., in shape of a shared moral principle (Simmons, 2001). How to best interpret this distinction is widely debated. Some political philosophers, following Locke, draw the conclusion that an institution can be justified (reasonable to accept) by producing welfare without being legitimate by possessing the right to impose binding duties on its subjects (Simmons, 1999: 745-46). On a deliberative understanding, legitimacy and justification are intertwined, and even more so at the global level, since legitimacy in a global setting must possess important justificatory elements to compensate for the missing consensual link between a 'people' and a political authority. We argue that a global governance institution is considered legitimate to the extent that it is supported by moral reasons on two levels: on the one hand, that it is reasonable for people to accept a global governance institution (or as a minimum not impede its operation) which promotes key democratic values, and on the other, that collective decisions within the institution are guided by moral reasons. So while legitimacy in accordance with the domestic analogy is anchored to the idea of actual consent between the people/those affected and the political authority (in practice through voting), legitimacy in a global setting is anchored to a *two-level justificatory praxis*, drawing its normative force from a hypothetical consent between people and institutions, and from an actual consent between agents within those

institutions. We assume that the former is reinforced by the latter and argue that both are possible to achieve through principled deliberative decision-making.

In order to specify what views of justice, equality and accountability proposed by this normative framework we need to explore procedural, substantive, normative and epistemic aspects of deliberation. To begin with, what kinds of justice and equality should a deliberative theory of legitimacy endorse? In recent years, the call for justice in terms of fair procedures has become salient in international negotiations, in particular from the voices of developing countries. For economic institutions such as the WTO to avoid perpetual stand-off of the kind seen in the failures in Seattle, Cancun and Geneva in July 2008, the establishment of principles of procedural fairness are required. Indeed, for advocates of a theory of public goods, underwritten by methodological assumptions of rational self interest, the privileging of 'process' rather than 'outcome' no doubt appears irrational.[1] But as literature, spanning the political spectrum, tells us, it is in the bargaining process that structural asymmetries between North and South have traditionally been at their most evident and their most political sensitive. It is politics that matter here—especially issues of sovereignty, ethics, perceived fairness and dignity—not economic outcomes. For many developing countries, it is in the negotiating process that what constitutes a public good is determined. The gradual learning curve that has seen the self-empowerment of developing countries as negotiators in the absences of procedural fairness, as in the early stages of the Doha Round, may prove to be a serious obstacle to collective action problem solving in general and the acceptance of what constitutes *global* public goods in particular. In the absence of procedural fairness the temptation by developing countries to thwart the aspirations of the developed countries is only likely to grow.

If institutional rule makers (from the developed world) tend to privilege GGI and rule takers (developing country government officials and civil society actors) tend to privilege GGII, then the possible difference between success and failure in a negotiation will revolve around the degree to which principles of justice and fairness underwrite any bargain. Since global public goods need multilateral cooperation to produce them, collective action is unlikely if resentment

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[1] This section draws on Higgott (2005) which reviews and provides a critique of a recent UNIDO project on Global Public Goods (see UNIDO, 2005).

and stand-offs prevail. Collective action problems require negotiated outcomes and these are secured in *political activity* between the principal actors. This is not simply a technical issue of bridging the participation gap identified by Inge Kaul and her colleagues in the 1999 and 2003 volumes on *Global Public Goods*. Nor is it just an issue of how to incorporate new actors (especially civil society actors) into the multilateral spaces traditionally occupied by states. Globalist imaginings of governance—global public goods theories of the kind outlined by the UNDP and UNIDO—are limited in their practical applicability because of their essentially one dimensional understanding of governance.

Even if GPGs are, in theory at least, public and non-excludable, irresponsible or selfish use, such as over-consumption or free riding, leads to resentment and resistance. It is usually the stronger states that behave in an irresponsible way. This situation is frequently illustrated by over resources use, but the same principles can be applied to the manner in which the benefits from the international trade regime favour developed and/or powerful states at the expense of poorer and/or weaker ones. Hence it is invariably the poorer or developing states that appear to be 'negative' towards trade liberalization since it is they that dispute the ideas of justice and fairness applying in a supposed global public good such as a liberal trade regime.

