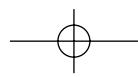
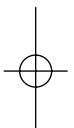
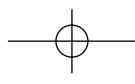
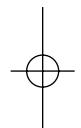
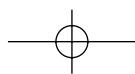


S E C T I O N I I I

INTERNATIONAL DEMOCRACY





CHAPTER 5

DEMOCRATIC LEGITIMACY AND INTERNATIONAL INSTITUTIONS

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I. INTRODUCTION

In assessing proposals for international democracy we will need to make a distinction between democracy in the sense of a set of political institutions and processes and democratic values in the sense of those values that underpin democratic institutions and processes. With the help of the underlying values, I argue, we can arrive at an assessment of the worth of democratic institutions at the global level. I will discuss two kinds of institutional system that might be thought to have democratic legitimacy: one based on the idea of a fair voluntary association of democratic states and the other based on global democratic institutions in a unified form as in proposals for a global democratic assembly. I will assess these institutions on the basis of the values I take to underpin voluntary association and democracy in the domestic setting.

I start with some brief remarks about legitimacy and the basis of what I call inherent legitimacy followed by an idealized version of the system of international institutions we already have. I examine some of the principal objections to such a system framing them within my conception of public equality. I defend what

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I call the system of Fair Democratic Association. I then discuss whether or not a case can be made for global democracy. I argue that even as an ideal, the case cannot be made. I argue tentatively that the system of democratic association is superior to international democracy. I conclude with some remarks on whether or not legitimacy can be attributed to current international institutions, at least from a broadly democratic standpoint.

The results of this study are inevitably quite messy since we are dealing with the fast-changing and polymorphous arrangements of the global order and there is so much disagreement about how it works. This is an attempt to impose some order on our understanding of international institutions while at the same time respecting the complexity of the system.

II. THE CONCEPT OF LEGITIMACY

The principles that underpin democracy are primarily concerned with the grounding of inherently legitimate political institutions. In the case of the nation-state, the theory of democracy is normally meant to give us an account of legitimate political institutions. The role of considerations of inherent political legitimacy is to define a fair system of collective decision-making when there is disagreement on the substance of the decisions and fundamental interests are at stake. It answers the question: by what right has this decision been made and imposed on all? It determines who has the right to make certain decisions. If a system of decision-making is legitimate then the decisions become legitimate as well (within some clearly defined limits). Members then have content-independent reasons to go along with decisions even if they think them unjust. These reasons are grounded in the right of the legitimate decision maker.

Instrumental legitimacy grounds content-independent reasons in the fact that one is likely to do better by the reasons that apply to one independent of the decision maker by following the directives of the decision maker.¹ This kind of legitimacy is weaker because it tends to be piecemeal and its hold varies from person to person.

[FN:1] A conception of legitimacy only lays down some constraints on how one may pursue justice in the international realm but it does not define justice or morality in its entirety for that realm.

¹ See Raz, J., *The Morality of Freedom* (Oxford: Oxford University Press, 1986) for this conception of legitimate authority and its justification.

III. A PROVISIONAL ACCOUNT OF THE BASIS OF POLITICAL LEGITIMACY

The basic idea behind the democratic conception of legitimacy is that legitimacy is a property of institutions publicly committed to the equal advancement of the interests of the persons who are affected by those institutions. This idea is based on two notions: the principle of equal advancement of interests, which is a morally cosmopolitan principle; and the requirement of publicity, which attaches to the principle once it is implemented in actual political and economic institutions. The principle of equal advancement of interests has two aspects worth bringing out: it directs us to advance the good of all persons and it constrains the pursuit of the common good by equality.² Public equality implies that people can see that they are being treated as equals in the operation of the institutions even if they do not always accept the outcomes of the decision-making process. The public realization of equality is required when we try to establish justice among persons in a system of rules and institutions.

In the modern state, democratic institutions are legitimate to the extent that and because they publicly realize the equal advancement of the interests of the members of the society. Democracy is a way of publicly realizing equality when persons who have diverse interests and backgrounds need to establish rules and institutions for the common world in which they live. There is substantial disagreement on how the common world should be shaped. The diverse interests and backgrounds make persons cognitively biased towards their interests and backgrounds in the judgments they form about how to accommodate the interests of all others in a common system of institutions. And persons have interests in living in a world that makes sense to them. Consequently, persons have fundamental interests in participating in shaping the world they live in. Democracy is a way to advance the fundamental interests of all persons in a publicly equal way. In the context of biased disagreement the only way to treat persons as equals so that all can see that they are treated as equals is to give each an equal say in the shaping of the shared institutions they live under. To the extent that democracy realizes public equality, a democratic assembly has a right to rule in the sense that persons have strong reasons to go along with the decision

