

October 14, 2008

Global Governance: The Problematic Legitimacy Relationship Between Global Civil Society and the United Nations

Kenneth Anderson

**Global Governance:
The Problematic Legitimacy Relationship
Between Global Civil Society and the United Nations**

Kenneth Anderson*

**I
Introduction**

A contested issue of globalization is the question of whether, how, and to what extent an *economically* integrating world requires a *politically* integrated planet – a world that has a global law, regulation, and enforcement that transcends all lesser political authority and to which all other political entities must cede their sovereignty.¹ It is a very old debate and an ancient dream, the world unified in peace under a single universal law and a supreme lawgiver who will end the wars and feuds and injustices and material want of the world as a whole.² A federal world, a world under a global constitution – loosely configured of necessity, naturally, but nonetheless one in which law as a distinct hierarchy and to which the sovereignty of individual states must necessarily give way.

For many, a politically integrated world is morally and politically desirable on its own terms. It is historical progress as such. For others, the justification for political integration is as a necessary corollary – as a matter of global welfare and justice – of economic integration. The fact of a world in which economies are coming together among economic actors such as multinational business enterprises that are able to act

* Professor of law, Washington College of Law, American University, and member of the Hoover Institution Task Force on National Security and Law. Professor Anderson was formerly General Counsel to the Open Society Institute and Director of the Human Rights Watch Arms Division, and chairs the boards of two mid-sized global philanthropies and advises several others on law, nonprofit corporate governance, and policy.

¹ See, e.g., Dani Rodrik, “Governance of Economic Globalization,” Joseph S. Nye and John D. Donahue, eds., *Governance in a Globalizing World* (Washington DC: Brookings 2000), at 347.

² As old as Isaiah 2:4 or Alfred Lord Tennyson’s *Locksley Hall* (1837) and its rhapsodizing of the Parliament of Man. For a discussion of the dream of global governance as platonic ideal, see Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations* (NY: Random House 2006); for a highly critical discussion of the ideal of global governance as found in Kennedy’s book, see Kenneth Anderson, “El pasado como prologo: El futuro glorioso y el turbio presente de las Naciones Unidas,” *Revista de Libros* (Madrid), November 2008 (English language download available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265833).

across national political borders gives, according to many, ever greater urgency to the building what has been called “global governance.”

At the same time, the world since 1990 has seen the unprecedented growth of international NGOs and transborder social movements drawing in large numbers of people around the world.³ Their place in this globalizing world has also posed questions, particularly as they take up political activities at the global, and not merely national, level. To take up global political activities presupposes global actors with which to have political intercourse. The influence, reach, presence, and power of these international NGOs have grown fantastically in the past two decades, and they pose questions about for whom they speak – on anyone’s behalf other than their own? To whom are they accountable for the positions they advocate, and does it matter? Do they represent anyone other than themselves? Should states and international organizations pay any particular attention to them, and if so, why and how? These are political and legal issues; but they are also ethical issues with respect to international NGOs and their funders, and with respect to the moral account that is given of them and how they are framed as an intellectual and ideological matter.

The account that follows suggests that these two actors and issues – global governance, through institutions of the United Nations, and international NGOs and their global role, are deeply interlinked. What links them is the ethical question of *legitimacy* – which is to say, the quality of a political order to be able to act with the broad and largely unquestioning support of its members. At stake in this debate over legitimacy, the UN, and international NGOs is the question of whether global governance – one overarching lawgiver for the planet, a constitution for the world, is a desirable or even possible thing. And whether, in this account of global governance, international NGOs, and transborder social movements more generally, have any special ethical role to play.

We proceed in notionally historical steps, walking through a deliberately stylized historical account of global governance and international NGOs, with particular focus on the period since 1990. The discussion is largely a descriptive sociological and political assertion of the evolution of the global discourse over the role of international NGOs, rather than specifically an ethical argument; the ethical argument is implied, of course, by the description of this political debate. The conclusion of this essay is an ethically skeptical one. It is skeptical, on the one hand, of the desirability of global governance as conceived by global elites, including those in international NGOs as well as in public international organizations. And it is especially skeptical, on the other, of the proposed ethical role for international NGOs on the global stage in promoting and legitimating global governance. Accountability, representativeness, and political intermediation – these are all ethical concepts as much as political or juridical, and this essay argues that international NGOs lack the capacity in each of the three to carry out the legitimization functions that the prevailing, prominent account of global governance gives them.

³ See Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca NY: Cornell UP 1998) for the best-known account from the 1990s.

II International Nongovernmental Organizations and Global Governance in European History (Until 1989)

International, transnational, and cross-border organizations that are separate from and not part of the state are not a new phenomenon. They have remarkably long and durable history, and so too their claims to a special role in the governance of the world. This claim leads quite naturally to a potted history of the supposed history of non-state actors in Western history. It is an account of history with considerable intellectual weaknesses; after all, there is little intellectually to connect what is meant by “international NGOs” today with non-state actors of early-to-modern Europe, let alone the Middle Ages.

The historical discussion is raised here in stylized fashion, rather, for a different purpose. It is certainly not to claim that the kinds of organizations are the same or that they have any actual historical linkage or lineage. It is, instead, for the quite different proposition that the history of the West, especially with the rise of Christianity in Europe, has long accepted some idea of a moral authority, outside temporal authority, lacking temporal authority as such, but bearing some political legitimacy to challenge and qualify, to some shifting extent, temporal authority. A moral and partly political authority, standing outside temporal order, with some shifting amount of legitimacy, authority even, to call upon temporal authority to act or refrain from acting. The political history of the Christian West has always included some notion of political authority outside that of the king or the prince.

This moral and political legitimacy and authority, moreover, is one which is importantly transborder – although that, too, only in some shifting historical sense. The source of legitimacy and authority is “higher” than any merely temporal power, and that source is “transborder” not only in that sense, but also in the further sense that it carries some claim to a legitimate role in transborder political governance, governance among and across states.⁴

Thus, transborder religious organizations predate the modern nation-state but have always claimed *some* role, however shifting across history, internal to the affairs of states, and also among them. In a very important sense, of course, Europe’s historical Christian religious organizations (the religious orders of medieval Europe, for example) cannot meaningfully be seen as “nongovernmental” organizations in the contemporary understanding, for two analytically separate reasons. Partly because the notion of government and state is so different from today’s understanding – and partly because the special place of the Church in the European social order make it, and its multiple institutions, different from any organization, nongovernmental or any other, in our

⁴ One standard text on these relations is Richard Fletcher, *The Barbarian Conversion: From Paganism to Christianity* (NY: Henry Holt 1997), and especially Chapter Thirteen, “Mission into Church,” at 451-482.

contemporary social and political life. The claim is not one of a cross-historical ancient but still actual historical lineage for today's non-state actors of one kind or another – but instead merely for the much more limited idea that today's international NGOs are able to build upon the historical condition that *some* amount and kind of legitimacy and authority could and did come from outside temporal authority or the state, and that this in the long-run history of Christian Europe was moreover transborder in conception and effect.

Even in that limited, cautious sense, this ancient notion of authority outside the state bears certain familiarity, at least in animating spirit, to contemporary nongovernmental organizations that exist by moralizing. Human rights organizations such as Human Rights Watch or Amnesty International, for example, see themselves as morally empowered because they stand outside of governmental authority and appeal to some different and higher source of legitimacy; indeed, they see themselves as authorized to convey that legitimacy to 'mere' governments, which are called upon to meet their standards in order to garner political legitimacy.⁵ This appeal to timeless morality, if not precisely to God, the appeal to immanence, is noteworthy for by-passing liberalism's characteristic contribution to the endless argument over legitimacy – appeal to the consent of the governed; in this sense, too, Human Rights Watch or Amnesty International are far closer cognates of the Vatican than Voltaire. Contemporary nongovernmental organizations believe firmly that, in virtue of their moral status and answering to a higher authority than mere governments, they too merit a place and voice in contemporary governance, and to governance that extends across mere national lines: no lack of expansive moral claims among them. And the ethical inquiry of this essay, in concrete political terms of today's world of the UN and global governance, is whether this is, or should be, so.

The Church in the long run of European history offered, at least in principle, many of the things that people today seek in transnational political governance – a common morality, an overriding political framework accountable to a higher authority than merely earthly, parochial and partial rulers, and a mechanism backed by spiritual authority for settling disputes among the parts of a temporal political system. It did not work so very well – from the beginning, indeed built into Christian theology, rulers disputed the authority of the Church to intervene in their affairs and frequently with impunity intervened in its affairs, while the Church, for much of its history, was also an explicitly temporal power that indeed wielded big battalions. But, even still, the platonic principle of global governance across nations by something that was outside of temporal governance and that was in the first place a moral, religious, spiritual, and not solely political, authority, has a long history in Western intellectual traditions.

⁵ This being the view, for example, of Michael Ignatieff, for example, from the late 1990s, criticizing, among other things, my own writings on the essentially religious and transcendental nature of the human rights movement. See Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, Vol. 46, No. 9 (May 20, 1999), at 58-62.

Once past the Catholic-Protestant schism in Europe, the wars of religion, the rise of the Westphalian nation-state, and the ideas of separation of church and state that took arose out of the Enlightenment, transnational religious organizations lost claims to governance. But they never lost their claims to be a voice of moral authority within, at least, European and Western international affairs. They were joined, too, by a host of secular (or, in any case, secularized) organizations and social movements, beginning largely in the mid-nineteenth century. These included, on the one hand, the international labor movement arising among the urban working classes generated by the Industrial Revolution. And, on the other, transnational social movements arising out of the bourgeois reform aspirations of the emerging middle classes *also* generated by the Industrial Revolution, movements often (but not always) closely aligned with religious groups, on such issues as temperance, abolitionism, women's suffrage, Christian conversion, education in the colonies, war and armaments abolition, humanitarian relief in war, and many more.⁶

The roots of transnational nongovernmental organizations thus trace historically down to the present day (as distinguished from analogues to the Christian church in ancient Europe) from the rise of the middle classes and the social organizing of labor in the industrializing world of the mid-late nineteenth century onwards.⁷ These expressions of transnational social concern arise with the modern period, from the 1840s onwards, and gradually spread outwards from the countries most prominent in the Industrial Revolution and the transformation of education, communications, transportation, and general awareness of the world beyond one's local community that issued from that – from Britain and the United States, most notably. The two most important influences were Protestant middle class social awareness, on the one hand, and the rise of the social solidarity of international labor, on the other; each, in its way, conveyed both a form of cosmopolitanism and an assertion of legitimacy to have a say in governance from outside the state.⁸

Even given the limited communications of the time, these transnational nongovernmental organizations and social movements had a noticeable impact. Sometimes the impact was measurably political and economic, as in the rather astonishing political success of the

⁶ A useful account of the beginning of the “modern” age, in the sense of the rise of the bourgeoisie and their characteristic attitudes in 19th century Europe, including their particular form of cosmopolitanism, and the working class and its particular form of internationalism, is Jerome Blum, *In the Beginning: the Advent of the Modern Age: Europe in the 1840s* (NY: Scribner's 1994). For a more intensely psychological examination of the same, see the classic texts of Peter Gay, e.g., *Schnitzler's Century: The Making of Middle Class Culture 1815-1914* (NY: WW Norton 2002).

⁷ International legal scholar Roger Alford traces this history in a fascinating article on the evolution of causes endorsed over time in the awarding of the Nobel Peace Prizes. Roger Alford, “The Nobel Effect: Nobel Peace Prize Laureates as International Norm Entrepreneurs,” *Virginia Journal of International Law*, vol. 49, no. 1 (2008), at 61.

⁸ I pass here over many historical complications, starting with the importance, seen over the last hundred years, of Pope Leo XIII's famous 1891 encyclical, *Rerum Novarum*, and its affirmation of the dignity of labor, labor unions and organizing, among many other things in Catholic social thought.

anti-slavery movement over a half-century. Sometimes the impact was more broadly cultural (such as the anti-armaments movement that, for example, George Bernard Shaw both glorified and parodied in *Arms and the Man*; their direct political impact was small, but the cultural shift in both middle class and working class sentiments still noteworthy).⁹ Indeed, the spread of such movements and the cosmopolitan sentiments they embodied were a noticeable part of the rising, respectable bourgeoisie across the Western world, almost as a required feature of the class and, notably, taking place simultaneous with the pre-First World War economic globalization, the globalization of trade and capital that characterized the expansion of the Industrial Revolution beyond Britain. Likewise internationalism was a pronounced part of the emerging labor and syndicalist movement.