The economic theory and practice of GPGs must thus be embedded within a wider normative context. *Procedural* fairness, as an applied concept which gives guidance to what is a reasonable way to implement justice in a given context (Albin, 1993: 223-44), is central here. It is a necessary, if not sufficient condition to guarantee *outcome* fairness. At the very least decisions taken by real consensus "enhance the perception of the outcome being fair and balanced" (Albin, 2003b: 379-40) and a positive perception is a vital ingredient in any process of institutional legitimation. However, there are many different approaches to justice as procedural fairness in the theoretical literature. While, for example, it takes the form of a moral principle in a Rawlsian approach, within a deliberative view it is built into the discourse procedure. According to the latter, just (justified) outcomes are outcomes from a discourse procedure fulfilling certain normative conditions. Concerning moral questions, these conditions are specified in Habermas' universalization principle (U-principle), which states that a moral norm is valid if (and only if) "the foreseeable consequences and side effects of its general observance for the interests and

value-orientations of *each individual* could be *jointly* accepted by *all* concerned without coercion" (Habermas, 1998: 42). According to Habermas' interpretation, the principle frames the moral dialogue that focuses on identifying common interests shared by all, in which the impartial judgement aims at establishing norms that incorporate the generalisable. Thus, a moral norm is valid (justified) if, and only if, everyone accepts it for the same (agent-neutral) reason and on the basis of the same (generalisable) interest (Erman, 2007: 609-10).

Of course, there is a vigorous debate among deliberative scholars about how to understand and/or modify Habermas' U-principle. For the purposes of elaborating a theory of legitimacy (rather than a moral theory) the normative demands of a fair procedure must indeed be a weaker. To begin with, "accepted by *all* concerned" in a global institutional setting would more appropriately imply all political actors representing peoples' basic interests primarily through state representatives but also through larger non-state actors. Within such a setting, moral norms about common matters of concern indeed ought to be justified through a rationally motivated consensus. However, there is a big difference between a shared or common interest (in collective problem-solving) and the impartialist laden universalisable interest suggested by Habermas. Let's assume that political actors in a multilateral negotiation agreed to the norm 'countries cannot under normal circumstances discriminate between trading partners'. Just because everyone has the same reason to agree to this norm it does not follow that this reason is agent-neutral (impartial) in Habermas' sense. All that is necessary is that an actor recognizes that her interest in this norm counts no more and no less in favour of the adoption of the norm than every other actor's interest (Finlayson, 2000: 465). Also this weaker interpretation of the U-principle promotes the democratic values of justice and equality since these values are built into the notion of communicative action in the Habermasian account.

Even if there is at present deep moral disagreement about what global justice would require and no unified system of global institutions within which it is possible to allocate institutional responsibilities for pursuing global justice, global governance institutions must not commit serious injustices in order to be legitimate (Buchanan and Keohane, 2006: 418-19). Thus, to be reasonably acceptable they must meet a minimal moral standard. According to a deliberative view, as suggested by the U-principle above, this is done by pleading by the giving and asking

for (moral) reasons in discourse. Through this process the values of justice and equality are both promoted.

Legitimate global governance has to rely primarily on non-hierarchical steering. Thomas Risse distinguishes between two types of non-hierarchical steering: firstly, following a logic of consequentialism (instrumental rationality), sanctions and incentives can be used to inveigle actors into complying with rules and norms by manipulating their cost-benefit calculations so that they are convinced that compliance is in their own interest. Secondly, following a logic of appropriateness, actors comply with rules and norms when convinced by their moral validity or the procedure which led to the norm in question. While negotiations previously were mostly understood in terms of instrumental rationality, some research shows that actors can follow a logic of appropriateness. In his approach to global governance, Risse links the latter steering mode to the idea of communicative action, where the logic of appropriateness is dependent on the logic of argumentation (communicative rationality) (Risse, 2004: 292-93; Erman, 2006: 261). Actors either acquire the social knowledge to act appropriately in a negotiation or they become convinced by the moral validity of the rule in question. In both cases they draw on the social actions of learning and persuasion, which harbour the logic of argumentation. Similarly, acting strategically (following the logic of consequentialism), actors using communicative action (following the logic of argumentation) are goal-oriented. The difference is that the goal in the latter case is not to maximise one's fixed preferences and given interests. Rather, actors seek "to challenge and to justify the validity claims inherent in them—*and* are prepared to change their views of the world or even their interests in light of the better argument" (Risse, 2004: 294). Furthermore, while the logic of consequentialism is *dyadic* in the sense that only mutual assessment matters, the logic of argumentation is *triadic* in the sense that it demands of speakers and listeners to refer to some external authority to make validity claims. Within the dyadic structure, bargaining actors do not give any reference to shared knowledge or common values, but rather try to reach a compromise from the standpoint of their own utility (Risse, 2004: 297; Erman, 2006: 262).