² I defend this principle in ‘A Foundation for Egalitarianism’, in Holtug, N. and Lippert-Rasmussen, K. (eds.), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Oxford University Press, 2007), 41. Equality of advancement of interests is not as demanding as one might at first think. The institutionalist idea that the domestic institutions of a society matter a great deal to the advancement of the interests of the members combined with the idea that outsiders can do little to reform one’s institutions, suggest that equality implies mostly that one must help others escape severe poverty and disease.

just because it was democratically made and despite the fact that they might disagree with the content of the decision. The reasons to comply are grounded in the pooled rights of all persons to have a say in shaping the common world they live in.³

[FN:3] This idea of legitimacy as public equality is a defensible way to think about struggles over the legitimacy of international institutions and law. The principal type of criticism of institutional legitimacy in the international realm is that the institution unfairly favours the interests of certain individuals or groups over others. In particular, the interests of the members of the wealthy and powerful states prevail over the interests of individuals in the rest of the world. They publicly treat the interests of the members of the developing world as having less importance than the interests of the members of the developed world.

Because democracy is the best realization of public equality in the domestic context it is natural to think that democracy is the best way to realize public equality in the international context. The application of the idea of legitimacy to international institutions and law is difficult and uncertain. There are two basic models of the legitimacy of institutions in modern democratic societies: one is the democratic model; the other is the model of institutions as voluntary associations. I want to explore both of these and mixtures of these as possible models of legitimate international institutions. I will start with the voluntary association model.

IV. THE VOLUNTARY ASSOCIATION MODEL OF INTERNATIONAL INSTITUTIONS

A plausible interpretation of the principles that underpin the current system is a modified version of the traditional state consent model. Call it the *voluntary association model* of the international system. It says that the legitimacy of international institutions and law derives from the fact that the system of international law and institutions is a system of voluntary association among states.

The idea that international society is a voluntary association of states seems to animate the traditional view that state consent is the main source of international law; but it permits that some propositions of international law are valid even though not consented to because they support a system of free association among states.

1. Some laws and institutions may be structural—or causal—prerequisites to making the system one of voluntary association. The principle that agreements must be performed, the norm against aggressive war, and the concern for preserving international borders are prerequisites of this nature.

³ See Christiano, T., 'The Authority of Democracy', *Journal of Political Philosophy* (Sept. 2004); and Christiano, T., *The Constitution of Equality: Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008).

2. Some laws are necessary for the stability of such a system. That peace treaties imposed on defeated aggressors are valid can be seen to be a necessary component of a peaceful international order that respects voluntary association.
3. Some laws may specify internally grounded limits to voluntary association. The *jus cogens* norms against slavery, genocide, and aggressive war are connected with voluntary association because they are grounded in the values that underpin voluntary association.

Even customary international law can be seen as respecting a kind of tacit consent. It is a generally understood principle that a state will not be bound by a proposition of customary international law if it has made persistent and clear objections to it when it arose and that it will be bound if it has made no such objections.⁴ The tacit consent principle in the international context does not presuppose the authority of the candidate proposition of law over the entity whose consent is asked for, unlike the case of tacit consent to the authority of the state.⁵

Finally, it is important to note that the voluntary association model is compatible with the fact that some international organizations enjoy some independence from the states that create them. The capacities of some organizations to adjudicate disputes among states, and to make the rules created by states more precise in the process, are certainly compatible with claiming that the capabilities of some organizations exist at the pleasure of the states. The capacities of organizations to make soft law and to propose hard law are also compatible with this claim. Indeed, the very limited capacities of organizations to make hard law are compatible with this model as long as states have a right to exit. In general though, even the most advanced international organizations do not allow very much in the way of making hard law without the participation of all the states that are subject to it. And in the exceptional cases where only a qualified majority is required, the most powerful states have real veto power.

V. SOME GROUNDS AND LIMITS TO THE VOLUNTARY ASSOCIATION OF STATES AS A BASIS OF LEGITIMACY OF INTERNATIONAL LAW

States should have the principal say in the making of international law. If states do not have a say and they do not want to do something, the rules of the international

⁴ See Simmons, A. J., *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979) for a statement of this requirement of tacit consent.

⁵ See Brilmayer, L., *Justifying International Acts* (Princeton: Princeton University Press, 1980) for this critique of tacit consent as a basis of the authority of the state.

system simply won't be observed except by accident since the international system relies on their cooperation. This reason is grounded in a concern for the stability of the system of international law and organization since states are by far the most powerful players in the international system.

The moral foundation of the voluntary association model of legitimate international institutions and law consists in the importance of states to the advancement of the interests of persons. The state and, more particularly, the modern democratic state is an extremely sophisticated system for the identification and advancement of the interests of a very broad proportion of its population. It is important to understand that this is a comparative claim; the modern democratic state is far from what we want it to be. In comparison with other institutions, it is relatively successful.

