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The Munk School: From Roots in International Studies to the Broader Perspective of *Global Affairs*

BY

Janice Gross Stein

Welcome to the new Munk Monitor. The new version of the Munk Monitor coincides with the transformation of the Munk Centre for International Studies into the new Munk School of Global Affairs. The Munk School now offers graduate education with three flagship masters programs and a collaborative PhD program, as well as undergraduate education. The school is actively recruiting new faculty and students from around the world to Toronto.

There is more here than simply a change of name from "international studies" to "global affairs." The change signals a shift in perspective from a focus on the relationships among nation states to a much broader and richer network of relationships among states, private corporations, non-governmental organizations, foundations, and international institutions. Almost anything of importance that happens today involves non-governmental organizations that, more and more, develop and propel policy proposals; the private sector that puts forward policy and engages directly in corporate diplomacy and corporate social responsibility; foundations, whose assets dwarf those of many states and increasingly define and shape programs around the world; and international institutions that shape and regulate a growing swath of global public life. States remain centrally important players in global life but they are surrounded by a vibrant set of institutions and organizations that are changing the way states develop policy and do diplomacy.

This inaugural issue of the new Munk Monitor speaks to all these issues. It is a window on the exciting research and scholarship that scholars at the Munk School are doing on the big issues in global economics, politics, society, and science. In this issue, our scholars speak first to the changing role of the state in the face of the latest wave of globalization. They go deep inside the state to look at financial flows that privilege and protect particular interests and shape policy. And they examine the quiet but unprecedented ceding of sovereignty, both formally and informally, as states came together to manage the considerable downdraft from the global financial crisis of 2008. Sovereign states sat at the global conference tables to be sure, but their leaders agreed on levels of collaboration and coordination that compromised some of their fundamental interests. In Europe right now, members of the Euro zone are facing precisely such challenges as they struggle with the contradiction of a common currency without deep policy coordination. The European Union will either take a big step forward in sharing fiscal policy, or the Euro zone will fly apart. As in many other areas of global public policy, the status quo is not sustainable.

A second set of essays look at some of the new kinds of global action that goes on around states. Lawyers and physicians, for example, are now global players, influencing the global agenda on issues ranging from genocide to international human rights and the right to health. And new international institutions have sprung up to meet new

challenges. The G-20, newly prominent in the wake of the global financial crisis, continues to meet alongside the older, more comfortable, more established G-8. The G-20 includes China and India, countries that are experiencing explosive growth, Brazil, the engine of growth in a newly vibrant Latin America, Turkey, a country that is newly powerful in Asia and the Middle East, and South Africa and Nigeria, the two large economies in a newly vibrant Africa. When G-20 leaders met in Seoul in November 2010, for the first time they met in the capital of a member that is not in the G-8.

These new members, participating in new global institutions, reflect a deep change in the global economy which is ongoing, strengthening some and weakening others, creating new opportunities alongside new challenges, and bringing hundreds of millions of people into the global economy and global society. A fundamental shift in economic power and dynamism—a rebalancing of the global economy—is now well under way. It will play itself out in bursts and spurts over the next several decades, hopefully without the cataclysmic violence that has given birth to changes in economic and political structures in the past. That shift cannot but affect the capacity to provide security as a global public good, to manage sustainable growth, and to engineer a new architecture of global governance. The progress thus far, however, has been remarkably timid and incremental. There is barely a whiff of the deeper structural changes that are coming.

In Part 3 of this volume, scholars at the Munk School examine the changing role of citizens in global society; the kind of impact that was evident when citizens took to the streets of the Middle East in order to drive autocratic and corrupt regimes from power. In an unprecedented display of citizen engagement in this part of the world, people came together to demonstrate against their governments in the public squares. In these conflicts, all the trends of contemporary global society were evident.

Those movements owed a great deal to citizens who knew how to mobilize social media in cyberspace. But citizens aren't alone in cyberspace As Munk scholars Ron Deibert and Rafal Rohozinski argue, states as well as citizens exercise power to organize and control cyberspace. For several critical days, the government of Egypt was able to close off the Internet by shutting down the critical service providers. Protestors had to resort to informal traditional networks to organize demonstrations. What did stay on the air throughout was Al-Jazeera, the television network based in Qatar, which provided extraordinary wall-to-wall coverage of the protests. Some scholars have called the spreading wave of protest in the Middle East the "al-Jazeera" revolution.

Indeed, the Arab Awakening of 2011, taking place as this volume goes to press, illustrates the breadth of "global affairs"—well beyond the traditional frames of analysis in international studies. States, multilateral organizations, citizens, NGOs, and private market actors were all converging to shift political and economic power in the region. Non-governmental organizations like Human Rights Watch monitored governmental actions and broadcast detailed descriptions of the harsh use of force against citizens. Humanitarian organizations rushed to provide assistance to populations on the move and under seize. Print and electronic media from around the world converged on Cairo, on Benghazi, on Amman, and provided visual and written stories to satisfy a twenty-four hour news cycle. Not much of what was happening could be hidden from a watching world.