In communicative action, no force apart from the force of the better argument counts as valid in discourse. For any argument to be valid it must be accepted by the discourse participants by their

saying "yes" to the raised validity claim. Through a hypothetical ideal speech situation, defined as a model of "pure" communicative socialization, Habermas reconstructs the necessary conditions for enabling communicative action, most importantly, the equal opportunities to speak and to participate—both presupposing equality as equal worth and the equal interests of all persons. These conditions are necessary insofar as we cannot question them without invoking them (Habermas, 1996b: 122-123, 323). That is, the normative force is located in the practical speech situation as such, which "demands" that participants follow counterfactual discourse rules. Against Habermas (1996b: 353-54) however, we argue that the U-principle cannot be purely procedural. Rather, to promote the values of justice and equality, communicative action requires that participants in negotiations adopt certain epistemic and normative attitudes towards each other.

The extreme power asymmetry within global institutions is the most severe obstacle for fair deliberative negotiations promoting these values. Advocates of civil society emphasize a widened formal representation by non-state actors in global governance, but an equally important problem concerning representation is that having a seat at the negotiating table guarantees neither influence nor effective representation (Erman, 2006: 268). In fact, as Held points out, the main problem in international decision-making does not seem to be quantitative but qualitative (Held, 2004b: 370). We contend that the logic of argumentation (communicative action) has more to offer than the logic of consequentialism in coming to terms with the fact that formal representation does not say much about influence over decisions. The more arguing matters in multilateral negotiations, the more actors with less material resources are empowered through the process. (Risse, 2004: 303).

Yet, as Stephen Krasner (1985) pointed out over twenty years ago, developing countries have a strong preference for formalized, rule governed processes of decision-making rather than the informal less prescriptive and flexible approaches often favoured by powerful states. Of course, in order to promote the value of justice and increase the legitimacy of global institutions, fair deliberative procedures must be strictly regulated and institutionalised. Mechanisms must not only be implemented to support the shift towards consensual problem-solving, but also to actually 'force' actors to switch communicative mode from bargaining to arguing. If there were

rules that prevented actors from using their material power in negotiations (e.g. through the threat of sanctions) they would have to rely on trust in order to persuade one another into a cooperative mode. In fact, trust can never grow when all involved use strategic action. Enforcing a shift from bargaining to arguing by institutional means could be one way of levelling the playground between powerful and powerless states, as well as between state and non-state actors (Erman, 2006: 269).

A problem with non-hierarchical political steering is that actors could always choose to withdraw from the negotiating table. Therefore, a crucial complement to threats of sanctions is what Risse calls 'argumentative entrapment'. Even actors that are initially strategically motivated must engage in reason-giving and demonstrate their openness to the 'better argument', in order to convince other participants and influence the course of negotiations. In argumentative entrapment, dialogues become more genuine over time through a shift from the logic of consequentialism to the logic of argumentation (Risse, 2004: 299-300, 308). The purpose in a court room is a good illustration of how argumentative entrapment occurs. Lawyers are instrumentally motivated, but they need to use argumentation by reference to acknowledged law and legal principle to persuade the judge or the jury (Risse, 2004: 300; Erman, 2006: 270).