Yet these movements largely collapsed in the gush of national sentiment that characterized the onset of the Great War. The international labor movement, for example, simply fell apart in the face of nationalism as an ideological driver.¹⁰ Yet after the Great War (particularly given such monumental loss of life for what many at the time came to see, only a short distance after the War, as having been for no discernible reason other than gross nationalism), transnational nongovernmental organizations and social movements devoted to peace, anti-militarism, disarmament, humanitarian action in war, and so on found, if anything, still more ardent adherents. The cultural impact was large, but these movements were also associated – causality is hard to establish – with political impacts such as the Kellogg-Briand Pact, for example, purporting to outlaw war by treaty and the very existence of the League of Nations.

Yet these organizations once again largely went dormant in the Second World War; for many, indeed, the crisis had actually occurred earlier in the 1930s, between the worldwide depression, the Spanish Civil War, and the rise of the totalitarian states as a seemingly attractive alternative to the parliamentary democracies that, among other things, provided the social space for these transnational organizations. The Red Cross movement, for example, which had deliberately incorporated a transnational, common mission but anchored that mission within particular national societies, had some success in keeping alive its common humanitarian mission, but overall the takeover of national Red Cross movements by totalitarian states which denied the concept of genuinely independent civil society drove an intra-war wedge within the movement.¹¹

The enormous value of the Red Cross during the Second World War was given not by the Red Cross movement at the national level, but instead specifically by the International Committee of the Red Cross, based as a committee out of Geneva and entirely of Swiss

⁹ George Bernard Shaw, *Arms and the Man* (NY: Methuen Drama 2008).

¹⁰ See, e.g., Martin Gilbert, *The First World War: A Complete History*, 2nd ed. (NY: Henry Holt 2004).

¹¹ Caroline Moorehead discusses these transformations of the national Red Cross movements with great acuity in her indispensable *Dunant's Dream: War, Switzerland, and the History of the Red Cross* (NY: Carroll and Graf 1999).

composition.¹² The ICRC acted, in other words, less as an *international* organization (and not at all as a transnational one) than as a *neutral*, yet plainly national, *Swiss* entity. (And in any case, the ICRC came under enormous criticism after the war for its failures publicly to denounce genocide and the concentration camps).¹³ The legitimacy of the ICRC came not from transnationalism, but from its humanitarian neutrality.¹⁴ The churches in Europe, and particularly the Catholic Church, for their part – the leading component of non-state actors, even if in a very special sense – were riven by the national passions of their members and the larger ideological concerns of their leaders – anti-communism, for example, over anti-Hitlerism among some within the Vatican.¹⁵ And so, as in the Great War, transnational nongovernmental organizations went into virtual suspension during the course of the Second World War.

III The Gradual Unfreezing of NGOs and Transnational Social Movements After the Founding of the United Nations (1945-1989)

The post-WWII period saw the founding of the United Nations in 1945, and with it the reemergence of transnational nongovernmental organizations and social movements. They played a part in the San Francisco meetings that led to the UN Charter. Indeed, the Charter makes explicit reference to them as consulting organizations.¹⁶ Yet the tensions and ideological divisions of the Cold War meant that the role of transnational NGOs was subordinated to the struggle between the two superpowers, and as well the gradually emerging non-aligned movement at the UN, anti-colonialist and post-colonialist coalitions within the UN General Assembly and its attendant agencies. During the 1950s, 60s, 70s, and 80s, large-scale social movements developed; these, to some degree, these social movements transcended borders, and the organizations supporting them likewise. Many of these had to do with peace and disarmament and anti-nuclear weapons campaigns; by the 1970s, these had started seriously to develop into the genuinely transnational movement for human rights, the environment, women's rights and issues,

¹² See Kenneth Anderson, "First in the Field: The Unique Culture and Legitimacy of the Red Cross," Times Literary Supplement [date] July, 1998.

¹³ See, e.g., Jean-Claude Favez, *The Red Cross and the Holocaust* (Cambridge UP 1999) for an even-handed historical account.

¹⁴ The difference is not a small one, but is underappreciated, perhaps even by the ICRC today. See Kenneth Anderson, "Humanitarian Inviolability in Crisis: The Meaning of Neutrality and Impartiality for U.N. and NGO Agencies Following the 2003-2004 Iraq and Afghanistan Conflicts," Harvard Human Rights Journal, vol. 17 (2004), at 41-74, available online at SSRN, <http://ssrn.com/abstract=524082>.

¹⁵ [christain churches in ww2]

¹⁶ Charter of the United Nations, Article 71, provides that the Economic and Social Council may make "suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."

and the other social movements that are most familiar to us today and which, to some degree, have supplanted the most traditional and oldest concern of transnational social movements – international peace.¹⁷ This account notably runs together transnational NGOs with social movements; the latter are by their nature larger movements of people who might or might not express themselves through NGOs, while the former are actual organizations, although organized and run in a wide variety of institutional ways.¹⁸

The social and cultural shifts that led to a redefinition of NGOs in the 1990s actually began in the 1970s, in part with the development of new social movements, but in large part with the growth of the institutional human rights movement and the international environmental movement. The emergence of the Helsinki Accords in 1975, with their nearly offhand reference to human rights, in retrospect turned out to have given birth to many of the human rights monitoring and advocacy NGOs that today are taken almost for granted.¹⁹ What the Helsinki reference to human rights did, in the context of a mid-Cold War document, was give NGOs an implied legitimacy in matters of politics, power, diplomacy, and basic existence and voice.²⁰ The Chernobyl nuclear disaster of 1986 both took advantage of the new-found legitimacy of citizens' groups within even a communist regime and their international counterparts – and accelerated the movement toward the legitimacy of international NGOs, not just in human rights matters, but in environmental issues, as well.²¹ The spillover radiation effects of a nuclear reactor disaster in communist Russia upon Western and Eastern Europe focused much attention on the cross-border effects of environmental problems, further empowering the idea of cross-border NGOs.

The recursive legitimacy of transborder NGOs that arose from these historical events has gradually turned into a genie that authoritarian regimes have been seeking to keep bottled up ever since, as attest the massive efforts of China, for example, to police the ability of

¹⁷ See, e.g., Enrique Larana, Hank Johnston, Joseph R. Gusfield, eds., *New Social Movements: From Ideology to Identity* (Philadelphia: Temple UP 1994); or David Plotke, "What's So New About New Social Movements?" *Socialist Review*, Vol. 20, No. 1 (January-March 1990), at 81-102.

¹⁸ See Stanford M. Lyman, "Social Theory and Social Movements: Sociology as Sociodicy," *Social Movements: Critiques, Concepts, Case-Studies* (London: Macmillan 1995), at 397-435.

¹⁹ For the US Department of State's briefing explanation of the Helsinki Final Act (1975), see US Department of State, Helsinki Final Act, 1975, online at <http://www.state.gov/r/pa/ho/time/dr/97936.htm>.

²⁰ Historian John Gaddis has remarked that "Leonid Brezhnev had looked forward, Anatoly Dobrynin recalls, to the 'publicity he would gain... when the Soviet public learned of the final settlement of the postwar boundaries for which they had sacrificed so much'... '[Instead, the Helsinki Accords] gradually became a manifesto of the dissident and liberal movement'... What this meant was that the people who lived under these systems — at least the more courageous — could claim official permission to say what they thought." John Lewis Gaddis, *The Cold War: A New History* (London: Penguin 2005), [what's the page number?]

²¹ See, e.g., Zhores A. Medvedev, *The Legacy of Chernobyl* (NY: WW Norton 1992).

NGOs inside and outside China to be able to take advantage of the Internet.²² The UN Charter made reference to transnational NGOs as a source of advice and expertise, but the Helsinki Accords implied a *political* legitimacy that hinted, however obliquely and, really, only in historical retrospect, at a seat at the table of governance. The fact that this legitimacy arose in the context of human rights rather than other leading values of the UN – peace and security, or economic development and relief of global poverty, for example – gave an absolutist moral tenor to the NGO movement. Human rights, after all, are matters of rights, at least in principle, not matters of social tradeoffs; and those who advocate for them therefore, according to the narrative, have a similar absolute right to be heard and take part. It was a short ideological step to add – and to participate in governance about these issues, which is to say, about everything, because what does not have a connection to human rights?

The human rights advocates that emerged as global players in that era – Human Rights Watch and Amnesty International, particularly – saw themselves as accountable to no government or, really, any other authority.²³ On the contrary, governments in moral theory if not political fact, ought to account for their behavior to *them*. At the same time, they saw themselves as having global moral authority, as it were, derived as guardians and trustees of Kant’s categorical moral imperative. In this they exhibited a certain echo, as earlier noted, back to the ancient moral claims of the Church in early Europe as against “mere” temporal authority.²⁴

Yet the 1980s was also a peculiar political period. On the one hand, human rights advocates made common cause with the US government in opposition to communist oppression in the Soviet empire (without, however, actually denouncing socialism as an economic system). On the other hand, they sharply attacked the US government for its Central American policies and proxy wars that were, after all (and as the rising American neoconservatives pointed out), fundamentally aimed at rolling back communist expansionism. From the standpoint of human rights advocates, this was moral consistency in an exemplary fashion – the application of common human rights standards

²² See, e.g., Human Rights Watch, *Race to the Bottom: Corporate Complicity in Chinese Internet Censorship* (August 2006), report available online at <http://www.hrw.org/reports/2006/china0806/>.

²³ One relatively neutral, well-done journalistic account of the rise of the modern human rights movement – meaning, an account not merely hagiographic – is Kirsten Sellars, *The Rise and Rise of Human Rights* (London: Sutton Publishing 2002). For an outstanding, semi-anthropological account – a social scientist observing from the inside – of the interior culture of Amnesty International, including its many tensions and conflicts, see Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (Ithaca: Cornell UP 2006); for my brief review of it, from the standpoint of someone who has worked inside a similarly situated organization, Human Rights Watch, see Kenneth Anderson, *International History Review*, Winter 2008.

²⁴ For a critical take on this tendency, see Kenneth Anderson, “Secular Eschatologies and Class Interests of the Internationalized New Class,” in Peter Juviler and Carrie Gustafson, eds., *Religion and Human Rights: Competing Claims?* (NY: ME Sharpe 1998), available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=881278.

without exception – while from the standpoint of American neoconservatives, such as Reagan administration UN ambassador Jeane Kirkpatrick, it was merely formal consistency that resulted, in fact, in an insidious double standard of undermining admittedly authoritarian but pro-Western dictators in favor of totalitarian dictators and Communist regimes.²⁵

Throughout all of this, however, the UN was still *not* the focus of the rising human rights NGOs. The UN was still caught in the paralysis of the Cold War. The idea of global structures to govern the globe through international law seemed madly utopian, given two superpowers locked in global struggle – in an era when the very term ‘World Federalist Society’ (today reasonably respectable within the NGO community), was all but code for saying ‘political airhead’.²⁶ The UN mattered, principally, to the increasingly vocal nations of the third world and the post-colonial world as an expression of post-colonialism, not to the first or second worlds.

But transnational NGOs and new social movements *were* rising throughout the 1980s in the first and second worlds. They were rising in places ranging from the Western democratic networks supporting the Polish Solidarity movement and the Charter 77 advocates in Czechoslovakia, to peace networks with aspirations to banish nuclear weapons from Western Europe in the Reagan years, to global human rights monitoring, and the rise of global feminism and women’s rights advocacy, and the global environmental movement.²⁷ These were movements primarily within the industrialized world, within the first and second worlds, the world of industrialized democracies and the world of socialist and communist states (at least those in the West, and certainly not China). The UN and global governance were not directly the focus of these efforts, because this would have constituted a massive diversion of resources at that point into organizations that carried no great weight with the Cold War still underway.²⁸ There was

²⁵ Jeane Kirkpatrick, *Dictatorships and Double Standards: Rationalism and Reason in Politics* (NY: Simon & Schuster 1982).

²⁶ I am here quoting a senior human rights advocate, upon his receiving a review copy at the office of a World Federalist Society tract in the late 1980s. That was still his reaction, even in the early 1990s, to James A. Yunker, *World Union on the Horizon: The Case for Supernational Federation* (London: University Press of America 1993). Today the proposal would seem to him unremarkable and only the historical timing a matter of dispute.

²⁷ The critical theory journal *Telos*, with its close attention to the intellectual and political currents of dissident movements in Eastern Europe and the Soviet Union, perhaps best captured the theory and practice of these movements over the 70s, 80s, and 90s; the intellectual evolution of these movements is found in English language sources in the *Telos* archives. See <http://www.telospress.com/>.