The voluntary association model also suggests a very weak kind of equality among persons in the advancement of the interests of persons. Because states have equal rights of exit and entry there is a sense in which the interests of persons are being given a kind of equal weight by the system in a way that is publicly clear to the persons in the system. This will give rise to many objections but it is important to see that the equality of states could be thought to provide some kind of weakly egalitarian protection for the interests of all persons.

Now we can see why the *jus cogens* norms against genocide, slavery, torture, and some forms of radical discrimination make sense within the voluntary association conception of the international system. States that engage in these practices cannot be said to be representing the interests of their members, and so the point of voluntary association seems to be clearly defeated in the cases of states violating these *jus cogens* norms.

VI. THE REPRESENTATIVENESS PROBLEM

There is a natural objection to the voluntary association model of international legitimacy: the consent and lack of consent of some states does not reflect the interests of most people in those states. As a consequence, numerous individuals' interests are not being considered in the making of international law and institutions. The *representativeness problem* comes in three variants: the authoritarian variant, the minority variant, and the secrecy variant.

The first is that many states are not democratic, or not very democratic, and so they do not even represent their majority populations very well. Generally, democratic states are likely to represent their populations reasonably well and so the states' interests are going to be closely connected with the interests of a substantial proportion of their populations. When a democratic state agrees to undertake a duty or burden, it is doing so with the agreement of a significant proportion

of the people on whom the burden is ultimately imposed. The question is: if a state is non-democratic, do its decisions adequately reflect the significance of the duties to and burdens imposed on its population? The answer is not a simple one. Clearly non-democratic states have to be responsive to the interests of some of their populations. But in general there is reason to think that they will be much less responsive to their populations than are democratic states.⁶

The second representativeness problem is that even democratic states do not always represent their minorities very well, in particular indigenous peoples and insular minorities. And this could amount to a significant proportion of the world's population.

The third source of under-representation is the fact that states have traditionally invested foreign-policy making powers in their executive branches.⁷ Traditionally, the branch of government most responsible for relations with other states has been the executive branch. And the exercise of its foreign policy functions has been relatively non-democratic. Such functions often occur in secret and it is often the case that citizens in democratic societies have paid less attention to foreign affairs than to domestic affairs. But now international law is expanding into the areas of trade, the environment, and human rights. And international law demands more and more reform of the internal institutions of societies. The consequence of this is that if the voluntary association model is to have any chance at being a reasonable source of legitimacy, the foreign policies of states must become more democratic.

VII. HARD BARGAINING

The most serious problem of the voluntary association model is that it seems to allow for all forms of hard bargaining, which may not be coercive in a strict sense but allows for a great deal of unfairness. The basic idea of hard bargaining is that two states may arrive at an agreement whose benefits are highly asymmetric between those states because one state is credibly able to threaten withdrawal from the arrangement while the other is not. The development of trade law provides an instructive example. Regarding many goods, the US is capable of dictating terms of trade that are highly favourable to itself or at least to its domestic industries and exporting industries because the relative market share of the US economy is so great and the market share of many developing countries so small. It can lay down terms

⁶ There is a very large literature defending this proposition, see esp. Przeworski, A., et al., *Democracy and Development* (Cambridge: Cambridge University Press, 2000).

⁷ See Siedentop, L., *Democracy in Europe* (New York: Columbia University Press, 2001) for a discussion of this problem in the case of the EU. See also Stein, E., 'International Integration and Democracy: No Love at First Sight', *American Journal of International Law*, 95 (July 2001).

and say to the developing country ‘take it or leave it’. And this also holds true for the European Union and some other economies.⁸

To secure terms of trade that are highly asymmetrically in one’s favour through the more credible threat of withdrawal, particularly against a society in dire need, seems to be a fundamental violation of norms of fair exchange. Though the agreement is voluntary there is something highly problematic about it morally.

And this impression is borne out when we think in terms of the underlying principles of the voluntary association model. It seems clear that the asymmetric outcomes, due to hard bargaining, violate an intuitive sense that the interests of all are being advanced equally. The interests of those in the developing country seem to be relatively neglected for the benefit of those of the developed country. Let us call this the *problem of asymmetrical bargaining*. Asymmetrical bargaining has been by far the most serious objection to the claim of international institutions to legitimacy. Complaints about the Security Council, the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO) are all instances of this phenomenon.⁹

It should be noted that asymmetric bargaining need not be motivated by self-interest alone. The terms the IMF imposes on countries seeking relief may often be the result of well-meaning policies in accordance with neo-liberal political economy. But the fact that the countries seeking relief are in such dire need makes them capitulate quickly to the IMF demands without having much of a say in determining the terms of the loans. It is the position of asymmetric bargaining that enables the IMF to impose terms without taking into account the opinions of the society in need. This must be regarded by all as a violation of the principle that people should have some say in the things that deeply affect their lives.¹⁰

VIII. FAIR DEMOCRATIC ASSOCIATION

If we take into account the above worries about the current system of voluntary association, we can give an abstract description of what it would have to be like to be

⁸ See Steinberg, R., ‘In the Shadow of Law or Power? Consensus Based Bargaining and Outcomes at the GATT/WTO’, *International Organization*, 56 (2002), 339. See also Schlesinger, S., *Act of Creation: The Founding of the United Nations* (Boulder, Colo.: Westview Press, 2003) for a lively account of the bargaining that produced the great power veto in the Security Council.