In our particular understanding of GGII, apart from promoting justice and equality, global institutions should promote *accountability* in order to be legitimate. How can we conceive of accountability in absence of democracy? The relationship between accountability and legitimacy is under-theorised within democratic theory, where accountability is often *a priori* seen as part of legitimacy. Likewise, in international politics it is the norm to equate accountability with legitimacy, presuming that increased accountability necessarily leads to increased legitimacy. Unfortunately, this equation has led to a negligent way of speaking about global governance in democratic terms. As soon as accountability is involved (where someone is made accountable for something or someone) it is presumed that one deals with democratic issues. Indeed, such careless 'democracy talk' might even lead to an increased democratic deficit of international institutions since it falsely makes us believe that we have solved democratic problems through the implementation of accountability mechanisms.

Legitimacy is something larger than accountability, yet in the need of it (Kahler, 2004) but there are both empirical and normative reasons for making an analytical separation of accountability and legitimacy in the study of the democratic deficit of global governance. Furthermore, for our purposes it is useful to distinguish between an institution being democratically accountable in the traditional sense and promoting the value of democratic accountability. For too long, and once again drawing on the domestic analogy, democratic accountability has been equated with widening participation. In order to take GGII forward we should not dream of instant and unattainable global democracy. Exercises to enhance the accountability of global governmental actors will do nothing to fundamentally alter the structural nature of global power in the short term, although they may do so in the longer run. Thus, Grant and Keohane argue, we should "… figure out how to limit the abuse of power in a world with a wide variety of power-wielders and without a centralized government" (Grant and Keohane, 2005).

As we have seen, justice and equality are knit together in a deliberative account of the conditions required for norms to be validated in discourse. *Improved normative standards* (the acceptance of norms of behaviour that are fair and just) increase the accountability of global institutions. If there is not a new consensus on the evolution of democratic norms, there is at least a growing unacceptability of entrenched and exacerbating patterns of inequality in the global economic order. It is here that the work of political philosophers such as Pogge (2001) and Sen (1999) cast increasing policy shadows. Equally important for accountability is *enhanced information provision and transparency* (Grant and Keohane, 2005). Modern communications and their global diffusion make open information provision, and hence transparency, a more important political tool than at any time in history (see Florini, 2003).

Accountability is also connected to the epistemic aspects of legitimacy. Judgements about whether an institution satisfies the right criteria for legitimacy require factual knowledge. The response to this problem is to focus on the 'epistemic-deliberative' quality of an institution, measured by the extent to which it provides reliable information (Buchanan and Keohane, 2006: 425-26). On the deliberative view advanced in this paper, however, epistemic quality is not solely an empirical and practical matter since epistemic and normative dimensions of deliberation are intimately connected. Thus what counts as 'reliable information' is partly a

normative question. Indeed, transparency is an essential feature of accountability. But the connection between access to information and accountability is not obvious. In order for institutions to be legitimate, channels of information between institutions and civil society, need not only be transparent but also open to criticism and revision.

A problem today is that the epistemic power to define global economic governance is driven primarily by a neo-liberal discourse and liberal trade theory (in support of GGI) while outlets for critical voices are weak. In order for global institutions to provide reliable information and thereby increase their accountability some kind of (self-) critical discourse must also be secured. Moreover, since the terms of accountability will most probably be contested, rules and procedures should be established to enhance the conditions for deliberative contest concerning the institutions' own operations. As the next section will demonstrate, the WTO has ventured farther down this discursive route than any of the other international economic institutions. This journey is briefly reviewed and suggestions for the next steps advanced. Via a brief examination of WTO decision-making we look at some of the theoretical opportunities and practical constraints on the role of the WTO operating as an instrument of global governance.

The WTO, Deliberative Democracy and Decision-Making

As we have indicated, the legitimacy question is not merely a 'policy' question for international institutions. This is especially the case for the WTO as a global actor. It is also a normative-theoretical question, more important now than at any time in the life of the post World War II multilateral trade regime. This is due in no small part to the shift from a relatively informal, albeit rules based agreement, amongst contracting parties (GATT) to a more formal organization with greater policy reach and influence (WTO).[2] And it is not just developing countries, NGOs and the alter-globalization movement that are frustrated by the roles of the WTO. Strong objections can be found towards some of its activities (especially those of the DSM) among the rising economic nationalist tendencies in the USA and some European countries. Also, key sections of the global business community and the wider trade policy community feel the WTO acts at times as an impediment rather than a support to liberalization; hence the turn to alternatives, such as bilateral and regional preferentialism.