²⁸ The general thrust of this observation is, I entirely grant, highly first world-centric. There was a proliferation of more nonstate actors arising from the politics of and ideological struggles of the third world, but they were still not so very important in the Cold War and still not so very important to the UN, except to gradually effect a takeover of many of its – still not very important – institutions. For a discussion of this – one that would take strong exception to my point here – see Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley: University of California 2002) at 96-125 (Chapter Four, “More States, More Nonstate Actors”).

also a growing, parallel network of developing world organizations that were focused on the United Nations as a source of influence and legitimacy, but they were to a large extent not visible to the organizations dealing with East-West issues in the 1980s. The groundwork was yet being laid at the intellectual and ideological level for the entry of NGOs into a far more direct dialogue with both state actors and international organizations such as the United Nations – primarily, but not exclusively, through the lever of international human rights – about no less a question than who should have the legitimacy to run the world.

IV New Ambitions in the Post Cold War Re-Think of the UN, NGOs, and Global Governance (1989-1996)

The opening provided by the end of the Cold War invited many people to believe that the world might enter a new period of global political coordination to match the economic globalization that was emerging during this period. It was a period of heady liberal internationalism – the belief that sovereign power politics could be overcome through a liberal version of international law, resulting in a benevolent and liberal global governance under a loose, but still federal, global law.²⁹ Leading international law scholars offered pronouncements that the era of truly sovereign states was over; they moreover offered these views to a certain extent as legal opinions that this was, or at least was in a legal sense, coming to be, true.³⁰

These hopes and dreams were fostered, somewhat perversely, by the remarkably united front offered by countries around the world, through the UN and the Security Council, to the invasion, occupation, and sack of Kuwait by Saddam Hussein's Iraq. For once, it seemed, the leading countries came together – including Russia and the United States – to take concerted military action against Iraq. Even if the United States overwhelmingly took the military lead, it was supported by a very broad coalition of states and the Security Council. President George Bush (senior) excited a great many globally when, in the wake of this action, he described a “new world order” that apparently seemed to foreshadow global governance through the UN and genuine collective security.³¹

²⁹ I borrow Francis Fukuyama's useful definition in *After the Neocons: America at the Crossroads* (New Haven: Yale UP 2006), at 7.

³⁰ Perhaps most famously, Columbia Law School international law scholar Louis Henkin: “For legal purposes at least, we might do well to relegate the term sovereignty to the shelf of history as a relic of an earlier era ... [it] is not a necessary or appropriate external attribute for the abstraction called a state.” Louis Henkin, *International Law: Politics and Values* (NY: Springer 1995), at 9-10.

³¹ President George H.W. Bush, “Toward a New World Order,” speech of September 11, 1990. See George Bush and Brent Scowcroft, *A World Transformed* (NY: Knopf 1998).

In retrospect, it is clear that different actors supported the collective military action against Iraq in Kuwait for very different reasons. Some did so because they were genuinely worried about Saddam's naked use of force to acquire an entire country as territory. Others joined because of Saddam's genocidal (as Human Rights Watch concluded) human rights abuses within Iraq against the Kurds and others; their concern was fundamentally the internal political order under Saddam.³² Still other states, particularly Middle Eastern states such as Saudi Arabia, looked at the conflict through the geopolitical aim of weakening Iraq. And still others supported the First Gulf War from the idealistic belief that this essentially unprecedented military exercise in collective security would lead to long-term global governance through the United Nations.

That was with respect to sovereign states and international organizations. Within a few years, however, those idealistic hopes for collective security were dashed – in large part by the outbreak of the Yugoslavia wars and, still later, the genocide in Rwanda. The international community proved unable to respond to provide collective security; Europe proved unable to provide security even within Europe, and the Yugoslavia wars came to a halt only when the United States, under the Clinton administration, decided finally that it had to intervene.³³ In lieu of collective security as such, the UN Security Council implemented a series of war crimes tribunals that aimed to provide after-the-fact justice, first for Yugoslavia and later for Rwanda. These were widely celebrated as the beginnings of an international criminal justice system but, critics noted, their origins were as an *alternative* to actual intervention before or during the fact.³⁴ At the same time, however, in the early 1990s, international NGOs became ever more active in all these causes – human rights, international tribunals, agitation for sovereign states to act in the former Yugoslavia, and many more. Their activities at the United Nations became more active as well.

³² Human Rights Watch/ Middle East Watch, *Genocide in Iraq: The Anfal Campaign Against the Kurds* (NY: Human Rights Watch 1993) available online at <http://www.hrw.org/reports/1993/iraqanfal/>; my own contribution to this research, as a field researcher for Human Rights Watch in Iraq in 1991, was published as *The Destruction of Koreme* (NY: Human Rights Watch 1992). For the definitive account of the use of chemical weapons in Iraq, see Joost Hiltermann, *A Poisonous Affair: America, Iraq, and the Gassing of Halabja* (NY: Cambridge UP 2007); my review can be found as Kenneth Anderson, "America, Iraq, and Poison Gas," *Times Literary Supplement*, July 9, 2008, available online at http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/the_tls/article4302201.ece.

³³ Derek Chollet and James Goldgeier provide a superb account of the Clinton administration's foreign policy in all these matters in their *America Between the Wars: 11/90 to 9/11* (NY: PublicAffairs 2008).

³⁴ See Kenneth Anderson, "Illiberal Tolerance: An essay on the fall of Yugoslavia and the rise of multiculturalism in the United States," *Virginia Journal of International Law*, vol. 33 (1993), at 385-431; the suggestion that post hoc tribunals were being offered as an alternative to actual action was not a message anyone wanted to hear at that time, as I discovered whenever I raised this among human rights groups, funding foundations, academics, or government officials.

The cause that transformed the self-understanding of international NGOs during the 1990s was the international campaign to ban antipersonnel landmines.³⁵ By the late 1980s, humanitarian groups, particularly the ICRC, had begun to raise awareness of the damage being caused by the heavy and increasing use of landmines in conflicts around the world. The issue appealed to a wide variety of international NGOs from a surprising range of perspectives – human rights groups, environmentalists, humanitarian relief organizations, development NGOs, and more – and in the early 1990s, they came together to form a loose network, the International Campaign to Ban Landmines.³⁶ Taking advantage of the emerging technologies of the Internet – the cutting edge communications technologies of the day, email and listservs – they forged an international campaign for a treaty that would ban use, production, stockpiling, and transfer.³⁷ Initially rejected and, indeed, laughed off by leading states, the movement succeeded in forcing powerful states, including the United States and others, to take account of the movement.³⁸ The campaign eventually succeeded in enlisting Canada and several other important states, and eventually produced the Ottawa Convention banning landmines.³⁹

The success of the NGO campaign against landmines did not go unnoticed by the United Nations, including the eventual Secretary General, Kofi Annan and his senior advisors. They had been looking for political mechanisms to strengthen the UN as an instrument, not merely of the member states of the UN or as a kind of negotiating table as between sovereign states, but of independent global governance.⁴⁰ Global governance conducted

³⁵ I speak in this section from my personal experience as director of the Human Rights Watch Arms Division from the inception of the landmines ban campaign and the formation of the International Campaign to Ban Landmines.

³⁶ For one of the early manifestos of the movement, see Kenneth Anderson, Stephen D. Goose, Monica Schurtman, and Eric Stover, eds., *Landmines: A Deadly Legacy* (NY: Human Rights Watch/Physicians for Human Rights 1993). An encyclopedic volume in the beginning days of the campaign, it laid out the basic propositions behind a ban treaty as well as the role of a wide range of international NGOs in pursuing it.

³⁷ Discussing in particular the role of then-new Internet technologies in the globally networked world of international NGOs, see [Charlotte KU, etc.]

³⁸ The US military's approach to landmines and the campaign – sympathetic to the general humanitarian goal, but convinced both that new technologies would solve the problem and that, in any case, the situation of international border-guarding landmines were indispensable to the peace and security of the Korean peninsula – is discussed in Kenneth Anderson, [Chicago]

³⁹ For an account of the landmines campaign that argues both for the special role of NGOs, but also for the special role of Canada as facilitating the special role of NGOs, see Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, eds., *Walk Without Fear: The Global Movement to Ban Landmines* (Toronto: Oxford UP 1998), particularly chapters 19, 20, and 21.

⁴⁰ This was the view of what came eventually to be known by political scientist and senior UN advisor John Ruggie's terminology – the "traditionalists" within the Secretariat who saw the legitimacy and authority of the UN as a function of the member states, and the "modernizers" who saw the need to go beyond, or indeed around, the member states and reach directly to legitimacy with global populations, including through and intermediated by the international NGOs. This internal argument, within the

by the UN in its own name and as its own source of legitimacy and authority, beyond and indeed above that of individual nation states, no matter how powerful. One question of deep and abiding importance, however, was the fact that the UN lacked legitimacy as a democratic actor.⁴¹ It had connections to member states, but the UN itself lacked any direct connection, in the sense of democratic legitimacy, with the “peoples” of the world, as stated in the preamble of the Charter.⁴² The lack of a connection to people as such meant, by implication, that the legitimacy of the UN was merely through the member states – and, by further implication, that its legitimate activities and scope of authority were merely what the member states granted it. The highest goals of global governance, as far as the senior leadership of the UN General Secretariat was concerned, however, was to transcend the reliance for authority and legitimacy upon the member states, to govern, at least in some important matters, directly in the name of the UN and by appeal to the “peoples” of the world.

And yet there is no direct election to the UN; it is structured as an association of member states. It is not a global parliament that is elected by its people(s); it is a meeting ground of states. The ideological problem – the legitimacy problem – for the United Nations leadership, in pursuit of the authority of genuinely global governance, was to find a source of legitimacy that did not run through the member states, and yet did not require something that seemed – and seems – quite implausible if not fantastic, global parliamentary elections.⁴³ The lesson of the NGO landmines campaign, to the UN leadership under Annan, was that international NGOs, which could be perhaps plausibly understood as groups of global citizens, could be asserted as ‘representatives’ of the

Secretariat, is discussed in James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power* (NY: FSG 2006), at 383 et seq.

⁴¹ The notion of legitimacy used in this essay is not intended to be a highly technical one, as the subject is too complicated of its own. It is used here in the loosely Weberian sense that “action, especially social action which involves a social relationship, may be guided by the belief in the existence of a legitimate order.” Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, Geunther Roth and Klaus Wittnich, eds. (Berkeley: University of California 1978), vol. 1, at 31. I do not commit myself here to any deeply technical sense of the term, and broadly speaking this essay subscribes to the generally understood idea of legitimacy as “widespread belief in a system of governing institutions ... Legitimacy denotes the positive evaluation and acceptance enjoyed by a system of power and its bearers.” John Keane, *Public Life and Late Capitalism: Toward a Socialist Theory of Democracy* (Cambridge UP 1984), at 224-225. Specifically with regard to legitimacy and law in the contemporary United States, see the fine article by Alan Hyde, “The Concept of Legitimation in the Sociology of Law,” *Wisconsin Law Review* (1983), at 379.

⁴² Indeed, the very term “peoples” as used in the Charter preamble raises questions all its own, as distinguished from, for example, “We the people of the world.”

⁴³ There was indeed a movement, partly among academics and partly among activists, for a global parliament; proposals for its composition were sometimes modeled on the European parliament and sometimes expressed the view that its membership should consist of ... representatives of international NGOs. It was an idea that was given a veneer of public international respectability in the 1990s by appearing in a report of global “big names” – the Report of the [global village report]. Most theorists, however, even those of impeccable liberal internationalist persuasion, found this a bridge too far.

world's peoples for purposes of providing the UN with a form of quasi-democratic legitimacy, or at least a plausible connection to a global constituency that did not run through the member states.⁴⁴

For their part, the NGOs were happy to see themselves in this role. Besides confirming their own auto-vision as the citizens of the world forcing themselves into the closed negotiating sessions of states, being treated by the institutional UN as the legitimate representatives of the world's peoples who, in turn, conferred legitimacy upon the UN and its claims to governance over the member states, gave considerable status and power institutionally. International NGOs were no longer merely unofficial players standing outside the doors of power, outside the rooms in which states made their agreements – they had, in effect, the backing of the UN leadership to seek a place at the negotiating tables themselves, armed with the claim that they had a special role as representatives of the world's peoples.⁴⁵ States overall were not pleased with this claim, but some – Canada, for example – tended to go along, particularly insofar as it might serve other state purposes, usually to diminish the power of the world's remaining superpower, in the traditional geopolitical habit of middling states.⁴⁶ And the precedent for NGOs joining in

⁴⁴ Annan's rhetoric on this theme became more rhapsodic and ever more attuned to adulation of the international NGOs to a crescendo in 1999-2000; the Seattle riots and collapse of the trade talks in 1999 created what might best be described as great cognitive dissonance for Annan in relation to the international NGOs and new transborder social movements, and 9/11, as the text discusses, was a game changer, as it were, in Annan's attentions.