⁹ Indeed, even the dispute resolution system of the WTO (which has received high marks for its adherence to the rule of law) gives ample opportunity for wealthy and powerful states to take advantage of poorer states. See Pauwelyn, J., ‘Enforcement and Countermeasures in the WTO: Rules Are Rules-Toward a More Collective Approach’, *American Journal of International Law*, 335 (2000), reprinted in Hathaway, O., and Hongju Koh, H. (eds.), *Foundations of International Law and Politics* (New York: Foundation Press, 2005), 282–93, esp. 283.

¹⁰ This is one of the key complaints of dissident economists concerning the IMF. See Stiglitz, J., *Globalization and Its Discontents* (New York: Norton Publishers, 2002) as one example among many.

a minimally legitimate system of decision making. It would have to be a *fair system of voluntary association among highly representative states*. I will call this a system of *fair democratic association*.

The representativeness problem (in all of its variations) is theoretically and partially soluble. First, one can push states to become democratic or more democratic.

[FN:11] This has become an increasingly widespread norm in the last twenty five years.¹¹

Second, one can insist that the foreign policy establishments of states become more transparent and more democratically controlled and that the negotiations among

[FN:12] states as well as the institutions that arise from them be made more transparent.¹²

Third, one can set up special consultative or representative bodies for indigenous peoples and insular minorities in the different democratic states. At least, these are all reforms with which societies have had some experience in the past.

The representativeness problem has not been solved in practice yet. Though election monitoring has become a common norm in the international arena there are serious questions as to its effectiveness in advancing genuinely democratic values.¹³

The problem of asymmetrical bargaining is much harder to get a handle on. But it should be noted first that there are some mitigating factors here. First, less powerful states can group together and attempt to bargain collectively and thereby acquire more leverage over the larger economies. This is now being tried in the case of the WTO and it will take some time before we know that the collections of smaller states can actually achieve a greater degree of symmetry in defining trade law. The

[FN:14] question is whether or not this will lead to agreement.¹⁴ Second, wealthy states

may not be exclusively self-interested in their foreign policies. Developed countries have allowed developing countries to delay setting up policies to reduce carbon emissions in the Kyoto protocol; the WTO permits trading preferences to developing countries; and there is a large, influential body of opinion in the developed countries in favour of bringing down agricultural barriers in the developed countries that

[FN:15] have been thought to harm developing countries.¹⁵ These are modest achievements,

but they do give some credibility to the hope that wealthy countries will not merely press for their own interests even to the detriment of developing countries. Third,

¹¹ See Franck, T., *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1995), ch. 4.

¹² This has been happening in part with the IMF and the World Bank. See Keohane, R. and Nye, J., 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy', in Keohane, R. (ed.), *Power and Governance in a Partially Globalized World* (Boulder, Colo.: Westview, 2002), 219.

¹³ See Hyde, S., *Observing Norms: Explaining the Causes and Consequences of Internationally Monitored Elections*, PhD thesis (University of California, San Diego, 2006) for scepticism about the association of the recent increase in election monitoring and genuine democracy.

¹⁴ Drahos, P., 'When the Weak Bargain with the Strong: Negotiations in the World Trade Organization', *International Negotiation*, 8 (2003), 79; and Singh, J. P., 'Coalitions, Developing Countries, and International Trade: Research Findings and Prospects', *International Negotiation*, 11 (2006), 499.

¹⁵ See Franck, T., *Fairness in International Law and Institutions* (above, n. 11), 58–9, 426–7 for a discussion of these trading preferences.

relative market share is not the sole determinant of bargaining power even when coalitions do not form. Nationalistic sentiment sometimes increases the bargaining position of small, poor states. Fourth, a world in which there is more than one large society to negotiate with can give small and poor states alternatives that enhance their bargaining positions.¹⁶

FN:16 Still the problem of asymmetric bargaining is a large one, and it is hard to see how this problem can be avoided. There are really two main ways in which asymmetric bargaining can be held in check. First, the playing field can be levelled by greatly diminishing the economic inequalities among the parties. Second, establishing independent standards of fairness in the process of forming agreements, which are then implemented in international agreements.