Finally, the United Nations Security Council, an "old" international institution, took action under a very new doctrine. In 2005, the United Nations passed a resolution affirming the "responsibility to protect," the obligation of states to intervene, with force

if necessary, when a government is about to commit crimes against its own citizens. The responsibility to protect, first conceived in part by Canada, trumps state sovereignty, trumps the venerated principle of non-interference in the internal affairs of other states, and elevates the protection of the lives of civilians to an overarching global principle. It was this principle which justified the creation of a no-fly zone over Libya in March 2011 to prevent Gaddafi's air force from strafing and killing civilians who at first demonstrated against his government and then broke into open, organized rebellion when Qaddafi's military responded with force. The coalition did not restrict itself to enforcing a no-fly zone, but moved beyond to strafe and bomb Qaddafi's military forces on the ground. Almost unwittingly, the "international community" found itself in the middle of a civil war.

What began as a local protest spread virally throughout the Middle East and then globally. Citizens, non-governmental organizations, social media, print and broadcast media, states, global corporations, energy markets, and international institutions were quickly caught up in very local processes that had global consequences. That is exactly what we study at the Munk School of Global Affairs: the wide spectrum of local processes that have global consequences and the global processes that have significant impact on the ground.

I very much hope that you enjoy reading about our research and scholarship and invite you to write directly to our scholars. I also invite you to go to our website at www.munkschool.utoronto.ca, where every week voices from around the world join us in informed debate about a global issue.
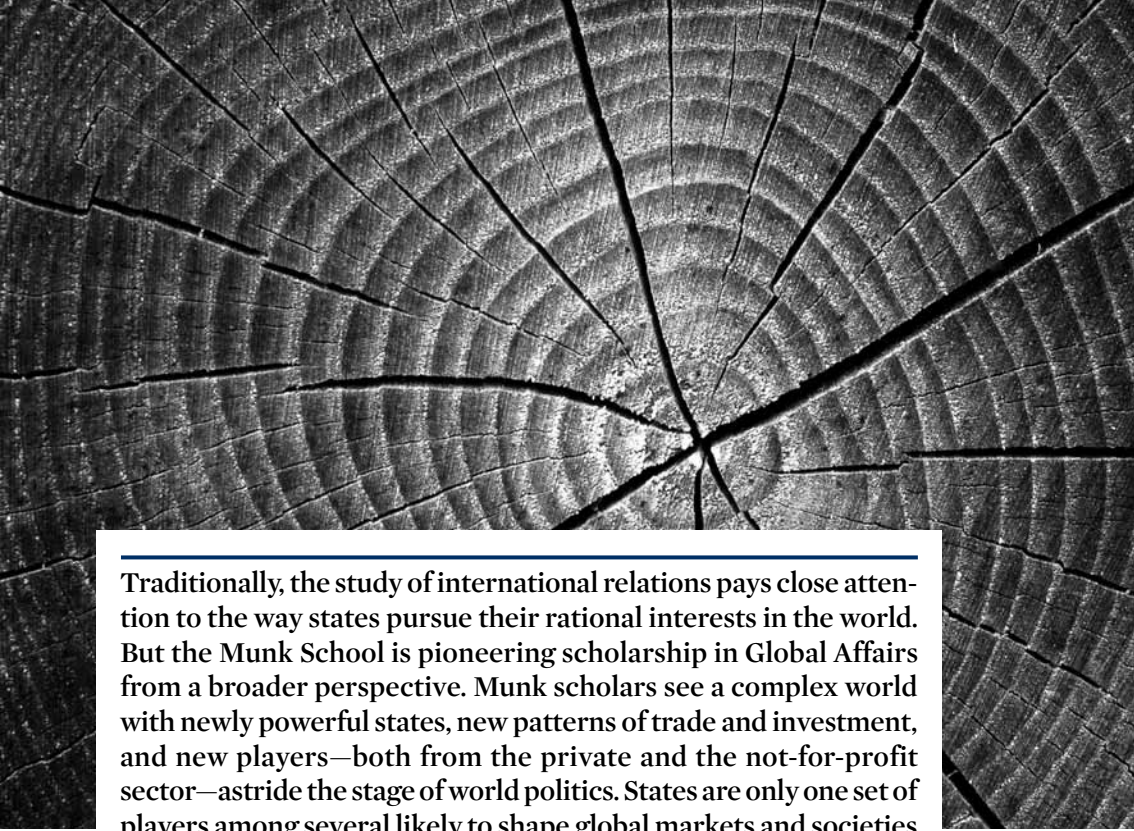
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PART 1

RETHINKING STATE POWER

Traditionally, the study of international relations pays close attention to the way states pursue their rational interests in the world. But the Munk School is pioneering scholarship in Global Affairs from a broader perspective. Munk scholars see a complex world with newly powerful states, new patterns of trade and investment, and new players—both from the private and the not-for-profit sector—astride the stage of world politics. States are only one set of players among several likely to shape global markets and societies in the decades ahead.