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[2] For a discussion of this transition see Narlikar, 2005.

Who or what confers legitimacy on the activities of an organization like the WTO is a complicated matter. In the GATT era, when it was an organization of contracting parties it was clearly its member states. For the vast majority of the trade policy community this is still very much the case. But what we might call the 'community of legitimation' has clearly grown; certainly in a *de facto*, if not *de jure*, sense. This community now includes those elements of civil society that purport to speak for citizens not only within member states but also across state borders. So apart from the adjustment problems that arise with the creation of a new organization, the legitimacy question reflects a number of longer term structural problems pertaining to:

(i) The continuation of increasingly dysfunctional decision-making procedures that accompany the question of determining the legitimate functions and roles for the WTO given how the move from GATT to WTO has widened its remit.

(ii) The issue of to whom the WTO is accountable; given the increased the range of actors with now assume a right to 'voice' on trade matters.

If governance increases the expectations of compliance on the part of the governed, then it also raises requirements of increased accountability and superior levels of justification for the decisions taken by an institution (and its agents) seeking compliance from the governed. If these expectations are not met, the longer term legitimacy (of the WTO) will remain problematic.

The primary aim of the deliberative theoretical framework elaborated in the previous section, is not to propose an ideal to be realised but to offer tools for criticising global economic institutions from a legitimacy perspective—detecting rules, decision-making procedures and other institutional structures that produce coerced decision-making and inequitable outcomes—and pointing out directions that these institutions might take in order to remedy their legitimacy deficit. The major task here is to reduce the power asymmetries within multilateral trade negotiations and establish a fairer bargaining procedure. Specifically we need to ask what problems and possibilities face the WTO from a deliberative perspective. The WTO is ostensibly more democratic than most international organizations and its institutional structure certainly harbours elements with (potential) deliberative qualities and major efforts at reform have been undertaken since 2005. Indeed, as Director-General Pascal Lamy notes:

'While most international economic organisations have a restricted body alongside their plenary body, the WTO is unusual in that the totality of its membership participate, as a matter of law, in all of its bodies from the Ministerial Conference, which meets at least once every two years, to the General Council which functions during the interval, not to mention each of the Councils and the Committees. All of the decisions are taken according to the principle of 'one government, one vote' and by consensus. While it is true that this rule of consensus is responsible for a certain sluggishness in the negotiations it does enable all Members, whatever their share of international trade, to express their views and to participate on equal footing … no decision is ever taken in a green room meeting, the object of which, as that of many group meetings of variable geometry, is simply to narrow down the main interests at stake.

Green room meetings include representatives from all interest groups. … They usually follow open ended meetings held by Chairs of negotiating groups in addition to bilaterals, confessionals, group briefings, informal meetings, technical meetings and briefings by the Director General to various regional group members. … Once a consensus emerges in green rooms, Members go back to broader meetings in the form of Heads of Delegations, TNC or GC Meetings, where all members participate and can express their views and their position on any proposed consensus decision.[3]

We quote Lamy at length to demonstrate that there is a case to be made—stronger than one would believe from a reading of the NGO literature (*pace* Kwa, 2003) —that the WTO is a venue at which 'all' voices, including those of the weakest members can, in theory if not always in practice, be heard. There is thus a formal environment for deliberative decision-making and for an institutional structure which could in principle promote the democratic values of justice, equality and accountability.

Of course, this is not the same as suggesting the presence of a culture or environment that automatically lends itself to deliberative democratic discussion. The WTO remains principally a venue for negotiation rather than for argumentation. Deliberative democracy of the kind we have outlined in the preceding section is not embedded in the WTO at either the normative or

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[3] Pascal Lamy to Richard Higgott, personal correspondence, June 27, 2006.

empirical level. Notwithstanding some shift in the balance, the logic of consequentialism still prevails over the logic of appropriateness and conditions for enabling communicative action (based on the equal opportunities to speak and to participate on an assumption of the equal worth and equal interests of all members) are not embedded. Indeed, it remains clear that many participants in trade negotiations conducted under WTO auspices do not accept that the decision-making processes, as currently constituted, are acts of deliberative democratic discourse rather than exercises in power politics.