But the level playing field condition seems to require something that has eluded the international community for a long time. Not only is it not clear that the international community has succeeded in lessening inequality or even severe poverty among persons and among societies, it may have exacerbated one or both of these. When nearly 20 per cent of the world's population lives in extreme poverty and when nearly 40 per cent of the world's population lives in severe poverty and these populations are concentrated in particular political societies, it is hard to see how we are going to be able to set up a scheme of fair bargaining. These populations are extremely vulnerable to deeply unfair terms of association.¹⁷

FN:17 On the other hand, overcoming the bargaining problem by setting outcome standards on the results of bargaining and having them implemented by international institutions would require that the results of bargaining live up to certain standards. This seems to give up on inherent legitimacy altogether. The problem here will be determining both who will set the standards and who will implement them.

Finally, we do not have a clear normative principle for the evaluation of the fairness of the system of international negotiations. A rough standard is that power in the process of negotiation should be roughly proportionate to the stake each society has in it, where the stake is a function of population size as well as the populations' relative need for agreement. But these are very rough standards that call for significant theoretical elaboration and justification.

Nevertheless, if the agreements among states come about by a process of fair association among democratic states, they can satisfy the basic constraint of public equality. All persons are publicly treated as equals by the process that generates

¹⁶ See the essays in Zartman, I. W., and Rubin, J. Z. (eds.), *Power and Negotiation* (Ann Arbor: University of Michigan Press, 2000); and Ingebritsen, C., Neumann, I. B., Gstohl, S., and Beyer, J. (eds.), *Small States In International Relations* (Seattle, Wash.: University of Washington Press, 2006).

¹⁷ For contrasting perspectives, see Wade, R., 'Is globalization reducing poverty and inequality?', *World Development*, 32 (2004), 567; and Chen, S., and Ravallion, M., 'How have the World's Poorest Fared Since the Early 1980's?', *World Bank Research Observer*, 19 (2004), 141.

these agreements. As a consequence, states have reasons to conform to treaties that are grounded in public equality. And since the grounding is in the process of coming to agreement, the reason generated is a content-independent one. Furthermore, citizens of those states have content-independent reasons, founded in the fact that the agreements are reached through an egalitarian process, to act in accordance with the provisions of the treaty and the institutional implications of the treaty. And since the requirement of public equality is a weighty requirement, the reasons generated are weighty reasons, normally outweighing contrary reasons.

My guess is that in the absence of much greater collective bargaining power on the part of developing countries or greater economic equality among societies, the system of voluntary association cannot be made legitimate. It simply cannot be seen as advancing the interests of the persons in the global order equally.

IX. DEMOCRACY AS A BASIS OF LEGITIMACY OF INTERNATIONAL LAW

With these worries about the legitimacy of the current system of decision making in mind it is time to take a look at some proposals for democratic decision making that have been made for the international system. My focus here must be limited to the aspiration to have a global peoples' assembly or parliament with representatives of constituencies of individuals making up the parliament, which has legislative powers. This need not involve a world state and could be connected with a federal structure of institutions. Though this institution would have formal and legal status it must be contrasted with something like the General Assembly of the United Nations in which a majority of states participates (though of course they do not have legislative power).¹⁸

I emphasize the formal and legal character of the basis of democratic legitimacy due to the importance of publicity to legitimacy. It seems to me that people can see that they are being treated as equals by institutions only if these institutions have an egalitarian formal and legal character. Informally, democratic arrangements are likely to be far more opaque to their participants in terms of whether or not they realize equality, especially on a large scale.¹⁹

¹⁸ See Held, D., *Democracy and the Global Order* (Stanford, Calif.: Stanford University Press, 1995); and Falk, R. and Strauss, A., 'On the Creation of a Global People's Assembly: Legitimacy and the Power of Popular Sovereignty', *Stanford Journal of International Law*, 36 (2000), 191. See also Archibugi, D., 'Cosmopolitan Democracy and its Critics: A Review', *European Journal of International Relations*, 10 (2004), 437, esp. 451, which states 'A cardinal institution of democratic governance is therefore a world parliament'.

¹⁹ See, in contrast, Dryzek, J., *Deliberative Global Politics* (Cambridge: Polity Press, 2006) for a conception of democracy that de-emphasizes the formal and legal character of democracy.

X. CONDITIONS OF INTRINSIC JUSTIFICATION OF DEMOCRACY

I sketched a justification for democracy grounded in the principle of public equality in section II. But democracy can be used to realize public equality only under certain conditions. The conditions under which democracy is intrinsically justified for a community are the following;

1. A number of important issues must arise for the whole community.
2. There must be a rough equality of stakes among persons in the community concerning the whole package of issues.
3. It must not be the case that the community is divided into discrete and insular groups with distinct preferences over all the issues in the community so that one or more substantial groups always lose out in majority voting. In other words there should not be persistent minorities.
4. Democracy is justified only when it protects at least the fundamental human rights of all the persons in the community.
5. Democracy is justified when the issues with which it deals are not primarily of a purely scientific or technical character.
6. A final institutional condition for the justification of democracy is that there be a dense network of institutions of civil society that connect individuals to the activities of the democratic legislative power. A system of political parties, interest group associations, and other types of associations are necessary to give ordinary citizens an orientation among the vast array of issues that arise in a democratic polity.