⁴⁵ This is explicitly Maxwell A. Cameron's argument in his essay "Democratization of Foreign Policy: The Ottawa Process as a Model," in *To Walk Without Fear*, at 424-447, which appeared at the high water mark of theorizing of international NGOs as the interlocutors of states and international organizations in a new form of "democratized" global governance in 1998.

⁴⁶ As Eric Posner notes in his book [forthcoming, check title with Eric 2009], the final results of the landmines movement might be as explainable by the traditional realist hypothesis that medium sized and middle power states, such as Canada, in effect supported and brought the Ottawa treaty about because, as with many other initiatives in international law, it supported their power positions by using rhetorical tools to bind the superpower. The NGOs were not irrelevant in this process, but it is mostly explainable by state-centric mechanisms, not some grand theory of international politics. My own view, as an insider and academic of that process, is that the international campaign to ban landmines would not have achieved a widely accepted treaty – certainly not in so short a time – had the government of Canada not decided to make it Canada's foreign policy objective of the later 1990s. I do not slight the campaign in saying that Canada's decision essentially to turn its entire worldwide diplomatic apparatus over to the NGO campaign gave access and lines of communication that otherwise would have made the campaign perhaps one of those unending but never quite "closing" campaigns. Canada's actions, however, while compatible with its own vision of itself as the "moral" internationalist, are also compatible with what, in those years, was widely seen as the interests of middling powers, to constrain the United States. Moreover, the personal ambitions of Canada's foreign minister in those years, Lloyd Axworthy, to win the Nobel Peace Prize, cannot be ruled out. The ugly competitions among the various virtuecrats for the Prize (Axworthy, Jody Williams, [ICRC], et al.) were, at least to me, astonishing – if not least because they were conducted in the way that Angels of Mercy conduct their internecine competitions: the passive aggression worthy of middle-school girls. The level of distraction they caused within the broader ban campaign enough to persuade me that the merest hint of awarding some worthy cause the Prize suffices to derail it from its mission of goodness. In any case, we must be clear on what the campaign achieved and did not achieve: a ban treaty that has received adherence from a vast number of the world's states, in some cases almost certainly

treaty negotiations was already on the table in the landmines campaign – although, quite distinct from most other treaty negotiations, it was in the first place sponsored as much by the NGOs themselves.

V
**The Golden Age of Social and Political Theory of NGOs:
Dreaming of ‘Global Civil Society’ as Partner in
Global Governance Through the United Nations
(1996-2000)**

The institutional UN sought to elevate the UN’s own intellectual and ideological claims to governance by treating NGOs as the locus of the legitimacy of the world’s ‘peoples’. The NGOs, for their part, elevated their own intellectual and ideological self-conception by treating themselves (and inviting the UN and the rest of the world to treat them), not merely as international NGOs, but as something mysteriously called ‘global civil society’. Why this special term and what was its special significance? Why shift from calling international NGOs by a plain, practical, descriptive term – nongovernmental organizations – to calling them by a term far more laden with ideological significance in social and political theory, the far more intellectually portentous, but also ideologically fraught – ‘global civil society’?⁴⁷

The origins of the terminological shift lie in the effort by intellectuals and theorists of the landmines ban campaign to draw larger lessons – with respect to both future NGO activity in very different fields as well as the very conception of globalization and global governance – from the leading role played by NGOs themselves. The increasingly fawning overtures made to the NGO community in this period by their counterpart intellectuals and theorists within international organizations, the UN Secretariat and its so-called “modernizers” – those UN strategists who saw the transformation of the organization as dependent upon finding a source of legitimacy that would ‘go around’ the

insincerely, but with surprisingly plain rejection by precisely those states that must contemplate fighting a serious war in which losing is a serious possibility, which is to say, among others, the United States, India, Pakistan, China, Taiwan, and all the Middle East. Or international borders, such as the Korean peninsula, in which unilateral removal of landmines could be as profoundly destabilizing as the introduction of nuclear weapons. It does not detract from the achievement of the treaty to note that it has received almost precisely the adherence that power theories would predict, but not more. In treaty matters, as the economists teach us, what matters is behavior on the margin; the fact that Germany adheres to the treaty does not really matter because, as Afghanistan demonstrates, Germany does not intend ever to fight (although it does write quite outstanding laws of war manuals which receive remarkable numbers of citations for documents never really used in practice), while the fact that Taiwan does not adhere does matter. See Kenneth Anderson, [Chicago military lawyers].

⁴⁷ Among the voluminous literature on “global civil society,” the source that stands out is the yearbook series, Helmut Anheier, Marlies Glasius, and Mary Kaldor, eds.-in-chief, and Fiona Holland, mang. ed., *Global Civil Society* (London: Sage, successive years). The series features empirical as well as conceptual articles on global civil society.

member-states directly to global populations and constituencies – also played a role.⁴⁸ This was also the period, after all, in which the International Campaign to Ban Landmines and its coordinator, Jody Williams, won the 1997 Nobel Peace Prize over state officials, such as then-Canadian foreign minister Lloyd Axworthy, who had thrown all the weight of Canada’s worldwide diplomatic service behind the ban campaign and who might have thought that their efforts deserved equal recognition.⁴⁹

As a theoretical matter, however, NGOs, merely as such, are what they are – just organizations consisting of interested individuals. Their motivations might be noble, altruistic, cosmopolitan, and so on, but they are, as a matter of political role, simply organizations that attempt to persuade international organizations, states, others in authority, to act – sometimes on the basis of NGO expertise and sometimes simply on the basis of their enthusiasm and ability to influence the national governments where they hold some level of political capital – which is to say, most strongly in the world’s democratic states in which citizens’ groups can make themselves heard and their influence felt.⁵⁰

Expertise, even when genuine, and enthusiasm are not ordinarily considered sufficient to give one authority, however.⁵¹ The moral authority of NGOs in the international arena

⁴⁸ The whole proposition linking this newly described phenomenon of “global civil society” and the institutional UN was laid out in [cite to UN report on civil society relations]

⁴⁹ See Jody Williams, Nobel Prize Speech, 1997, online at http://nobelprize.org/nobel_prizes/peace/laureates/1997/williams-lecture.html.

⁵⁰ John Bolton provides a telling practical example of the way in which international NGOs operate in the quasi-alliance among international NGOs, sympathetic middling states, and UN bureaucrats in his description of the fights surrounding the UN’s attempts to create a small arms and light weapons control treaty – an effort that, in the hands of gun control NGOs, quickly morphed from a useful attempt to control the rampant spread of light weapons from the arsenals of the former Soviet Union across Africa into a campaign to create an international treaty that would effectively seek an end run around handgun laws in individual states, and the United States in particular. That long term campaign, and counter-campaign, is on-going, but Bolton, in his memoir of his time in the State Department and as US ambassador to the UN, offers a revealing view of how NGOs pursued influence in the endless rounds of meetings – “wear the United States down until only its key issues are unresolved, declare it isolated, and then use the sleeplessness and frayed tempers of many late-night sessions to press us to ‘join consensus’ and avoid ‘isolation’.” John Bolton, *Surrender is Not an Option: Defending America at the United Nations and Abroad* (NY: Simon and Schuster 2007) at 90-92, 91.

⁵¹ Martin Shapiro astutely observes (I draw here directly from Anne-Marie Slaughter’s description in her superb *A New World Order* (Princeton UP 2004) at 9-10), however, that the shift from government to governance marks a “significant erosion of the boundaries separating what lies inside a government and its administration and what lies outside them” with one result being to advantage “experts and enthusiasts” as constituting the two groups outside government itself that have the strongest incentives to participate, as Slaughter notes, in governance but, Shapiro says, “while the ticket to participation in governance is knowledge and/or passion, both knowledge and passion generate perspectives that are not those of the rest of us. Few of us would actually enjoy living in a Frank Lloyd Wright house.” Martin Shapiro, “Administrative Law Unbounded: Reflections on Government and Governance,” *Indiana Journal of Global Legal Studies*, vol. 8 (2001), at 369.

had traditionally rested upon recognized expertise and effectiveness in their particular missions – the relief group, for example, whose acknowledged record in wartime humanitarian aid gave a certain practical as well moral authority to its views before international bodies in areas of its subject matter. The ICRC was always the model – careful, precise, never flamboyant, typically self-effacing, and above all *competent* in its areas of competence. But the ICRC, and international NGOs seeking to model their efforts at global public policy on its example, never sought to claim a role in governance as such.⁵²

The success of the landmines ban campaign, however, including the resulting attention from senior leadership of international organizations, convinced theorists of the international NGO movement that it was something more than merely a collection of organizations speaking for themselves.⁵³ The intellectuals and theorists of the international NGO movement developed an ambitious political and social theory that re-conceptualized international NGOs into something politically and ideologically suitable to serve as a partner to public international organizations – the UN – in the service of global governance. This re-conceptualization drew upon an old political and social theory in Western intellectual tradition, the theory of civil society, and asserted it as a paradigm at the global level, as ‘global civil society’.⁵⁴ The conventional account of global civil society – but also its unconventional, skeptical critique – runs approximately as follows.⁵⁵

Economic globalization has taken place through innovations that have brought down the cost of transportation and, even more dramatically, communications across borders and

⁵² The ICRC stands, however, in a position slightly different from that of any other international NGO. Indeed, in an important sense, the ICRC *does* have a limited, recognized, treaty-based role in governance in the laws of war. The 1949 Geneva Conventions give juridical recognition to the unique role of the ICRC in conveying neutral humanitarian aid and relief; in convening conferences and treaty negotiations in international humanitarian law; and in acting as the repository of sovereign accessions to the Geneva Conventions. In other words, when it comes to drafting international humanitarian law treaties, the ICRC *does* have a juridical seat at the table, and might well chair it. This privilege has been far from irrelevant to the ICRC; unsurprisingly, it has been not entirely enthused about the barbarians at the gates, as it were, the hoi polloi of the NGO movement seeking to join negotiations on roughly the same terms. But the ICRC claims to a role in the “governance” of international humanitarian law has always been based on the assertion of its unique neutrality, not, as the text elaborates with respect to the general international NGO movement, representativeness and intermediation.

⁵³ See Kenneth Anderson and Monica Schurtman, “The United Nations Response to the Crisis of Landmines in the Developing World,” *Harvard International Law Journal*, vol. 36, No. 2 (Spring 1995), at 359-371.

⁵⁴ The leading statement was given by the leftwing British political theorist John Keane, in his influential and impressive *Global Civil Society* (Cambridge UP 2003), which drew upon his theoretical work over the previous decade.

⁵⁵ This is a version of the critical argument offered in Kenneth Anderson and David Rieff, “Global Civil Society: A Sceptical View,” Helmut Anheier, Marlies Glasius, Mary Kaldor, Fiona Holland, eds., *Global Civil Society 2004/5* (London: Sage 2005), at 26-39.

over long distances.⁵⁶ That implies, in the view of many, a corresponding need for political globalization to address the many issues of coordination that arise when economic activities (in the broadest sense of movement of goods, services, capital, and labor) can shift increasingly freely around the world.⁵⁷ Political globalization can take either of two main forms, however, a minimalist form and a maximalist form. The minimalist form says that globalization can be given such regulation as it requires by coordination of sovereign jurisdictions without, however, giving up the essential attribute of sovereignty⁵⁸ – a political community, without a political superior.⁵⁹ Cooperation and coordination among sovereigns, even entering various political arrangements that would provide for arbitration and rule-making in matters as diverse as the environment or public health, can be robust, yet without ever conceding the fundamental attributes of sovereignty: call this ‘robust multilateralism’.

The maximalist form says, on the contrary, that globalization requires instead an ultimately federal system in which sovereignty of individual nation states is given up in favor of a central locus of governance that can enforce behavior in the collective interest, rather than a situation of individual countries forever breaking the rules in their immediate self-interest, whether the matter at issue is economic or security or something else.⁶⁰ Maximalists ordinarily point to the UN as the forum that should gradually evolve

⁵⁶ Although the specific facts are now out of date, the argument is as relevant as ever; see Alan Rugman, *The End of Globalization* (NY: Random House 2000), arguing that much of what is understood as globalization is really the lowering of communications costs and anything digitized that can be transmitted relying upon such technologies. Things that weigh, and hence have transportation costs associated with them, still have transaction costs of movement, and hence there is a noticeable tendency to regionalization of such goods.