Part One of this collection samples Munk scholars who are rethinking the role of states. Munk Professor Joseph Wong, working with the University of Toronto Sociologist Prof. Ito Peng, rethinks the traditional understanding of the welfare state in East Asia by tracing the evolution of social welfare policy in Taiwan and South Korea since World War Two. Munk Professor Lynette Ong deepens our understanding of the Chinese state by analyzing the way rural branches of the Communist Party have shaped the financial system around their own interests. Munk Professor Louis Pauly describes how states *transcended* their own, deeply rooted authority over their domestic financial markets in order to collaborate globally during the economic crisis of 2008.

And we present a full paper by Munk Professor Steven Bernstein with Yale University's Benjamin Cashore about the growth of regulatory mechanisms that operate beyond state power altogether. The paper examines how the Forest Stewardship Council gained political legitimacy as a global regulator without any state's endorsement. Based on that analysis, the authors begin shaping a model for the emergence of other non-state regulators.

Can Non-State Global Governance Be Legitimate? An Analytical Framework

BY

Steven Bernstein AND **Benjamin Cashore**

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Introduction

Where national and international regulation of significant global social and environmental problems has been absent or weak, an array of voluntary, self-regulatory, shared governance, and private arrangements has begun to fill the policy void (Howlett 2000; Haufler 2001; Gunningham *et al.* 2003; Ruggie 2004; Hay *et al.* 2005). The interdisciplinary literature that has emerged to describe, understand, and explain the rise of these mechanisms includes rich descriptions of corporate social responsibility (CSR) (Vogel 2005), industry self-regulation (Webb 2002), political consumerism (Micheletti *et al.* 2003), voluntary instruments, and public–private partnerships (Rosenau 2000; Börzel & Risse 2005). In addition, large-N (Prakash & Potoski 2006) and historical case studies (Boström 2003; Gulbrandsen 2005; Sasser *et al.* 2006) have addressed why specific types of private authority emerged, and why firm-level support for such mechanisms often varies within and across sectors.

Despite these advances, theory development is being hampered by the conflation of mechanisms with different characteristics, scope, depth, and prospects for transforming the global marketplace. This is particularly problematic for assessing "non-state market driven" (NSMD) governance systems because, unlike the voluntary nature of most other forms of private authority, these are designed to create binding and enforceable rules (Cashore 2002). NSMD systems are defined here as deliberative and adaptive governance institutions designed to embed social and environmental norms in the global marketplace that derive authority directly from interested audiences, including those they seek to regulate, not from sovereign states. Operationally, they use global supply chains to recognize, track, and label products and services from environmentally and socially responsible businesses. They operate in what John Ruggie (2004, p. 504) labels an emerging global public domain: an "increasingly institutionalized transnational arena of discourse, contestation, and action concerning the production of global public goods, involving private as well as public actors." Here, members of the public increasingly express their demands to moderate the excesses of global liberalism and to "embed" markets in broader societal goals.

Non-state market driven systems have proliferated to address: global problems such as fisheries depletion; deleterious environmental impacts from forestry, food produc-

tion, tourism, and mining; rural and community poverty; and inhumane working conditions (see Appendix I). Their potential impact is far from trivial. Current systems alone operate in sectors that represent one-fifth of the products traded globally.[1]

What makes these non-state governance systems unique? How do they gain governing authority? What is their transformative capacity? To address these questions, we develop an analytical framework designed to explicate how NSMD systems might achieve "political legitimacy," defined as *the acceptance of shared rule by a community as appropriate and justified*.[2] We focus on legitimacy because if NSMD systems are to achieve their goal of moving beyond static systems in which firms and social actors constantly evaluate and reevaluate whether to withdraw support based on short-term cost–benefit calculations, they must become more deeply engrained as legitimate authorities (Levi & Linton 2003, p. 419).

Our framework addresses three shortcomings in existing scholarship. First, we differentiate NSMD systems from other forms of private authority, drawing on and revising Cashore (2002). Second, we highlight how globally institutionalized norms, or social structure, provide the constitutive and regulative basis of legitimacy for these systems. Third, we challenge the tendency in existing scholarship to assess support for NSMD systems as either strategic or norm driven. We assert that while much of the *initial* motivation for firms to participate comes from market-based incentives, a full-fledged theory of NSMD system emergence and institutionalization must address how firms, *as well as* consumers, community stakeholders, and non-governmental organizations (NGOs) interact with norms embodied in, and promoted by, NSMD systems. We posit that actor interactions produce a three-phase process through which NSMD systems may gain political legitimacy: initiation (phase I), building widespread support (phase II), and political legitimacy (phase III). As systems move through the phases, we argue that what March and Olsen (1998) identify as a "logic of appropriateness" becomes increasingly important to explain actors' evaluations, although strategic action based on a "logic of consequences" continues to play a role.

Growing the East Asia Welfare State

Since World War Two, South Korea and Taiwan have both organized social insurance around their citizens' occupations—that much is widely understood. But Munk Prof. Joseph Wong and U of T sociologist Prof. Ito Peng tell a far richer story about how social welfare policy in East Asia evolved alongside the region's free markets and democracies.