XI. INTERDEPENDENCE AND EQUALITY OF STAKE

The first two conditions must be taken together. There must be an interdependence of interests among persons or groups on many issues. Since democratic decisions must be taken by majority rule, it is important that there be many issues so that

those who come up losers on some issues be winners on others. This condition enables people to trade votes between issues that are of great importance to them and those that are of lesser importance to them.²⁰

But this complex interdependence is not sufficient. There must be some kind of equality of stake in the interdependence, where by 'stake' I mean the susceptibility of a person's interests or well-being to be advanced or set back by realistically possible ways of organizing the interdependent group. If one group of persons has a very large stake in a community, in which there is interdependence of interests, and another has a fairly small stake, it seems unfair to give each an equal say in decision-making over this community. We can recognize this in faculty decisions. Those who are permanent members of the faculty clearly have a much greater stake in the decisions than those who are only visiting. We do not think it is fair that everyone's vote has the same weight in decision-making. And I think we recognize this idea in many different contexts of collective decision-making. Democratic decision-making over entities in which some have a much greater stake than others, treats unequally those who have a much greater stake. The equality of stake at issue need not be on every issue. Some persons or groups may have more at stake in one set of issues and another may have more at stake in another set of issues. The key is that, in general, people have something at stake in each decision, and each has roughly equal stake in the overall package of issues.

We see some such rough equality of stake in the case of the modern state. The citizens of a modern state usually have most of their fundamental interests at stake in the decisions of a modern state. And so there is a kind of rough equality of stake. To be sure, some individuals are only temporarily or rarely residents of the state in which they are citizens. Some are wealthy enough so that they are capable of avoiding the decisions of the state by some form of emigration. But on the whole, the modern state does involve a great degree of interdependence on matters concerning nearly all of the fundamental interests of the citizens. And so there is a rough equality of stake in its decisions. This is presumably an important reason why democracy has come to be seen as an important ideal for the modern state.²¹

²⁰ For variations on the thesis that complex interdependence is sufficient see Gould, C., *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004); and Held, D., *Democracy and the Global Order* (Stanford, Calif.: Stanford University Press, 1995); and Pogge, T., *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), 168.

²¹ To be sure, equality of stake does not imply equality of outcome.

XII. ARE THERE EQUAL STAKES?

Many have argued that democracy at the international level is justified because there is interdependence among persons at the global level. But this thesis is extremely vague and is rarely made more precise than this. First, how much interdependence exists at the global level? And most important, is the interdependence such that the different peoples of the world have equal stakes in it?

The problem is complicated by the fact that the answer depends on the institutional capacity of the international system. The reason why the modern state seems to be a community of roughly equal stakes is because of the immense institutional capacity of the modern state. It plays a role in nearly all the main activities that human beings engage in. The same cannot be said of the set of international laws and institutions. They play a fairly small role in the lives of people throughout the world. They do not set anything but very vague standards for education or health. They do not enter into the systems of property and exchange in domestic societies except in very abstract ways. Human rights standards are quite vague; in any case the international institutions do not have the capacities to monitor human rights very effectively and have little or no chance of getting the judgments of human rights courts implemented.²²

The principal sources of global interdependence in the modern world are the expansion of international trade and communications, the effects of global environmental degradation and pollution, and the preservation of peace. The prevention of the spread of some diseases has also been an accomplishment in part of the international system. No countries are left untouched by the modern system of international trade. But the system of international trade does not reach nearly as deeply into people's lives as most domestic systems of trade and exchange. Furthermore, the capacity of international institutions to regulate the flow of trade is still quite small. And regarding global environmental conditions: most cross-border environmental effects are regional in importance, though there are some genuinely global concerns such as that of global warming.

We cannot at the moment give a very clear answer to the question of relative stakes, but here are some indicators that suggest inequality of stakes. States do not participate equally in the process of international trade. The ratios of export to gross domestic product of economies and the ratios of foreign investment vary quite a bit

²² See Buchanan, A., *Justice, Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004) for an account that places human rights at the heart of the legitimacy of the international order. See Hathaway, O., 'Do Human Rights Treaties Make a Difference?', *Yale Law Journal*, 111 (2002) for a sceptical argument about the positive effects of human rights treaties. For some scepticism about this particular argument see Goodman, R. and Jinks, D., 'Measuring the Effects of Human Rights Treaties', *European Journal of International Law*, 14 (2003), 171.

between societies. In this respect societies, and plausibly individuals, do not have equal stakes in the international system. Environmental problems are still mostly regional in character so that the extent to which people are affected by these is still quite uneven.