⁵⁷ For an excellent introduction to the social theory of globalization, see Malcolm Waters, *Globalization*, 2nd ed. (NY: Routledge 2001). Waters sets out the sociology relevant to the argument that economic globalization implies some form of political globalization.

⁵⁸ The argument for coordination among sovereigns as the proper form of political globalization is laid out in Kenneth Anderson, “Squaring the Circle? Reconciling Sovereignty and Global Governance Through Global Government Networks,” *Harvard Law Review*, vol. 118, No. 4 (February 2005), at 1255, 1260-1266. It is also what Francis Fukuyama calls for as the position of the United States after neoconservatism, in *After the Neocons: America at the Crossroads* (Yale UP 2006), at 155-180; likewise Jeremy A. Rabkin, *The Case for Sovereignty: Why the World Should Welcome American Independence* (Washington DC: AEI 2004). Yet this position is not that far, in principle, from the global government networks approach offered by Anne-Marie Slaughter in *A New World Order* (Princeton UP 2004); much of the difference has to do with where you think the process should, over the long run, wind up – as permanent multilateralism among sovereigns or some sort of gradually emerging, genuinely global governance.

⁵⁹ Borrowing Lincoln’s classic formulation; Abraham Lincoln, *Message to Congress in Special Session* (July 4, 1861).

⁶⁰ The literature on this proposition is nearly endless; one formulation is Antonio F. Perez, “Who Killed Sovereignty: Or: Changing Norms Concerning Sovereignty in International Law,” *Wisconsin International Law Journal*, vol. 14 (1996), at 463. Perez, like many (including me) who started out enthusiastic about global governance and the supposed erosion of sovereignty, over the years has become much, much more cautious.

from a forum for multilateral discussion and, sometimes, cooperation and coordination, into a true global government. The term ‘global governance’ is currently favored over the more plain ‘global government’ because, as it became clear in the course of the 1990s, that nation-states were not interested in giving up their sovereignty as such to a global government, theorists of political globalization invented a new theory by which the UN would exercise “governance” without (somehow) actually being the “government.”⁶¹

What speaks in favor of the maximalist model? The practical argument is that no effective global coordination or cooperation will last over the long term except by a single global governor, able to enforce law and regulation in the classic definition of law as command backed by the effective threat of coercion. That argument appeals to realists, for whom the test of law really is a command backed by an effective threat. Equally important, however, is the idealistic argument – indeed, this is the one that has always appealed to the global bourgeoisie, the emerging middle classes from the dawn of the modern era onwards – that the world and history are gradually progressing toward a unified world, in which individually sovereign states must gradually give way to a global government for the cooperative good of all. Particularly given that nation-states are established precisely on the principle of the ability to exercise ultimate control over activities within their territory – why should a global political system not require precisely such reach? It is an argument from idealism that takes the successful nation state as the model for what a global order ought to look like, even though that means supplanting the nation state itself. Indeed, it is a form of constitutionalism – global constitutionalism, and is often represented as such.⁶²

The minimalist position – the defender of national sovereignty, even if committed to robust multilateralism – usually comes off in this comparison as the retrograde stance: defender of crude sovereignty and the privileges, justified or not, of states simply because they are states. But there is both a realist and idealist argument to be made for the ‘sovereigntist’ position. First, the necessary regulation of the global economy *can* take place among sovereigns; the range of things that can be undertaken will almost certainly be shorter and narrower and regulation less satisfyingly global than it would be under a genuinely federal constitutional system for the planet as a whole. Regulation of trade, in which the benefits of adhering to a common system even when one loses sometimes in rulings and arbitration vastly outweigh the costs of staying out, is likely to gain in solidity over time.⁶³ Security, on the other hand, is likely to remain fragmented; the costs of

⁶¹ The conceptual machinery behind the terminological shift was given by Wolfgang H. Reinicke, *Global Public Policy: Governing Without Government?* (Washington DC: Brookings 1998).

⁶² So, for example, Erika de Wet, “The International Constitutional Order,” *International & Comparative Law Quarterly*, vol. 55 (January 2006), at 51; de Wet’s footnotes are especially helpful in tracing through the full impact of this thought in contemporary European public international law.

⁶³ Unsurprisingly, therefore, the most successful of the international governance organizations has been the World Trade Organization; the least successful, those related to collective security.

adhering to a system that might pose to important players, if not existential threats, then very serious ones, makes it a matter of adherence that is discontinuous with an activity such as trade. But the idealist argument explains why this should in any case be: the idealist argument for sovereignty, for robust multilateralism without giving up sovereignty, asserts the intrinsic value of a self-governing political community, a democratic political community, one that obtains its legitimacy from the consent of its members.⁶⁴

If that ideal argument has merit, then a certain amount of departure from maximalist efficiency in running the world is merited in the interests of self-government. It will be observed, however, that this idealist argument in favor of sovereignty is most particularly an argument in favor of *democratic* sovereignty, in which sovereignty is genuinely an expression of the consent of the governed.⁶⁵ Not all the idealistic arguments are on the side of global governance, in other words, with merely a crabbed realism counseling against – although one would scarcely know it, to survey the literature, which frankly soars into a limitless Platonism over the future possibilities of a unified, globally governed world.⁶⁶

If, however, one is persuaded by the global governance position, whether on realist or idealist grounds, or both, then one must confront the question of legitimacy that, as seen, the UN's own theorists of global governance had confronted. For them, the international NGO movement could provide that legitimacy, the will of the peoples of the world, that otherwise seemed lacking. But this role also corresponded nicely, in the view of other theorists of international NGOs and global social movements, with the concept of civil society in a domestic society.⁶⁷ 'Civil society' (which has a very long and, importantly, shifting lineage in Western political and social theory⁶⁸) had come to mean, by the 1980s, as theorized especially by intellectuals of the new social movements and dissident writers in such movements as Poland's Solidarity, the "independent sector"⁶⁹ – social institutions

⁶⁴ This is not always a "conservative" position; see, in particular, Jed Rubenfeld, [Wilson Quarterly essay 2003]. Rubenfeld, a leading constitutional law scholar at Yale Law School, is very, very far from being a conservative.

⁶⁵ I make this argument at greater length in Kenneth Anderson, "Squaring the Circle," Harvard Law Review, vol. 118 (February 2005), at 1266. As expressed in that article, "we are all idealists now."

⁶⁶ Platonism about global governance and the United Nations reaches its fullest flower in Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations* (NY: Random House 2006).

⁶⁷ A useful introduction to the historical and contemporary uses of the term is found in John A. Hall, ed., *Civil Society: Theory, History, Comparison* (Cambridge: Polity Press 1995).

⁶⁸ See the outstanding Marvin B. Becker, *The Emergence of Civil Society in the Eighteenth Century: A Privileged Moment in the History of England, Scotland, and France* (Bloomington: Indiana UP 1994).

⁶⁹ The archives of the critical theory journal, *Telos*, with its emphasis on critical European thought and social theory, especially from Eastern Europe, are vital sources in understanding the evolution of thinking around the concept of civil society as it emerged in the 1980s and 90s.

that were neither the market nor the state, the NGOs, the social movements, citizens groups, religious organizations, some political but many not, which gave meaning and social texture to individuals' lives.⁷⁰

In democratic societies, the civil society organizations were a mechanism by which citizens could organize to express and press and advocate for their views. In undemocratic authoritarian and totalitarian societies, civil society organizations were sometimes swept up by or co-opted by the state – the union of the Church and fascist political authority by Franco's Spain, for example, or the takeover of such institutions as the national Red Cross or the Boy and Girl Scouts by state authorities under Communism. In the 1970s and 80s, as civil society organizations began to thrive as the forbidden, and later half-forbidden – forbidden but tolerated within certain bounds – in the Soviet empire, they served as a means of pressing authorities with an implicit claim to represent the 'true' interests and desires of the people. The difference in the role of civil society organizations in the two types of society is crucial.

In a genuinely democratic society, civil society organizations are free to advocate, to organize, to argue, debate, cajole. Ultimately, however, political authorities are accountable *not* to civil society organizations, but instead to citizens who vote in the privacy of the voting booth. The legitimacy of the democratic system depends ultimately upon the free and unconstrained vote of the citizens. Civil society organizations are important to the free flow of information and debate and policy in society – but they are not the guarantor of its legitimacy. In particular, in a domestic democratic society, civil society is immensely important to the robust and intelligent functioning of democracy, especially representative democracy, but civil society is conceived as neither 'representative' or as a necessary political 'intermediary' between government and the governed. The ballot box ensures that.⁷¹ Legitimacy in a democracy is given by people raising their hands and voting – not by the presence of citizens or activist groups as civil society, however important they may be to articulating a society's politics.

In an undemocratic society that nonetheless tolerates *some* level of civil society organizations, however, matters are quite different. There is no ballot box to convey legitimacy and, if democracy in fact matters, then in an important sense the society's governance is not (fully) legitimate. Legitimacy is not always conveyed by democracy, to be sure; historically, democracy is rather special idea, in a historical world in which legitimacy was conveyed by kingship, by blood, by kinship, by religious sanction – by mechanisms in which the consent of the governed was scarcely at issue, and certainly not by specifically democratic mechanisms and voting.⁷² In the world that has emerged since

⁷⁰ See, e.g., Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Boston: MIT Press 1992).

⁷¹ For a fascinating, non-scholarly account of the rise of the ballot box and the secret ballot, see Jill Lepore, "Rock, Scissors, Paper: Your Ballot or Your Life," *New Yorker*, October 13, 2008, at 90.

⁷² The notes have earlier stipulated that this discussion utilizes only a crude, non-technical, broadly Weberian notion of legitimacy. However, the legitimacy for the purposes sought in genuinely federal

1945, however, the secular trend has been toward a world in which democratic consent in some fashion, and most usually by the ballot box, has been understood as a *sine qua non* of legitimate government.⁷³ But what happens to civil society, what is its role, in an otherwise modern society that lacks democracy or democratic legitimacy? Either they are repressed, often brutally, as in a truly totalitarian society. Or else they are tolerated – precisely because they serve as a political safety valve for the broader democratic aspirations of the population. Either way, however, what they cannot do is *actually* offer democratic legitimacy, because they are not the ballot or the ballot box.

Indeed, in fascist regimes, such as Mussolini or Franco's, the "officially" accepted organizations of what we might call 'faux civil society' were explicitly treated as representative, intermediary organizations between the people and the state, in a corporatist sense. The Communist dictatorships did something similar, particularly with labor unions. The ruling elites of these undemocratic societies knew perfectly well that they lacked ballot box legitimacy – or at least were unwilling to test it, over and over again, in the way of a long term, stable democracy – and so substituted organizations of 'faux civil society' as the supposed legitimating intermediaries between state and people. This is political "corporatism," not democracy or republicanism.⁷⁴ Organizations of genuine civil society, such as Solidarity in Poland, had constantly to wrestle with what its role should be in an undemocratic society.

In the conventional account, global civil society is offered as the global homologue of civil society in a settled domestic society. For several years, this analogy seemed

global governance requires more than a *politics* – it requires a *society*, in Weber's sense and for Weberian reasons. The kind of legitimacy that now exists in the UN is essentially political in nature and derivation, because there is no international society in the sense of actual people. The international society of states offers an analogue, a homologue, of legitimacy within domestic social orders, but that is a political construct taken by analogy to the social legitimacy found within actual societies. The political legitimacy of the international order is limited and analogical, as Thomas Franck acknowledged in his influential *The Power of Legitimacy Among Nations* (Oxford UP 1990).

⁷³ A point argued by some even as a matter of international law. See, e.g., international legal scholar Thomas Franck, writing in 1992 that democracy "is on the way of becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes." Thomas Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law*, vol. 86 (January 1992), at 46-91.