Writing in 2010, Wong and Peng describe how South Korea and Taiwan's current systems of social welfare grew through three clear phases. In the first phase, as Taiwan and South Korea both focused on economic development in the aftermath of World War Two, they designed social policies to boost economic production. When both countries became democracies in the 1980s, their approaches to social policy also changed; they began to stress universal access to certain economic opportunities and redistribution of wealth. The current era, which began after 1997, enriched social policy further—by adapting it to the new pressures of changing demographics, more flexible labour markets and economic globalization.

The full article appeared as: Peng, I and Wong, J (2008) Institutions and Institutional Purpose: Continuity and Change In East Asian Social Policy. *Politics and Society* Vol. 36, No. 1, March 2008, pp. 61-88.

Our method includes both inductive and deductive elements. Inductively, we draw on data collected over the last seven years, including more than 230 interviews and 21 country-level analyses that focused primarily on NSMD in the global forest sector, as well as interviews and documentary analysis specifically for this paper on the range of NSMD systems in Appendix I. Deductively, we draw on theoretical work in political science, sociology, and management to build propositions on conditions for movement from phase II to phase III. Although no system currently is fully at phase III, our attention to the transformative impact on the global marketplace that *might* occur is especially justified given the ultimate goal of NSMD systems. Our aim is to build a comprehensive analytical framework, which we then use to initiate theory-building. We do not aim to test our arguments in this paper.

We proceed in the following analytical steps. First, we distinguish NSMD governance from other forms of private authority and justify our attention to political legitimacy. Next, we inductively develop the core of our framework, that is, the conditioning effects of social structure and the three-phase process of achieving legitimacy. The final section proposes preliminary causal arguments on the conditions under which NSMD systems gain full political legitimacy (move to phase III).

NSMD Systems and Their Need for Political Legitimacy

Features of NSMD Systems

Drawing on Cashore (2002) and Cashore *et al.* (2004), we discern five characteristics of an ideal-type NSMD system. Together, these characteristics distinguish NSMD systems from other forms of private authority.

First, NSMD systems do not derive policy-making ability from states' sovereign authority. As elaborated in Cashore's earlier work (2002), this feature does not mean that states are unimportant: some state agencies have provided financial support for particular NSMD systems, and domestic and international regulatory environments potentially affect their activities. However, even in cases where governments supported their formation, NSMD systems do not derive governing authority from states nor are they accountable to them.

Second, NSMD institutions constitute governing arenas in which actors purposely steer themselves toward collective goals and values and in which adaptation, inclusion, and learning occur over time and across a wide range of stakeholders. Dynamic governance differentiates NSMD systems from most traditional ecolabeling initiatives (e.g. Nordic Swan), which generally identify a static measure of environmental quality a firm must adopt to receive a label. NSMD system managers justify this design feature on the grounds that it makes NSMD systems more democratic, open, and transparent than many of the business-dominated public policy networks they seek to bypass, as well as most corporate self-regulation and many social responsibility initiatives.

Third, authority granted to NSMD systems emanates from the market's supply chain. Producers and consumers from extraction to end-users (in the case of commodities such as forest or agricultural products) or from service providers to consumers (in the case of services such as tourism) make individual choices about whether to require that products or services are certified for compliance to an NSMD system.

Fourth, NSMD systems aim to *reconfigure* markets. They attempt to ameliorate global problems that, in their absence, firms have little incentive to address. This feature distinguishes NSMD systems from new arenas of private authority designed to

China's Communists and Their Credit Co-ops

In the extensive coverage of China's growth as a financial power, one big story has gone largely untold: How local branches of the Communist Party shape the way business is done at credit cooperatives, the bedrock of finance in rural areas where most of China's people live.

Writing in 2009, Munk Professor Lynette Ong sheds light on a weak underside in China's economic miracle. "Beset by lack of access to valuable data," she notes, "a majority of researchers studying China's financial sector have tended to treat Communist Party institutions as non-existent or something exogenous to the system." The reality is very different. Indeed, many of the same dynamics that led to the Asian financial crisis—cozy dealings between political bosses, banks and businesses—are also weakening China's financial system. The effects are especially clear to those who venture away from the banking centres along China's coast, and deep into China's countryside where three quarters of the population live.

Prof. Ong's paper presents findings from 120 interviews with people involved in rural credit cooperatives across seven provinces and municipalities, as well as a rural credit survey of about 300 households that she conducted. Among her conclusions: Interference in loan-making by local branches of the Communist Party is "fundamentally incompatible with effective corporate governance."

standardize business practices, such as accounting, or to improve market coordination. In those cases, economic incentives for profit-maximizing firms inherently exist. Thus, they pose no puzzle for compliance (Porter 2007).

Fifth, NSMD systems possess mechanisms to verify compliance and to create consequences for non-compliance. This feature means that, in effect, they develop mandatory standards for those who sign onto the system. The most common compliance mechanism is a third-party audit in which auditors "certify" firm or producer compliance with the rules or identify improvements required for a successful audit. In contrast, self-regulation and CSR standards are usually voluntary and often discretionary, even for those who sign onto them.[3]

Arguably, the first full-fledged global NSMD system was the Forest Stewardship Council (FSC) certification program. Transnational environmental and social groups created the FSC in 1993 following governments' failure to negotiate a binding global forest convention. To avoid business domination, which many view as a key problem with state-centered processes, the FSC includes environmental, social, and economic decision-making chambers, each with equal voting weight. It also *excludes* governments from formal participation. The FSC created nine international principles and criteria (later expanded to 10) to guide the development of environmentally and socially appropriate standards in local settings around the world. The FSC accredits and requires auditors to certify companies that manage their operations according to FSC rules.