Certainly the historical record suggests that the MTN processes have been driven by restricted deliberations of the major powers and issue specific coalitions. The pattern of negotiation in MTN rounds to-date has seen "… a semblance of law based negotiation in the launch phases of trade Rounds, but domination and coercion by powerful western states for most of the rest of this process" (Kapoor, 2005: 529; but see also Kraweski, 2001 and Steinberg, 2002). For developing countries, both the psychologically negative impact of Green Room processes and the usually asymmetrical deals that result have traditionally been a severe test of commitment to the organization. Significantly, however, this is better understood in the contemporary era of the WTO than at any time in the history of the GATT/WTO. Lamy for example is on record as saying that he understands the negative impact of the Green Room process on the WTO's less powerful members. Responding to the criticism that Green Room processes at the July 2008 Geneva Mini-Ministerial resulted in a sense of lack of ownership of decisions by smaller members, Lamy replied "I totally understand, and share, the concerns of those of you who feel that this process is frustrating and sometimes too obscure, … I agree that we have to work out this problem of ownership." But, notwithstanding more sensitive use of Green Room and small group discussions, these activities can still lead to wider member resentment; as was clearly the case in Geneva in 2008.[4]

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[4] This point is based on a detailed empirical analysis of the discussions of the Ministerial Meetings in the Doha Round from 2001 through to Geneva July 21-30, 2008. For insights into the nature of the negotiations processes in these meetings see the detailed 'Daily Update' analyses produced by the International Centre for Trade and Sustainable Development (ICTSD, Geneva) accessed at http://ictsd.net/

For some WTO analysts and practitioners, especially those concerned about its ability to make effective decisions, the only way beyond this kind impasse is the creation of some kind of 'consultative board' (Narlikar, 2005) not dissimilar to the UN Security Council or a major change away from 'single undertaking' decision-making towards 'critical mass' decision-making in the setting of the WTO policy agenda (see the Warwick Commission, 2007). Needless to say neither suggestion has so far found much support within the developing world. Notwithstanding developing country dissatisfaction with the current processes, the one thing that WTO decision-making processes theoretically have in their favour is that they are rules based and consensus based with a juridical notion of member equality. While a movement away from the 'single-undertaking' towards critical mass decision-making might make things easier for developing countries in meeting WTO obligations, the disadvantage of this approach is that it would undermine their overall input into the policy process of the WTO.

But there is a practical limitation with the 'one-member-one-vote' argument. The WTO has a *de facto* system based on the size of a country's market. This would be difficult to change in a *de jure* sense. A formal approach based on weighted preferences (as at the World Bank and the IMF) for the major trading states would shatter the myth of sovereign equality amongst WTO members and formalize the omission of many developing countries from the consultation processes. It may be easier to acknowledge the growing power of the BRICs in a *de facto* way than it would be if voting weights were formalized. As Lamy argues, "the WTO is one of the few places where the geographical and economic changes of the recent past are reflected in the representation around the table" (*The Financial Times*, January 24, 2007: 7). An observation of the behaviour of the G20, and especially India, Brazil, China and South Africa, in the Doha Round would support Lamy's view but it does not solve the dilemma inherent in the need to progress GGI and GGII in lock step. A move towards 'critical-mass' agenda setting that streamlines decision-making while at the same time protecting the varied but legitimate interests of all members (see the proposal in the Warwick Commission Report, 2007: 31-33) will need to be considered at some stage if the WTO is to remain sustainable.

The process in train since the Seattle Ministerial Meeting of 2000 has been characterised by a concerted attempt by developing countries to enhance at one and the same time both their

deliberative impact, that is their ability to set the terms and practices of argumentation as well as negotiation) and their *de facto* market power in the WTO on a number of fronts. This is epitomised in the growth of coalitions such as the G20 (see Narlikar and Tussie, 2004). The growth of Southern activity, including stronger positions in Green Room negotiations that have emerged during the Doha Round, is a reflection of an increased understanding by the developing countries of their *juridical equality* within the WTO legal framework. This is having the effect of breaking up some of the traditional asymmetries. Developing countries—notwithstanding the danger of 'coalition proliferation' (G20, G33, G90, G110—20+90 etc)—have enhanced their ability to offer 'voice' in the negotiating process. Recognition of this is to be found in the growing influence over the negotiations of India and Brazil in particular and the increasingly frequent irritation of the US and EU at not automatically getting their own way. Although power asymmetries are still heavily weighted in the favour of the traditional powers, the veto capacity of the 'new majors', as evinced by India and China's role in closing down the Mini-Ministerial in Geneva in July 2008, has been fully established since the turn of the century.