⁷⁴ I am here adapting an argument against global civil society as bearer of democratic legitimacy offered by John Bolton who was, so far as I know, the first person to articulate it in the current debate. "It is," Bolton writes, "precisely the detachment from governments that makes international civil society so troubling, at least for democracies ... the civil society idea actually suggests a 'corporatist' approach to international decision-making that is dramatically troubling for democratic theory because it posits 'interests' (whether NGOs or business) as legitimate actors along with popularly elected governments ... Mussolini would smile on the Forum of Civil Society." John Bolton, "Should We Take Global Governance Seriously?" *Chicago Journal of International Law*, vol. 1 (2000), at 205. But it is noteworthy that a serious, reflective liberal internationalist such as Anne-Marie Slaughter has taken the essence of the criticism on-board in her own call for governance via global government networks, not NGO networks. See Anne-Marie Slaughter, *A New World Order*, at 9.

unimpeachable; global civil society would act as civil society does in an ordinary domestic society. It would agitate, advocate, cajole, demand, organize, lobby, and do all the functions of organizations and social movements in a settled domestic society. But gradually, the question arose as to what *kind* of domestic society and what *kind* of civil society. The civil society of a domestic democratic society, in which legitimacy ultimately flowed from votes of citizens, and in which the function of political civil society was to organize and channel – but not pretending to stand, because of the independent existence of the ballot box, as corporatist intermediaries or representatives between the people and their government? Or the civil society of an undemocratic society, in which, precisely because of the state's undemocratic character, civil society was – by necessity, by opposition, by cooption, by whatever mechanism – treated as a representative and intermediary?

Given that the international system – the UN system – the system of global governance, to the extent it existed or could be, among international idealists, imagined into being, was palpably *not* democratic, then these international NGOs, recast as a matter of ideology as 'global civil society', were likewise palpably not the organizations of civil society of a democratic society. This did not matter much, so long as the aspirations of the players in the system – the governance ideologists of the UN system and their confreres among the international NGOs – did not extend to matters of global importance. The fact that the international system lacked specifically *democratic* legitimacy did not so much matter when the issues presented to the system were either narrowly technocratic or else matters of mere multilateral negotiation among states, not claims for the UN to govern in its own name.⁷⁵

But by the mid-1990s, the aspirations of this global system were reaching beyond the legitimacy that could be said to attach to the earlier system. The UN was seeking to take on governance tasks that quite apparently required much greater legitimacy than the existing system had or could claim to possess given the available sources of legitimacy – effectively delegation from the member-states. It was doing so as a strategy of a virtuous circle – leveraging up its legitimacy by leveraging up its governance activities, so to acquire more legitimacy, and so on round and round. Moreover, it was *also* being assigned such tasks by powerful nation states (not infrequently including the United States) seeking to offload global obligations from their own shoulders onto it.⁷⁶

⁷⁵ There is, of course, another possibility altogether – that democratic legitimacy is a red herring that does not matter. On the contrary, it is merely a front argument from reactionary defenders of sovereignty. Legitimacy does not require democratic participation as such. This is approximately the radical left view offered by global civil society activist and scholar Alison Van Rooy in *The Global Legitimacy Game: Civil Society, Globalization, and Protest* (NY: Palgrave Macmillan 2004).

⁷⁶ For example, see Derek Chollet and James Goldgeier, *America Between the Wars: 11/9 to 9/11* (NY: PublicAffairs 2008), at 272-275, on the US seeking to find ways to utilize the UN against terrorism and other issues in the Clinton years.

Peacekeeping, peace enforcement, weapons of mass destruction anti-proliferation, human rights in an ever expanding array with reach into individual sovereign states, the security problems of failed and failing states – these issues, especially as they reached inside states, were understood to require greater legitimacy than the multilateral system of member states of the UN offered. That legitimacy, in order to legitimate such governance, required overcoming the so-called “democratic deficit” – a deficit also identified and much debated in the context of the European Union. Indeed, for numbers of global constitutionalists – global federalists of global governance located in European academic and policy centers – the European Union offered the way forward for the world. It had achieved, in the minds of its architects and civil servants, at any rate, democratic legitimacy without all the ordinary trappings of nation state democracy – and the same model could, with sufficient attention, be ramped up to the world as a whole.⁷⁷

In that case, however, legitimacy that was close to democratic legitimacy – ballot box legitimacy – was required, and yet, at the planetary level, not really imaginable. Some dreamers dreamed – and still do – of a planetary parliament directly elected by populations around the world.⁷⁸ Most others – even many who are otherwise deeply committed to the political ideals of global governance in a globally federal system – accept that planetary democracy in that sense is meaningless and unachievable.⁷⁹ Among its many difficulties, it confuses the limits in space and population upon what can be genuinely called a ‘democracy’ with the unlimited, potentially infinitely upwardly scalable networks of a common market.⁸⁰ The latter becomes more efficient the larger it becomes; the former breaks down. The world’s great democratic societies are tradeoffs, sometimes uneasy ones, between the political requirements of democracy, which counsels limits on size, and the economic blessings of an ever larger common market. But in the search for legitimacy in a system that, imagined for the planet as a whole, is too large for ballot box legitimacy, but which proposes tasks for which the legitimacy is greater than that which can be conveyed ‘upwards’ by member states to the UN as a multilateral exercise – what is available?

⁷⁷ See, e.g., Erika de Wet, “The International Constitutional Order,” *International and Comparative Law Quarterly*, vol. 55 (January 2006) and particularly the footnotes thereto. Much of this is challenged, with an equally engrossing set of footnotes, in Ernest A. Young, “The Trouble With Global Constitutionalism,” *Texas International Law Journal*, vol. 38 (2003), at 527.

⁷⁸ See, e.g., Richard Falk and Andrew Strauss, “Toward Global Parliament,” *Foreign Affairs* (January-February 2001), available online at SSRN, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1130417.

⁷⁹ Anne-Marie Slaughter, for example: “Yet world government is both infeasible and undesirable. The size and scope of such a government presents an unavoidable and dangerous threat to individual liberty. Further, the diversity of the peoples to be governed makes it almost impossible to conceive of a global demos. No form of democracy within the current global repertoire seems capable of overcoming these obstacles.” *A New World Order*, at 8.

⁸⁰ Researchers into democracy have noted the size and population constraints – smaller along both dimensions makes democracy easier and more likely. See Larry Diamond, *Developing Democracy* (Baltimore: Johns Hopkins 1999), at 117-160.

The NGOs, of course, are available. But in that case, the form of analogy with domestic civil society is *not* that of a democratic society, but instead one in which necessarily the NGOs act in the absence of the ballot box. They are therefore treated as a kind of ideological stand in for democratic institutions, and in that sense resemble civil society in an undemocratic state. Why does it matter? It matters because under these conditions, this global civil society is treated by the international system, by the UN and its administrators and governors and ideologists, as representative and intermediaries of the ‘peoples of the world’ who do not otherwise have a direct vehicle for their expression.⁸¹ The conventional account of global civil society, as the wholesome homologue of civil society in a settled domestic society – particularly in an era in which civil society and its virtues had been extensively theorized, discussed, and praised as a necessary pillar of liberal democratic society – attained tremendous influence. It figured in many speeches at the UN, by UN senior leaders such as Kofi Annan and his chief aides. Kofi Annan, after all, could not have been more explicit when in 1999 he said that if the “global agenda is to be addressed, a partnership with civil society is not an option; it is a necessity. I see a United Nations that recognizes ...the non-governmental organizations’ revolution.” And NGOs, he added, will give “global civil society its rightful place as one of the pillars of the international community in the twenty-first century.”⁸²

Likewise, the sentiment of a global civil society – United Nations “partnership” figured in many speeches and activities of the world’s leading international NGOs, as they celebrated the undeniable achievements of the landmines ban campaign and took from that experience the conviction that they were indeed representatives and intermediaries for the peoples of the world. They would democratize foreign policy and international relations and bring the peoples of the world into the rarified chambers of the United Nations. And they would contribute to the erosion of sovereignty in favor of a progressive form of global governance that would have at its core a partnership between the institutional UN, as the seat of global governance, and global civil society, which would intermediate on behalf of and represent the world’s peoples.

VI

The Critique, and the Reaction Against Global Civil Society: After Seattle (1999-2000)

⁸¹ For many, to be sure, and the NGOs not least among them, this is a feature, not a bug. It is the argument laid out by, for example, David Held and his co-authors in many books and articles – that legitimacy does not require democracy in the ballot box sense, and that legitimacy in the sense of consent can be got by many different mechanisms, including through intermediaries such as global civil society. See, e.g., David Held, *Democracy and the Global Order* (Palo Alto: Stanford UP 1995). See also Diane Otto, “Non-governmental organizations in the United Nations system: The emerging role of international civil society,” *Human Rights Quarterly*, vol. 18 (1996).

⁸² One example among a great many, Kofi Annan, “Secretary General says ‘global people power’ best thing for the United Nations in long time,” Secretary General to World Civil Society Conference, December 8, 1999, M2 Presswire, December 9, 1999.

The critique was always implied in the conventional account: democratic legitimacy matters, and corporatist forms of intermediation and representation, even if actually true (a questionable assumption, as it turns out), are insufficient to yield the kind of legitimacy for global governance that it claims. Put another way, the UN and the international NGOs were locked in a sort-of ‘lovers’ embrace’ – eyes only upon each other, each in pursuit of its own ideological goal, but finding in the other the confirmation of its special status. The UN sought to be the seat of global governance – and international NGOs, recast as global civil society, appeared to be able to give it the measure of legitimacy needed. The international NGOs, recast and confirmed by the UN as being intermediaries and representatives of the peoples of the world, thereby had an unquestioned seat at the table of power. Moreover, the NGOs had a place at the table that required less *actual* expertise and competence at some *actual* activity or mission than before, because, after all, the *representatives* of the world’s peoples have a place at the table *because* they are representatives, not because of their technical skills or competences. It really was as though these two were lovers, each gratifying and confirming the other, eyes for each other and no one else – because, so far as each was concerned, each confirmed the worth of the other, without regard for the world beyond.

This love affair went on more or less unchallenged until an event that today (having now experienced 9/11, the Iraq war, the emergence of Al Qaeda and transnational jihadist terrorism, and much else besides) seems rather quaint. The event was rioting by anti-globalization protestors that brought to a crashing halt WTO trade talks in Seattle, December 1999. Anti-globalization protestors (with the active, profound assistance and coordination, and moral and material support of global civil society) took to the streets and forced the trade talks to shutdown. Very quickly, global business interests that had looked upon the global civil society movement with a sort of benign interest (seeing it in precisely the terms offered by it, as a sign of the maturation of a global society, a global demos) began to question precisely those aspects that made the claim of global civil society special: its representativeness and its claims to intermediate. But it was not merely global business interests that looked with profound dismay at what the rioters and their supporters had wrought – the senior leadership of the UN, including Annan, saw this as a disastrous development because, indeed, they genuinely saw free trade, if properly managed, as deeply in the interests of the world’s poor.

Hitherto for boosters of the idea of global civil society and global governance – so long as it included free trade – such as the *Economist* began to raise serious questions about the elevated political and ideological claims that intellectually transformed international NGOs into global civil society.⁸³ The skepticism was easy enough to develop – all one

⁸³ For example, The Economist, “Citizens’ groups: The non-governmental order: Will NGOs democratize, or merely disrupt, global governance?” December 11, 1999; “NGOs: Sins of the secular missionaries,” January 29, 2000.

had to ask was, who do these groups actually speak for, anyway?⁸⁴ As David Rieff baldly put it, “So who elected the NGOs?”⁸⁵ Governments in the developing world – the democratic among them desperate for free trade – acidly noted that these groups purported to speak for peoples but denying the legitimacy of their governments, even ones that had been democratically elected.⁸⁶ The journalist Sebastian Mallaby conducted a celebrated – and reviled – study of the membership of one supposed NGO in Uganda that claimed to have the legitimacy to prevent a dam project with the capacity to bring electricity to vast numbers of people; the NGO in Uganda turned out to have twenty-five inscribed members.⁸⁷

The international NGOs, under attack and subjected to a wave of unfamiliar skepticism from the long supportive Western elite press, began to back away from the most extravagant claims to represent peoples and populations – at least when dealing with journalists. The head of Greenpeace UK, for example, gave interviews in which he denied claiming legitimacy to represent anyone except the members of the group itself.⁸⁸ Many other organizations adopted the same tack.⁸⁹ Yet when it came to demanding, outside the venues of the press, privileges based on the exalted status of global civil society – places in the negotiations of treaties and agreements and so on – the demands remained fundamentally unchanged.

⁸⁴ For example, the highly regarded policy scholar and former State Department official Thomas Carrothers, “Civil Society: Think Again,” *Foreign Policy*, December 22, 1999 – and he was not even referring to global civil society, but to the limitations of what one could expect from civil society in newly emerging democracies in such places as Eastern Europe.

⁸⁵ Rieff raised this charge at a conference on child-soldiers at American University law school in a session I chaired, on February 27, 1998, and then followed it up in his widely remarked “The False Dawn of Civil Society,” *The Nation*, February 22, 1999. It was quickly picked up as a talking point by many critics of NGOs.