Forest industry and forest owner associations subsequently undertook their own initiatives in national settings including the US, Canada, Indonesia, Finland, Brazil, Malaysia, and Australia. In many cases, their interest in competing as a "legitimate" NSMD system in the global marketplace led them to adapt their systems to transnational market requirements or, as in the case of the Program for Endorsement of Forest Certification (PEFC), to create formal global institutions.[4] Because debates continue among industry, forest owners, and environmental groups over which program is preferable—like similar debates in other sectors—our framework draws attention to the dynamic interactions among burgeoning NSMD systems and their competitors as they vie for legitimacy.

Buoyed by widespread support in the forest sector, other systems emerged or evolved to fit the NSMD classification.[5] The most prominent systems are reviewed in Appendix I. They include the Fair Trade Labelling Organization (FLO), which coordinates under one system groups that had worked separately on consumer campaigns to improve the conditions of poor and marginalized producers in the developing world. FLO covers internationally traded commodities and specialized goods including coffee, tea, cocoa, sugar, bananas, rice, honey, vanilla, nuts, clothing, sporting goods, flowers, wine, and diamonds. Similarly, Social Accountability International, initiated by the nonprofit Council on Economic Priorities to reduce sweatshop labor practices, developed into a system that monitors companies according to specified social criteria, including child labor and worker safety (Bartley 2003; Courville 2003; O'Rourke 2003). The FSC model explicitly inspired the Marine Stewardship Council (MSC) governing natural fisheries management and the Sustainable Tourism Stewardship Council, among others. The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance is an umbrella organization created to develop agreement on "best practices" for any NSMD system (ISEAL 2006).

Political Legitimacy

NSMD systems, as we elaborate below, are unlikely to govern effectively if they depend solely on firms' strategic interests for compliance (Meidinger 2006). Like governments, whose coercive capacity is reinforced by their legitimacy, NSMD systems require legitimacy to justify policy development and enforcement measures. Unlike sovereign states, which by definition possess legitimate authority, or international organizations, which derive their legitimacy from sovereign states' consent, NSMD systems must actively achieve "political legitimacy" (Suchman 1995; Cashore 2002).

Whereas the concept of legitimacy generally refers to viewing the actions of an entity as "desirable, proper, or appropriate" (Suchman 1995, p. 574), our analytical framework focuses specifically on political legitimacy because it concerns the acceptance of a governance relationship, where commands ought to be obeyed (Esty 2006, p. 1511). It reflects "a more general support for a regime [or governance institution], which makes subjects willing to substitute the regime's decisions for their own evaluation of a situation" (Bodansky 1999, p. 602). Political legitimacy requires institutionalized authority (whether concentrated or diffuse) with power resources to exercise rule as well as shared norms among the community. Norms of legitimacy provide justifications and a shared understanding of what an acceptable or appropriate institution should look like and bounds what it can and should do.

We purposely avoid adding specific content to what legitimacy requires by definitional fiat. Instead, our framework focuses conceptual attention on how the normative environment and interactions of actors within NSMD communities determine and shape the process and content of legitimacy granting. This approach highlights that criteria of legitimacy are contingent on historical understandings at play and the shared norms of the particular community or communities granting authority.

Achieving Political Legitimacy

The Conditioning Effects of Global Social Structure

Global norms and institutions structure actors' choices over whether to support NSMD systems. They serve a constitutive or legitimating function that has enabled the emergence of NSMD governance by defining what appropriate authority is, where it can be located, and on what basis it can be justified. They also serve a regulative function by prescribing and proscribing the boundaries of NSMD governance activities.

Constructivist international relations scholarship has used such a notion of social structure, drawing especially on insights from sociological institutionalism (Finnemore 1996; Meyer *et al*. 1997; Ruggie 1998, pp. 22–25; Reus-Smit 1999; Barnett & Coleman 2005). Although these writings use various formulations—an "environment" in which organizations operate, "normative structure," "social structure"—their basic insight is that already institutionalized norms define appropriate and inappropriate courses of action, legitimate institutional forms, and create a context in which cost–benefit analysis occurs, even making certain actions unthinkable.