The growth of power of the new coalitions has allowed Lamy and his predecessor, Supachai Panitchpakadi to re-legitimise Green Room activities. The regular inclusion of the powerful developing countries into Green Room deliberations has had the effect of weakening, albeit not removing, the traditional developing country critique that they were totally controlled by the US, Europe and, to a lesser extent, Japan. This does not mean that in-built structural disadvantages have gone; nor that the 'new majors' axiomatically represent the interests of others. The WTO remains a 'power based' system with little concern for the asymmetries in the relationship between the developed and developing countries. The WTO negotiating system remains a system of asymmetrical domination embedded in a theoretically fair system of legal rules.

Further, limited financial and human resources—especially technical knowledge—also work against the evolution of a deliberative process and, by extension, developing country participation within it (see Page, 2003). This is in large part explained by the language of the WTO. The governing norms and the language of the WTO, emphasising core market values of competition and efficiency, remain unchallenged. This is also, of course, the language of business groups and experts, comfortable with the sentiments present in the neo-liberal discourse

and by extension, competent in the technical language of the WTO. This ensures a high degree of access to and influence over the trade policy community as illustrated for example in the effectiveness of the pharmaceutical industry lobby and the Coalition of Service Industries on TRIPS and GATS in the Uruguay Round. Increased capacity for developing countries usually means becoming more adept at understanding and articulating their interests through the prism of this paradigm with its settled (hegemonic) rationalist, state-centred, market driven norms.

Other disparities in intellectual (and infrastructural) resources at the disposal of developing countries in the negotiation process when compared with those of the majors also inhibit the decision-making process. For example, NTBs such as phytosanitary arrangements are now so technical that developing world trade officials do not have the expertise to understand them (see UN Millennium Project, *Task Force on Trade*, Washington DC, 2005: 146-65), hence the importance of the Aid for Trade initiative. Cost is also a salient factor for any developing country in functioning at the optimum level in the WTO (especially legal costs in the DSM). Civil society support to developing country governments cannot offset a lack of state capacity especially when compared to better-resourced developed countries (Edwards, 2001).

Moreover, the WTO, unlike say the IMF or the World Bank is not a 'knowledge based' organization with capacity building capability and programmes (see Stone, 2001). Notwithstanding a range of activities and initiatives to build technical capacity, WTO members are largely left to their own devices and material capabilities when it comes to the formation of national policy positions on WTO issues. The WTO is a repository of expert knowledge (on international trade) but it does not, unlike the IMF or the Bank, have substantial material resources to distribute as a way of legitimating and embedding its epistemic knowledge in the wider trade community. Indeed, the disparity in the resources at the disposal of the WTO, when compared with those of the Bank and the IMF, is one of the most cited reasons for some of the difficulties facing the WTO in being able to build capacity and socialize its members to the epistemic knowledge of the liberal trade theorist.

Generating 'voice' on new ideas—by which, following Hirschmann (1970) we mean the ability and opportunity not only to formulate policy but also advance policy—is constrained not only by

capacity, but also by the residual strength of existing ideas within the core epistemic and political groupings. Liberal economic trade theory privileges 'abstracted rationality' at the expense of 'contextual rationality' and the embedded political contexts of policy making (see Brint, 1994 and Lindblom, 1990). But, for many developing country policy makers contextual rationality is clearly privileged. In policy terms this frequently reinforces North-South divisions. Ironically, greater socialization into the discourse of liberal trade via a sustained process of knowledge capacity building could turn out to be one useful way of minimising hostile Southern voices on the issue of the legitimacy of the WTO.