⁸⁶ Fareed Zakaria, then managing editor of *Foreign Affairs*, found, after contacting ten NGOs after the Seattle riots, that “most consisted of ‘three people and a fax,’” and expressed the concern that rich world “governments will listen too much to the loud minority” of first world activists and “neglect the fears of the silent majority” in the developing world who would benefit from activities not considered virtuous by the NGOs of the developed world. Justin Marozzi, “Whose world is it, anyway?” *Spectator* (London), August 5, 2000.

⁸⁷ Sebastian Mallaby, *The World’s Banker: A Story of Failed States, Financial Crises, and the Wealth and Poverty of Nations* (London: Penguin Press 2004) at 7-8. There is practically a cottage industry among NGO activists responding to Mallaby’s charges regarding the situation of this Ugandan dam. See, e.g., [the book I’m reviewing with the dam director chapter].

⁸⁸ Justin Marozzi, “Whose world is it, anyway?” *Spectator* (London), August 5, 2000, quoting Peter Melchett, executive director of Greenpeace UK: “Democratic governments are elected and have democratic legitimacy. Other organizations, such as Greenpeace, The Spectator and the Guardian, do not. We have the legitimacy of our market of who buys us or supports us. I don’t claim any greater legitimacy than that, nor do I want it.”

⁸⁹ Alison Van Rooy collects and critiques some of this reaction in *The Global Legitimacy Game*, at 64-76.

The institutional UN, for its part, reacted with uncertainty. On the one hand, the legitimating role envisioned for global civil society remained unchanged: what else was there to play it? On the other hand, Annan and his senior advisors, in the weeks and months following the Seattle debacle, remonstrated openly with global civil society. Annan, in particular, rather bravely – given that he had declared these groups to be his constituency – gave multiple speeches directly to NGO conferences and congresses in 2000, telling them flatly that they were wrong about economic globalization and trade. The task before them, he said, was not to prevent globalization, but to make its fruits available to all – a plea to make globalization a positive sum, not a zero sum game. “We must swim with the currents of our time,” Annan said, in one of the most cogent speeches of his career, delivered to an audience, the 2000 Millennium Forum of global civil society meeting at and with the UN, that, if not personally hostile to him, was broadly hostile to the idea, “[**blah**].”⁹⁰

Global civil society, it seemed, had overstated its claims and even politically overplayed its hand. The collapse of the Seattle WTO trade talks badly damaged the global civil society movement with otherwise broadly sympathetic corporate, business, and many, many government interests, as well as intellectuals and policy experts. It was seen as unruly, anarchic, undisciplined, and often willing to tolerate street violence and thuggish language against economic globalization. In some respects the institutional UN pulled back from global civil society, feeling pressure from member states – particularly those of the developing world that had hoped for considerable concessions in the trade talks, eventually aiming, they hoped, at reform of the agricultural subsidies of the European Union and the United States that so hobbled the trade opportunities of poor countries.⁹¹

Yet to a large extent, global civil society continued to have a positive reception at the UN. This was particularly so of global civil society’s most presentable, upper-middle class, bourgeoisie emissaries – not the violent anarchists of the street, having a good time throwing stones at police and burning down the MacDonald’s, but instead the high-minded, respectful, respectable faces, those of large, serious, well-funded organizations in the human rights world, development, and humanitarian communities. Respectable – and yet few found their way in Seattle to condemning the violent agitators in the streets – a bit of the upper middle class romanticism about radicalism and violence, perhaps. But with them, alongside them as their guarantors and supporters, important foundations whose coffers could augment the apparently (to the international civil servants, anyway) always straitened budgets of UN activities.⁹²

⁹⁰ [get cite and exact quote from my microfinance article.]

⁹¹ UN Deputy Secretary General Louise Frechette remarked in the weeks following the Seattle debacle, for example, that “governments often question non-governmental organizations’ (NGOs) representativeness.” Louise Frechette, M2 Presswire, January 20, 2000.

⁹² Few of those private charitable donors, then or now, however, directly gave to the UN, cannily preferring to work in parallel partnership with it, and preferring their own mechanisms of accountability

Global civil society (its glamour a bit faded as the bearer of global democratic legitimacy, but the only available suitor for the role) remained a “partner” to the UN, in Annan’s parlance, while nonetheless receiving a distinctly chillier reception. Because, for the UN, the underlying issue of legitimacy remained unchanged and its possible choices constrained. The institutional UN and its leadership – the “modernizers” in the Secretary General’s offices among the organization’s senior executives – remained convinced that the UN-destined-for-global-governance *had* to find a way around the limited and limiting legitimacy conferred narrowly and jealously by the member-states and reach directly to the populations of the world as the UN’s legitimating constituency. This became especially clear in the discussions and arguments between the ‘traditionalists’ and the ‘modernizers’ in the Secretary General’s offices in the policy run-up in the early 2000s to Kofi Annan’s ill-starred UN Reform Summit in 2005. The UN and global civil society – lovers, still, but no longer out of a sense of true love, each giving legitimacy and countenance to the other. The intellectual high water mark had been crossed and critical intellectuals were mounting attacks upon the history and concept of the very idea of global civil society, let alone that it might confer authority upon the UN as the representative and intermediary of the world’s peoples to their global government.⁹³

VI

The UN’s Return to the Member-States (9/11 and the Iraq War)

And then, September 11, 2001. In a moment, the whole debate over the nature and status of global civil society within the global system seemed childish and silly. A form of non-state actor had made its presence known, but its claims, demands, origins, ideologies, zealotries and fanaticisms had very little to do with the non-state actors that made up global civil society. Throwing a few stones at policemen and burning a Macdonald’s with the police simply not bothering to take action – it all seemed like a form of recreation for bored Western young people, a way for boys to impress girls masquerading as a political cause – all quickly forgotten as Western adolescent games when instead the twin towers came down. But even serious, respectable NGOs also found that they no longer occupied attention in the way that they had even following the Seattle debacle. International NGOs were suddenly swept off the board as political actors. Global civil society, as an intellectual construct for conveying legitimacy, was suddenly irrelevant. The nation-state was back. If the UN wanted to have a role to play, it would pay attention to nation-states and above all to the Security Council.⁹⁴

and efficiencies – a telling statement on even what UN boosters such as George Soros think of UN efficiency when it comes to their own funds.

⁹³ Intellectuals including me. See, in particular, Kenneth Anderson, “The Ottawa Convention Banning Landmines, the Role of Non-Governmental Organizations, and the Idea of International Civil Society,” *European Journal of International Law*, vol. 11, no. 1 (2000), available online at SSRN, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=233561.

⁹⁴ See James Traub, *The Best Intentions*, at 156-166.

As for the NGOs, well, they could be the camp-followers of the nation-states as the Western alliance went to war, or they could stay home. Or they could issue press releases and studies and reports and statements, as they preferred or not, but they were no longer at the center of attention. It was as though global civil society had been, for the UN, a lovely but temporary dalliance with a mistress; but when reality intruded, the lover rushed back to his wife, and so the attentions of the UN leadership returned to the Security Council. This was so even though some of the leading NGOs, in the human rights field especially, found their work more in the public eye than ever, as the war on terror began to unfold following 9/11. The run-up to the Iraq war that began in 2003 emphasized even more the preeminence of nation-states and the central importance of the Security Council, especially for the UN senior leadership.⁹⁵ When the questions of war and peace were on the table in ways that involved directly the world's great powers, then the NGOs and global civil society seemed small beer indeed. This was so despite the efforts of global civil society to mobilize large numbers of people in protests against the Iraq war in many countries.⁹⁶

But the response to the war on terror and the Iraq war illustrated as well something that everyone had always known to be true, but which was always glossed over by the apparently politically neutral language of global civil society: although in principle, institutions of civil society can include a wide variety of political orientations and, in democratic societies, do, in fact the meaning of the term in the international community is reserved for politically 'progressive' organizations, defined in broad terms as a leftwing politics and an orientation toward global governance over merely democratic sovereign governance.⁹⁷ The legion academic literature on global civil society largely assumes that it is about the leftwing Human Rights Watch and Greenpeace, not the pro-life efforts of the Evangelical Christian and Catholic Churches, and that it is committed to precisely what the institutional UN sought from it – an a priori commitment to the idea of global governance, a preference for the international over the merely national.

The covert narrowness of the received view, however, its politically constrained but apparently neutral view, was exposed not by the presence of some dissident international NGOs that defied the consensus – the National Rifle Association and its global affiliates, for example.⁹⁸ It was exposed instead by the emergence of transnational, non-state actors

⁹⁵ See James Traub, *The Best Intentions*, at 167-187.

⁹⁶ The veteran peace activist, campaigner, and new social movements theorist, Mary Kaldor, makes the case for the global social movement against the Iraq war in her *Global Civil Society: An Answer to War* (London: Polity 2003).

⁹⁷ A point made long ago by David Rieff, "The False Dawn of Civil Society," *The Nation*, February 22, 1999.

⁹⁸ This is one of the many reasons why the intense debate (in the United States, at least) over domestic gun control efforts under guise of a UN small arms and light weapons treaty is so important: among many other things, it is a demonstration of the essential non-neutrality of global civil society as a category in

of great power and, as it turned out, dismayingly wide appeal in the Muslim world, at least for a time, that owed nothing intellectually or politically to the concept of civil society in relation to the international system. Put another way, after a post-Cold War decade in which global governance was pursued by the UN and global civil society as “international law,” it turned out that there *was* a growing form of transnational law, under the radar screen of global civil society and international organizations equally, but with far greater weight, impress, and consequence – and it turned out to be not international law as such, but shari’a.⁹⁹ One could plausibly argue that shari’a law has a considerable claim to be *the* genuine growth industry in transborder, global law.

This should give pause, one might think, to democratic liberal progressives who somehow automatically favor the transborder over the merely national, the international and global over the merely parochial sovereignty of the nation-state. Global law might indeed grow, but not necessarily a *liberal* one. The reason this does not appear to give concern to progressive forces of global civil society is simply that it, like the UN itself, has largely given up the dream of an international order based around liberal, secular, neutral principles that separate out private belief from public conduct in the public square, and has instead embraced religious and ethnic communalism, and multiculturalism, rather than the neutral liberalism of individual rights and liberties, as the ideal for managing conflicts among religious and ethnic communities.¹⁰⁰ A world in which the legitimacy of democratic nation-states is systematically degraded in favor of a shallow cosmopolitanism, promoted by global civil society, academics, the media, and international institutions, and that for the sake of the supposed abstract virtue of governance at the global level, is a world that *in fact* empowers simultaneously sub-national and supra-national religious and ethnic groups over liberal democracy.¹⁰¹

Why a world of transborder, multiculturally-‘managed’ cousin loyalties, however, would be a better place – merely because it endorses ‘global’ governance – than a liberal one based around individual human rights and democratic participation in religiously and ethnically neutral states is far from self-evident. Nonetheless, it appears to be what global civil society and the institutional UN have endorsed as the new global ethic in the wake of 9/11 and the Iraq war. Anyone doubting that proposition might take the opportunity to attend the sessions of the “reformed” UN Human Rights Council in Geneva and see how much of its agenda is devoted systematically to replacing liberal concepts of free expression with impeccably multiculturalist ideals of religious

international politics. See David Kopel, Paul Gallant, and Joanne D. Eisen, “The Human Right of Self-Defense,” *BYU Journal of Public Law*, vol. 22 (2008), at 43.

⁹⁹ See, e.g., Olivier Roy, *Globalized Islam: the Search for a New Ummah* (NY: Columbia UP 2004); Mark Steyn, *America Alone: The End of the World as We Know It* (NY: Regnery 2007).

¹⁰⁰ I offer more discussion of this at Kenneth Anderson, “Goodbye to All That? A Requiem for Neoconservatism,” *American University International Law Review*, vol. 22 (2007), at 277, 315-319.

¹⁰¹ This being, in effect, the (very) short response to Peter Spiro, *Beyond Citizenship: American Identity After Globalization* (Oxford UP 2007).

communalism, beginning with the proposition that no religion, or at least Islam, shall ever be offended by contrary speech.¹⁰²

VII

What Next for Global Governance, the UN, and Global Civil Society?