Structuring can be understood to operate through an idea of "fitness," where legitimacy is understood as embedded in social systems that provide a basis of appropriateness, or that make the purposes, goals, or rationale of an institution understandable and justifiable to the relevant audience in society (Weber 1994, p. 7; Bernstein 2001). Thus, legitimacy is enhanced when the norms and rules of organizations conform to existing social structure, where they compete for legitimacy (Scott & Meyer 1983, p. 140; Barnett & Coleman 2005, p. 598). In the case of NSMD systems, the relevant social structure includes institutional-

ized global marketplace norms as well as emerging democratic, social, and environmental norms in the global public domain. These norms can be found not only in specific declarations or principles that might apply to the sector, product, or process in question (e.g. the Statement of Forest Principles or Convention on Biodiversity in the case of forestry or core International Labor Organization [ILO] conventions in the case of labor), but also include broadly accepted norms of global environmental, labor, and human rights governance. These may be embodied in international treaties or "soft" declaratory international law, as well as in action programs, or in statements of leaders. Relevant international "hard" law includes legalized trade rules under the World Trade Organization (WTO), especially the agreement on technical barriers to trade (TBT), which includes coverage of non-governmental standardizing bodies.[6]

Social structure, however, is not wholly determinative of NSMD success or failure for two reasons. First, NSMD systems may themselves be a source of change in international norms and rules. Second, in line with most social theory, we recognize that agents and organizations almost always possess some autonomy. They may therefore pursue a variety of strategies, including acquiescence, compromise, manipulation, or strategic social construction to succeed within given structures (Barnett & Coleman 2005, pp. 600–602). For these reasons, our overall framework stresses the importance of the

interaction of social structure with the dynamics of choice, an increasingly common strategy among scholars interested in the interaction of logics of consequences and appropriateness (Finnemore & Sikkink 1998; Risse *et al.* 1999; Checkel 2005).
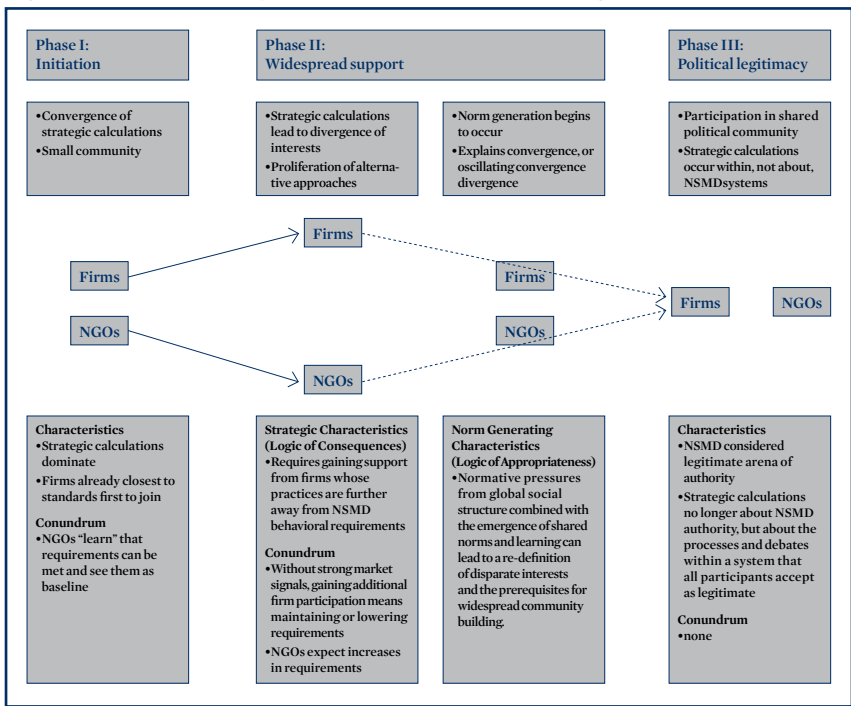
Evidence That Global Norms and Rules Matter

We observe that three sets of relevant norms in social structure have facilitated the emergence of NSMD systems. First, sovereignty norms have worked to their advantage. Although NSMD systems are disadvantaged in gaining legitimacy in comparison to intergovernmental institutions because they must build authority from the bottom up, their autonomy from intergovernmental processes allows them to tap into emerging norms more quickly. NSMD systems in forestry, fisheries, workers rights, and agricultural production emerged because certification corrected inattention to existing problems or provided a way forward when international negotiations stalled. They also effectively bypassed thorny debates over sovereignty—frequently a source of intergovernmental stalemate—because they targeted firms, not states.[7]

Second, the emergence of NSMD systems has corresponded with a general shift in global environmental norms, and in the international political economy more generally, toward sympathy with market mechanisms and economic liberalism more broadly (Bernstein 2001). This shift has provided a supportive normative environment for marketbased systems such as the NSMD systems reviewed in this article. For example, Principle 12 of the 1992 Rio Declaration on Environment and Development—the most widely accepted consensus statement on sustainable development norms—posits that environmental protection and open markets are compatible. This position is also found in the WTO preamble and in policy statements across the Bretton Woods and United Nations (UN) system. Recent events and initiatives reinforce this normative understanding, including the 2002 World Summit on Sustainable Development, where public–private partnerships emerged as a dominant mechanism to implement sustainable development in the shadow of disappointing progress in most areas of intergovernmental cooperation. These examples illustrate the increasingly shared understanding that working with markets and the private sector is the appropriate course of action in global governance.