But there may be a general argument for why individuals do not have equal stakes in international institutions: since international institutions still cover only a relatively thin set of issues (compared to the modern state) within the global order and since individuals' interests and circumstances are likely to be quite distinct, many individuals are not likely to have as great a stake in these issues as others. The reason for this is that in general for any particular issue, individuals' interests and circumstances are likely to be distinct and as a consequence, individuals are not likely to have as much at stake as others within that issue space. This holds in the international order—particularly if we confine the issues to what international institutions can do about the issue, which is in general quite limited.

Peoples have very different stakes in that order and so democracy would actually be a way of treating persons unequally in that context. Hence, there is substantial reason to doubt that democracy can realize equality publicly in the international order.²³

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XIII. PERSISTENT MINORITIES

Another connected worry about international democracy is the problem of persistent minorities. If the issues upon which a democratic international institution makes decisions are such that discrete and insular coalitions tend to form (with some forming a majority and some forming minority blocs), then there is a significant chance that some groups will simply be left out of the decision-making process. And this leaves open the possibility that their lives will be heavily determined by strangers.

As I argued in section II, democracy is justified to the extent that it is a collective decision making process that publicly realizes the equal advancement of the interests of the persons involved. Normally, democratic decision-making is determined by majority rule—resulting in some groups being winners on some issues and other groups being winners on other issues. Though there is no clear system for making interpersonal comparisons, as long as there is sufficient rotation among winners and losers, the system is reasonably fair. But sometimes a discrete and insular minority rarely if ever wins on any issue. Since the successful exercise of power is normally necessary to advance fundamental interests within a diverse and contentious polity,

²³ My worry in this section is about whether or not global democracy can be legitimate. Despite this worry, Thomas Pogge has pointed out in discussion, it may still be better than what we have. But the worries that follow call that thesis into question as well.

if the minority never succeeds in making legislation, we have strong reason to think that the interests of the minority are not being advanced. If there is a minimum amount of rotation of majorities and minorities, we can think of the collective decision-making process as publicly realizing equality. But when one group never gets its way, then the collective decision-making process is no longer publicly advancing the interests of members equally. But if the collective decision-making process is not publicly advancing the interests equally, then it loses its legitimacy—at least in significant part.²⁴

FN:24 It is important to note the difference between the problem of persistent minorities and the problem of majority tyranny. Though they often go together, they need not. Indeed, it is quite possible for a dominant group to act in accordance with what it takes to be the human rights of the minority, while the minority never gets its way. This seems to me a serious problem above and beyond the violation of human rights, and may itself constitute such a violation.

The possibility of persistent minorities in the international system is very great. To the extent that this is a serious danger at the global level, it seems that there is a real risk that a global democratic institution will be illegitimate in an important way.

This conclusion must be qualified in a couple of different ways. First, we do not know that the problem of persistent minorities would occur. What could happen instead is that groups of persons around the world see common interests so that groups that are persistent minorities in individual societies could form coalitions and form majorities in some circumstances.²⁵ Second, the problem of persistent minorities has been handled by democratic societies, with mixed success, by means of institutions that qualify majority rule such as consociational institutions or even federalist institutions. It is not obvious to me that these solutions will arise in the case of global democracy partly because of the weakness of civil society in global democracy. The idea is that because of this weakness, states will take the primary role in mediating between persons and global assembly.

XIV. INSTITUTIONAL INCAPACITY OF CIVIL SOCIETY

The other fundamental problem with global democracy is that we do not have institutions that can mediate well between individuals and legislative institutions. In the modern democratic state, political parties, interest groups, and diverse media

²⁴ See my ‘Political Equality and the Problem of Persistent Minorities’, *Philosophical Papers* (1995).

²⁵ See Madison, J., Hamilton, A., and Jay, J., *The Federalist Papers*, ed. Kramnick, I. (Harmondsworth, UK: Penguin, 1987), paper n. 10 for an argument to the effect that enlarging the size of a republic may diminish permanent minorities.

outlets all provide a fairly wide representation of views and provide means by which citizens can come to understand what is at stake in collective decision-making. The institutions we know are deeply imperfect and do not represent as widely as they should, but nevertheless they do provide citizens with some sense of what is going on from a wide variety of standpoints. In my view these institutions are absolutely necessary to democracy because citizens can only devote a small amount of time to political questions so there must be intermediate institutions that enable citizens to acquire a grasp of the key political issues and alternatives.²⁶ Without these institutions, citizens are at sea with the great number of issues and alternatives. They become prey to demagogic politicians and the system seems to be run essentially by elites.