Global governance as a federal world under the UN, as a global constitutional order, as a political project to correspond to economic globalization of goods, capital, and increasingly labor and services is stalled. But it is stalled in a peculiar way. The UN is immobilized in a cul-de-sac in which it can neither move forward meaningfully toward that political goal, nor give up that overarching political goal in favor of something more modest, achievable, or frankly useful, either. Its legitimacy is peculiarly linked to the vision of its glorious future as the seat of global governance, and it seemingly cannot get on with something more functionally important because then the limited legitimacy that it does have is *also* at stake. It is a little like the exiled queen who has lost everything – except the claim to the throne, which justifies everything else and yet which precludes her from doing anything different other than being pretender to the throne. There are indeed useful, functional, greyly technocratic things the UN might be doing very well, but which it finds difficult to undertake because, in a certain way, doing them would be beneath its dignity. Doing them would constitute an acknowledgment that the UN will never really be the Parliament of Man, at least not in the grand and glorious sense of global governance. And because of that commitment to the future, too, other actors are skeptical about entrusting the UN with anything they really care about – peacekeeping in some forsaken failed-state hellhole, yes; replacing ICANN with the UN to regulate the Internet, no – because they understand the deep tendencies of the organization to politicization of even apparently routine issues.¹⁰³

Unsurprisingly, the global civil society movement is caught in precisely the same cul-de-sac. It turns out to be both unable to confer the legitimacy that the UN's ideas of global governance require – but also not able to act as “representatives” and “intermediaries” for the peoples of the world, at least not compared to nation states. The more savvy among

¹⁰² The indispensable source of information on a daily basis is UN Watch, at <http://www.unwatch.org/site/c.bdKKISNqEmG/b.1277549/k.BF70/Home.htm>; see also, Brett D. Schaefer, Free Speech? Not at the U.N. Human Rights Council (Washington DC: Heritage 2007), March 29, 2007, available online at <http://www.heritage.org/Press/Commentary/ed032907b.cfm>. Even Human Rights Watch, which up until recently has acted as a semi-embarrassed apologist for the Council (after having made the mistake of backing it in UN reform negotiations for no better reason, seemingly, than to stick it to John Bolton but, being Human Rights Watch, being unwilling and unable to admit of any mistake), has recently begun cautiously criticizing the Council's assault on free expression. See [HRW Council free expression]

¹⁰³ See, e.g., Jay P. Kesan and Andres J. Gallo, “Pondering the Politics of Private Procedures: The Case of ICANN,” *I/S: A Journal of Law and Public Policy*, vol. 4 (2008), at 345; this article is generally sympathetic to the idea of UN agency regulation but it gives a scrupulously useful account of those who are not.

them have moved to two-sided, uneasy strategy of publicly abandoning the intellectual pretensions of global civil society and appearing, publicly, to beat a retreat to just being NGOs again. Beat a retreat, that is, from making such grandiose claims of representativeness and gone back to asserting – rightly or wrongly, true or false – their expertise and competence as reasons why anyone should pay attention to them. At the same time, however, international NGOs build on earlier success in creating an atmosphere of “partnership” among global civil society, international institutions, and like-minded states (precisely the formulation drawn out of the success of the landmines campaign) in order to demand a ‘seat at the table’. The old, and one might have thought, discredited, corporatist claim of representativeness and intermediation continues to operate within the more limited precincts of international organizations – not at the level of deliberations of the Security Council, but in the myriad lower level issues that are the natural fodder of interest groups that have found a way to ally themselves with the UN’s institutional interests, and to call it “representativeness” when that suits and “expertise” when it does not.

The ideological argument over global civil society will presumably resonate in the academic and NGO literature for years to come. The model worked out in the 1990s for global civil society has continues to operate, with some surface modifications. In order to accommodate to new sensitivities, the NGOs are no longer announced as “partners” but instead as “norm entrepreneurs” and “transnational advocacy networks.” Th new terminology tends to obscure what is the same – call it by these terms, and so seek to defang the problems of representation, intermediation, and corporatism, but the moving actor is *still* an ideologically conceived global civil society. The academic literature will thrill for some years yet to analyzing how global civil society is drawing new norms in the international market in ideas and so democratizing and opening the “international community.” The academic activist-scholars have difficulty taking on board that this supposed “openness” is actually and essentially a *closed* legitimization-circle between global civil society and international organizations. Calling it “entrepreneurship” obscures as much as it illuminates of what is the overarching issue of the United Nations and the ideal of global governance – the on-going, decades-long legitimization crisis.

Yet a new and intellectually powerful assortment of scholars – impeccably liberal internationalist, wedded to global governance, but not at all wedded to the sanctity of global civil society – has already moved beyond the idea that global governance can or should be sought through global civil society. They are almost certainly right in viewing the global civil society movement as an element, but not the most compelling one, in creating global governance. Anne-Marie Slaughter, Benedict Kingsbury, and Kal Raustiala, among others – all committed to some form of global governance, but none suggesting that its legitimacy would come about through global civil society.¹⁰⁴ As

¹⁰⁴ Slaughter’s pathbreaking book, *A New World Order*, has been extensively cited in this essay; see Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, “The Emergence of Global Administrative Law,” unpublished manuscript, NYU Global Administrative Law Project, posted to SSRN, May 25, 2005, available at SSRN online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=692628. Possibly I have missed some reference in it to global civil society as such, but not so far on my fourth reading. Finally, see Kal Raustiala, “The Architecture of International Cooperation: Transgovernmental Networks and the

Slaughter said flatly, global governance needs forms of legitimacy that *only* states, and their agencies, can provide; she elaborates a form of governance that goes far beyond the idea of robust multilateralism that this essay has suggested, but one which is distinctly cool to the idea of genuine legitimacy coming from global civil society.

Benedict Kingsbury's project of global administrative law skips over the very problem of political legitimacy altogether – a troubling jump, to be sure – in favor of purely technocratic legitimacy achieved simply by technocratic competence, whether through networked agencies among governments, networks including relevant corporate or NGO actors: what matters is competence and accomplishment, not political legitimacy in the abstract. This essentially technocratic account is noteworthy for the fact that nowhere does it refer to international NGOs as “global civil society,” and it prefers to treat private actors as including both NGOs and corporate actors because, in the end, what matters is who has genuinely expert knowledge and who is able to prove competence. It is an account coolly indifferent to the heated romanticism of the NGO claims, for and against, a certain shrug of the shoulders as if to say, it is nearly 2010 and those arguments are all so ... 90s. There are, in my estimation, serious problems with all these various alternatives. In the first place, the one thing that the troubled discourse of global civil society and the UN is right about is that political legitimacy does matter, and it cannot be got for the purposes and activities for which the UN has declared itself fit and fitting on a purely technocratic basis. Global civil society cannot convey that legitimacy; but it was not wrong to insist that it matters and is not reducible to bureaucracy, no matter how competent. That said, *they*, the theorists of networks of bureaucrats and judges and what, in a more adequately theorized system, would come to be known as the globalized “wholly-administered society” – not global civil society, not NGO norm entrepreneurship, not transnational advocacy networks – represent the cutting edge of theory of global governance and, by extension, the emerging conceptual poverty of the role of international NGOs.¹⁰⁵

In any case, however, the world at the time of this writing appears to be moving toward a multipolarity that raises a whole different set of issues both practical and ethical with respect to international NGOs, public international institutions, and global governance. What happens when it becomes clear that the superpower, while militarily still the superpower, does not have unlimited resources and powers to be able to impose its will on China, Russia, or such “resource extraction authoritarian states” as Iran, Venezuela, Saudi Arabia, etc., at least within their own spheres of influence and local geographies?

Future of International Law,” Virginia Journal of International Law, vol. 43 (2002). The next move in this on-going debate, I suppose, will be that international law theorists will begin to realize that they have possibly placed too much faith in network theory.

¹⁰⁵ The “wholly-administered society” refers to a concept developed as part of New Class theory among the editors of Telos in the 1970s and 80s. It is a discussion for another day, but we not so very far from the need for a globalized theory of the New Class, and the wholly-administered, professionalized-yet-marketized society that Telos debated several decades ago, in order to understand in a genuinely radical way the content of extant ideologies of global governance. The memory of Paul Piccone lives.

Whether that condition will continue to accelerate or not is unclear – shifts in oil prices, a US that loses interest in offering a global security guarantee or even a NATO one, a China that fails to continue achieving legitimacy through growth and sets off serious internal unrest; etc. – so many contingencies. Yet were this trend to continue, however, many will celebrate that as the advent of a more “equal,” more “just,” a better world. Many will also likely come to regret it, were that truly to come to pass, however, at least if they also count themselves fans of global governance. Why?

A genuinely multipolar world is, as David Rieff has noted, not a cooperative world but, almost by definition, a competitive one.¹⁰⁶ In that kind of world, states are more important than they ever were when they were under the hegemony of the United States, and there is less room, not more, for cooperation. Competition is not limited to the issues of deep conflict – Georgia, the Taiwan straits – but spills over into seemingly unrelated matters, such as whether the authoritarians of the Security Council, Russia and China, will begin reflexively to oppose initiatives in parts of the world – failed states, for example – in which they have no deep interests, simply for the sake of putting pressure on initiatives sponsored by the rest. Hold-up value on otherwise unrelated issues – countries at the UN, after all, thrive on it as a form of rent-seeking. Global governance does not have a real place in this world, at least not global governance conceived in its ‘high church’ sense as a federal world under the UN, with the Charter as its constitution. In place of governance, the UN becomes what, on a more realist view, it always was – *at best*, the talking shop of the nations.

One could argue perhaps that NGOs in such a world become more, rather than less, influential – but frankly, the opposite argument seems far more persuasive. Global civil society and global governance achieve their maximal ideological appeal and, indeed, political influence when the basic security of much of the planet is taken care of. And that guarantee provided not by the UN, with the great powers in much greater conflict and (even without great power conflicts as such) free-rider problems endemic to the collective security system, but by a relatively benign hegemon that, in pursuit of its own very broadly conceived security interests, a combination of its ideals and interests, carries along much of the industrialized world’s security interests in train. The cause of global governance, and partnership with global civil society, looks much less attractive when security itself is an issue; moral exhortation is a lovely but superfluous attribute when what is needed are the big battalions. The NGOs might consider prayer to Kant in the name of the categorical imperative, then, that the US not lose interest or capacity or undertake a calculation of fundamental tradeoffs as to the costs of being the hegemon: the global order that the superpower underpins is the one in which the NGOs swim as fishes in the sea.¹⁰⁷

¹⁰⁶ David Rieff, “Concerts and Silly Seasons,” Open Democracy, February 23, 2007. Rieff is here criticizing Michael Lind’s idea of a “concert of power”; see Michael Lind, *The American Way of Strategy: US Foreign Policy and the American Way of Life* (Oxford UP 2006), at 171-88.

¹⁰⁷ I address these questions in blunt language in *The Past, Present, and Future of the United Nations: A Comment on Paul Kennedy’s The Parliament of Man* (English language version of essay in the *Revista de Libros*, November 2008), available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265833.

It is less clear whether a competitive, multipolar world favors or disfavors global governance conceived as a more limited, more technocratic project. Jettisoning the grand political project of political representativeness and intermediation and legitimacy in any grand sense cannot hurt in such a world. The attempt to bring together technocrats rather than politicians, and seek only such legitimacy as is required to solve particular problems and presume only such legitimacy as is required – only to make a limited set of global trains run on time for the sake, especially, of very poor people about whom no else really very much cares, seems like it must be less disfavored, at least, even in a competitive multipolar world. Yet the problem of hold-up value in projects and tasks globally that seem, on their own, to have little to do with competitive great powers, does not go away. Still, there is much to recommend the approach – *provided* of course that it never gets above itself and begins to believe that the legitimacy of technocrats for discrete functions can somehow be built up into some ideologically grander structure.

There is no grander structure. Coordination among democratic sovereigns in robust multilateralism is the most that can, and should, be sought in the way of political globalization. It does not satisfy the vast imaginations for those that only the grandiosity of the Parliament of Man can satisfy. It promotes the UN-of-Less-Visibility and not the UN-of-Rock-Stars. It is resolutely state-centric and sovereign. It does not give NGOs a special place in the global firmament and certainly grants them no special legitimating authority. Their ethical status does not include representation or intermediation – something that ought to be understood within and without the United Nations, because it has implications for how the UN ought to treat with them: but, then, that would require that the UN take account of how it treats of itself. Robust multilateralism, for its part, as a model of governance, at least has the possibility of effectiveness in particular matters for particular people and particular places: taken together, enough of them, they after all make up the globe. The ethics of global governance, in other words, ought finally to include the acknowledgment that while there are international NGOs, there is no global civil society.*

* *One does not usually dedicate essays, but this one is to the memory of Paul Piccone, founding editor of Telos.*