Third, a growing normative consensus on the need to "democratize" global governance reinforces the legitimacy of NSMD systems' inclusive approach to decisionmaking. These norms include demands for democratic reform and improved public accountability of international institutions to states and/or broader affected publics (Payne & Samhat 2004; Held & Koenig-Archibugi 2005), as well as "stakeholder democracy" that calls for "collaboration" and truer "deliberation" among states, business, and civil society (Bäckstrand & Saward 2004; Vallejo & Hauselmann 2004). Such normative pressure is especially prevalent in international environmental institutions, treaties, and declaratory law that have been on the forefront of promoting increased public participation and transparency at all levels of governance (Bernstein 2005). Specific examples include codification in principles such as Rio Declaration Principle 10 (which states that environmental issues are best handled with participation from all "concerned citizens at the relevant level") and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which came into force in 2001. Institutional reforms along these lines include the creation of the UN Environment Program's civil society forum (institutionalized in 2002), the World Bank Inspection Panel (created in 1993 to improve accountability to local communities), and democratic reforms in the

Figure 1 The three phases of non-state market driven (NSMD) governance.

Phase I: Initiation	Phase II: Widespread support		Phase III: Political legitimacy
•Convergence of strategic calculations •Small community	•Strategic calculations lead to divergence of interests •Proliferation of alternative approaches	•Norm generation begins to occur •Explains convergence, or oscillating convergence divergence	•Participation in shared political community •Strategic calculations occur within, not about, NSMD systems

Firms → Firms ⋯ Firms ⋯ Firms   NGOs

NGOs → NGOs ⋯ NGOs

Characteristics	Strategic Characteristics (Logic of Consequences)	Norm Generating Characteristics (Logic of Appropriateness)	Characteristics
•Strategic calculations dominate •Firms already closest to standards first to join	•Requires gaining support from firms whose practices are further away from NSMD behavioral requirements	•Normative pressures from global social structure combined with the emergence of shared norms and learning can lead to a re-definition of disparate interests and the prerequisites for widespread community building.	•NSMD considered legitimate arena of authority •Strategic calculations no longer about NSMD authority, but about the processes and debates within a system that all participants accept as legitimate
Conundrum •NGOs "learn" that requirements can be met and see them as baseline	**Conundrum** •Without strong market signals, gaining additional firm participation means maintaining or lowering requirements •NGOs expect increases in requirements		**Conundrum** •none

Global Environmental Facility in the mid-1990s to improve meaningful participation from developing countries.

NSMD systems both promote and embrace these democratic norms. For example, they help explain the Forest Stewardship Council's eventual adoption of its three-chamber decision-making process. Likewise, the emergence of the Workers Rights Consortium can be explained, in part, by the initial failure of the Fair Labor Association (FLA) to develop multi-stakeholder processes in which social groups and institutional purchasers of products felt included. Similarly, the domination of Unilever in the development of the MSC contributed to its limited uptake from environmental and social groups. Following complaints of a "democratic deficit," the MSC undertook a governance review that resulted in an overhaul designed to better ensure openness, transparency and accountability to all stakeholders (MSC 2001).

The internal attention to democratic norms is increasingly matched by external expectations. States and international organizations, including the WTO, World Bank, ILO, and Food and Agricultural Organization, increasingly demand that the development and implementation of standards be inclusive, be transparent, include participation of stakeholders, and be adaptable to local conditions in order to be recognized as legitimate. As one NSMD system official explained, "it's a chicken or egg" situation, where democratic expectations created by NSMD systems are feeding back to create expectations for all social and environmental standards, including those set by traditional standard setters such as the International Organization for Standardization (ISO).[8]

In terms of "hard" law, contemporary international trade rules provide an enabling

environment for NSMD systems in three ways. First, the neoliberal normative environment reflected in contemporary trade regimes provides enabling conditions for marketfriendly systems such as NSMD governance. Second, although NSMD systems must navigate the trade rules that regulate international standards in order to avoid disputes, these rules target state regulation and leave significant leeway for non-state governance. Indeed, governments and intergovernmental organizations have resisted directly adopting an NSMD system standard in order to avoid disputes. For example, the ILO considered but rejected a proposal to certify countries rather than firms with a "global social label" owing to developing country concerns it would constitute a non-tariff trade barrier and contravene WTO rules (Bartley 2003, p. 450).[9] Third, while ambiguities in trade law make it uncertain what the outcome of a trade dispute would be if a state adopted an NSMD system standard (Joshi 2004), NSMD systems are increasingly proactive in seeking to conform to international rules. For example, ISEAL has instructed its members to adhere to TBT Annex 3 (the Code of Good Practice for the Preparation, Adoption and Application of Standards) and Annex 4 (Second Triennial Review) that define conditions for recognition of international standards. Leading NSMD systems within ISEAL have also started to register with the World Standards Services Network and begun to conform to relevant ISO guides.