The trouble in international politics is that the institutions of civil society, while certainly growing quite rapidly, are not anywhere near the capacity necessary to act as intermediaries between the great majority of persons in international society and international institutions. Even in the European Union, mass political parties have yet to form and these are an absolute minimum condition for successful democracy. The consequence of this situation in the international realm, were it to be democratized, would be a state of affairs in which elites rule mostly without any serious check on their power. Some groups, mostly representing selected Western interests and concerns, would have some capacity to embarrass and shame states and international institutions.²⁷

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XV. COMPARISONS BETWEEN GLOBAL DEMOCRACY AND THE SYSTEM OF FAIR DEMOCRATIC ASSOCIATION

Let us compare these two purported ideals. Our observations above suggest that global democracy is not currently an ideal for the global order at all. Without the condition of equal stakes in global collective decision-making, democracy cannot be intrinsically justified for the global system. But the condition of equal stakes in collective decision-making is not itself intrinsically desirable or required. Since equal stakes is not required as part of an institutional ideal, then democracy, which is justified intrinsically only if there are equal stakes, cannot be justified intrinsically under current circumstances.

²⁶ See Christiano, T., *The Rule of the Many* (Boulder Colo.: Westview Press, 1996), chs. 5 and 7 for a discussion of the nature and role of citizenship in an egalitarian conception of democracy and of the central role of political parties, interest groups, and other associations in mediating between state and citizen.

²⁷ See Dahl, R., 'Can International Organizations Be Democratic? A Skeptic's View', in Shapiro, I. and Hacker-Cordón, C. (eds.), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999).

In contrast, the system of fair democratic association can be thought of as an ideal to be pursued, though its realization is at best quite far off. The point of a scheme of voluntary association in domestic society is to deal with the reality of uneven stakes. It is designed to allow individuals to choose for themselves what ventures they wish to engage in and to tailor those ventures to their particular interests. Democratic association allows states to pick and choose what terms they enter into and so allows them to determine how important issues are to their peoples and to sub-populations within their societies. It allows for the possibility of the kinds of regional and other kinds of more particular associations that have proven to be the most effective institutions beyond the state.

The system of fair democratic association also deals with the problem of permanent minorities much better than does a global democracy because states must consent to the terms they come under. This provides protection for these states by ensuring them a say in what happens to their societies. Global democracy would have to deal with this problem by significantly qualifying majority rule.

Concerning the problem of institutional incapacity, the system of democratic association makes use of the most powerful institution in the current environment, which is the state. The democratic state is a reasonably successful mechanism for accommodating and representing the interests and concerns of its members. Many democratic societies have thriving civil societies that help ensure this function of the democratic states. The absence of a dense global civil society does not undermine the capacity of democratic states to represent the interests and concerns of their citizens.

If we compare the two ideals, I tentatively conclude that the system of fair democratic association is a superior ideal to aim at and it gives us a better picture of what inherently legitimate institutions would have to look like.

XVI. DO INTERNATIONAL INSTITUTIONS AND LAW HAVE DEMOCRATIC LEGITIMACY NOW?

For the moment, it seems that we should not think of the system as a whole as legitimate because of the problems of representativeness and asymmetric bargaining. This does not entail that we need to think of it as illegitimate. The basis for saying that a system of decision making is illegitimate is that it has either produced the conditions that undermine its legitimacy or it stands in the way of improving those conditions or is failing to do what it knows it can do to ameliorate the problem. Only under these circumstances can the system be thought to be treating the worse-off as inferiors. We might think that the problems of extreme and severe poverty are problems that we currently do not have the tools to solve. There is clearly a lot

of disagreement among expertly informed persons. Furthermore, there is progress in the direction of more democracy throughout the world and greater pressure in favour of representation of indigenous and insular minorities.

We must think of international institutions and law as works in progress. We must evaluate the products of this system mostly on a case-by-case basis to make sure that it is making progress towards resolving the major problems of human rights, severe poverty, environmental degradation and pollution, and that it is advancing the common good through a process of free and fair trade, investment, and finance. And finally we must evaluate it in terms of the progress it is making towards a more inherently legitimate system of decision making.

XVII. CONCLUSION

If our aim is to realize the democratic values in the international order, then we should aim primarily at what I have called a system of fair democratic association among states. Global democracy is highly unlikely to succeed given the weakness of global civil society and it is highly unlikely to be legitimate given the unevenness of stakes in its decisions and given the high chance of permanent minorities. And since we are quite far away from a fair system of voluntary-association highly representative states, we cannot think that the current system has legitimacy overall. Nevertheless, there may be some reason for hope for progress towards a more equal and representative system of association. According a greater say to developing countries in what are the most powerful institutions in the international order may help to advance a system that is more equitable and that could eventually become legitimate.