Conclusion

We have argued, notwithstanding limitations and constraints, that the WTO as a putative organization of 'global governance' has considerable deliberative potential to enhance the values of justice, equality and accountability. To begin with, the organization's formal legal structure constitutes a firm basis for justice and equality in decision-making. Formal equality is a necessary condition for non-hierarchical steering through deliberative problem solving. Of course, to become more legitimate, rules and procedures must also be more strictly and explicitly formulated and prescribed in order to prevent 'vagueness' that does not favour strategic action by powerful actors alone. Moreover, rules and procedures must be reformed in a way which encourages a shift from the dyadic logic of consequentialism, where only mutual assessment counts, towards the triadic logic of argumentation, where participants give reference to an external authority of common values when raising validity claims in discourse; that is, in a direction that strengthens the values of justice and equality and thus reduce major power asymmetries in trade negotiations. The changes we have witnessed at the WTO since 2001—and with the increasing pressure from developing countries, non-state actors and civil society at large—testify to movement in this direction.

For this trend to progress further however, socio-cultural and psychological factors are as important as juridical and institutional ones. Indeed, the 'free trade' culture nurtured by liberal trade theory infuses the basic intellectual structure of what we have called GGI. But as was discussed before, this view is becoming increasingly challenged both on pragmatic and normative grounds. This is not simply the case in developing countries. It is a tendency that finds

growing political voice in major OECD (for a discussion see Warwick Commission, 2007: 18-21). At the same time, political actors from the South form coalitions and come together in joint action which enhance their deliberative impact and slowly break down some of the cemented power asymmetries. As a consequence, their self-confidence, and argumentative capacity (in a deliberative sense) increases, which in turn gives rise to further requirements of equal inclusion and participation central to what we call GGII, thereby supporting and substantiating the growing juridical equality of the smaller members of the WTO. If actors come to rely more on argumentation rather than negotiation, this will alter the balance in the relationship between GGI and GGII.

The key issue in the early 21st century at the WTO is not the future of liberal, freer trade. The collapse of the Doha negotiations will not be the end of trade liberalisation. The issue is how to overcome a residual belief that structural power asymmetries actively work against developing countries taking the maximum benefit from a liberalising trading order. No developing countries nowadays talk of autarky in a manner common to the 1970s. But many believe that the first mover advantages and infant industry arguments that benefited the now developed world in earlier times are not so easily available to them in the 21st century (Ha-Joon Chang, 2002). This is a political problem in the way of the consolidation of global trade norms, principles and rules and the institutionalization of the WTO as their arbiter. It has thus been the argument of this article that it is the unsatisfactory and contested nature of the decision-making process, as much as the substantive trade issues at dispute amongst the players in multilateral trade negotiations, which challenges the legitimacy of the WTO as a vehicle for 21st century global economic governance.

For all the efforts of the WTO to overcome its failings, and these efforts we argue have been substantial and well in advance of the other international economic institutions since the turn of the century, a democratic deficit remains. Most of those affected by WTO rules still have little, or at least insufficient in their own eyes, input into the process. But we have also argued that this problem cannot be solved by the statist negotiation based models of the past nor by futirustic democratic yearnings of a cosmopolitan variety. Thus we have offered a couple of 'middle range' theoretical suggestions, of a reformist rather than pietistic nature, that might make a

positive difference to WTO decision-making by moving it in a more deliberative direction. Of course for many, what the WTO does, in both the developed and the developing world also remains as important as how it does it. We have noted, for example, that 'economic nationalists' in both the USA and Europe take increasing exception to the reach of the DSM. Similarly, for many developing countries, the WTO remit is also now deemed too intrusive. One currently powerful argument threaded through the DDA discussions of the early 21st century has concerned the problematic role of TRIPs, TRIMS and GATS and the manner in which they are thought to erode 'development policy space' (see Wade, 2005).

It is not clear that the provision of the benefits of trade liberalization by the WTO can be guaranteed to all its members. Empirically we know that weaker members do not always gain from trade liberalization. As a consequence, decision-making processes at the WTO and the global public good of trade liberalization that they aspire to deliver will continue to remain contested in their legitimacy. This article has argued, however, that the more global institutions promote justice, equality and accountability, the more legitimate they become. We have tried to demonstrate that the activity at the WTO since the turn of the century provides a partial empirical substantial verification of this assertion.

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