The Evolutionary Logic of NSMD Governance: Three Phases

Against this backdrop of an enabling global social structure, we posit a three-phase interaction process that takes the perspective of actors and audiences (the NSMD system's community) along the supply chain, who must evaluate whether to support the NSMD system in question. In identifying these phases, we focus attention on the legitimacy achieving strategies of NSMD systems and learning through which political legitimacy develops. Uncovering these processes addresses the paradox of why profitmaximizing firms would ever agree to abide by a non-state political authority that increases burdens and shapes their behavior, especially when incentives to avoid, shirk, and exit the system are high (Prakash 2001; Rivera 2002; Sasser 2002; Raines 2003). Similarly, it addresses why environmental and social groups would ever agree to a certification system palatable to firms when such systems face overwhelming pressure to devise "second best" standards that do not put supporting firms at a competitive disadvantage vis-à-vis non-participants.

This conundrum, when acknowledged at all, is frequently cited by rationalist accounts to argue that NSMD systems will never be effective. Such accounts assume that evaluations of legitimacy are utilitarian: firms base evaluations on cost–benefit calculations because they value profit maximization while environmental and social organizations base evaluations on whether the system's rules might ameliorate the environmental or social problem(s) they were created to address.[10] Whereas attention to such calculations may be appropriate for understanding functional legitimacy—the idea that organizations serve functions that constituents value (Barnett & Coleman 2005, pp. 597–598)—it is incomplete for understanding how political legitimacy, which emphasizes a shared sense of community and norm generation, might emerge.[11] To overcome the limitations of utilitarian assumptions, we draw from complementary literatures in political science, organizational sociology, and management that identify different logics or drivers of action. Political scientists, for example, have been drawn to March and Olsen's identification of a "logic of appropriateness." In contrast to a utilitarian logic of consequences, this institutional logic "pictures political action as

Experimenting With Deeper Global Integration

Money now flows more freely than ever across the borders of all but the poorest countries in the world. But finance became global before public policies governing it did—and that disconnect has unleashed a worldwide natural experiment in the deepening of financial markets. The basic idea that reliable policy coordination among states will promote more open and more innovative financial markets is being tested as surely today as it was before the Great Depression, wrote Munk Prof. Louis Pauly in 2009. Global financial crises, their management and resolution, and efforts to prevent them in the future suggest the fragility of an experiment that nonetheless continues.

In the future, it is possible that the experiment will end and the system will return to something like the one in place after World War Two, when countries protected their own national markets and controlled capital flows and their financial institutions through tight regulation. The crisis of 2007-2008, however, hinted at another option. Although shrouded in much acrimony and controversy, states made some surprising, if opaque, moves to collaborate more intensively with one another in a bid to keep the experiment going. Prof. Louis Pauly analyses these developments and assesses the more complex environment within which sovereign power is constructed and deployed.

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driven less by anticipation of its uncertain consequences and preferences for them than by a logic of appropriateness reflected in a structure of rules and conceptions of identities" (1996, p. 250). Such processes are "built upon visions of civic identity and a framework of rule-based action. Embedded in this notion are ideas about the obligations of citizenship and office, the commitment to fulfill an identity without regard to its consequences for personal or group preferences or interests" (1996, p. 254). Similarly, management scholars (Oliver 1991; Greening & Gray 1994; Prakash 2001) have shown the explanatory power of enduring norms and organizational cultures on how firms manage relationships with an increasingly complex array of stakeholders. And, in sociology, Suchman (1995) distinguishes subjective and largely non-engrained "day-to-day" evaluations of whether an organization seeking societal approval fits the evaluator's own goals and interests (producing "pragmatic" legitimacy) from a situation in which the appropriateness of the entity becomes so engrained and durable that "to do otherwise was unthinkable" (i.e. it possesses "cognitive" legitimacy). Political legitimacy almost always has some elements of both, but fits neither ideal type. It cannot rest simply on pragmatic evaluations because it requires accepting an institution that sometimes does not operate in congruence with particular actors' immediate interests, but it rarely if ever corresponds to the "cognitive" ideal type. It almost always rests on discursive validation based on implicit or explicit justifications. To be clear, the distinction is not between "good" values like environmental protection versus, say, profit maximization, but between actions motivated by an un-embedded utilitarian logic versus a situation where interests are pursued in congruence with norms of institutional appropriateness as defined by the governance system. What is "good" is often precisely the issue to be worked out within politically legitimate arenas recognized by a wide-ranging and diverse community.

Thus, we argue that logics of consequences and appropriateness are always at play in motivating firms and social actors over support of NSMD systems. However, changes in the norms of appropriateness (from, say, laissez-faire liberalism to a more socially embedded market) that both enable the legitimacy of NSMD governance systems and are actively promoted through its socializing efforts shift understandings of how profit maximization should occur as systems progress through the three stages (Fig. 1).[12] This can occur in two ways. First, as NSMD systems gain legitimacy, their rules may change material incentives facing firms, thus changing evaluations of actors even when acting strategically. For example, the institutionalization of NSMD systems in niche markets creates new opportunities for participating firms to pursue profit. A second reason is that reference to a "logic of appropriateness" can explain how norms potentially redefine firms' identities (e.g. from being exclusively profit maximizers to being socially responsible actors) in accordance with the expectations of the NSMD system, whether or not they agree with particular decisions of these institutions (Suchman 1995; March & Olsen 1996, 1998; Checkel 2005, p. 804). We argue that the conditions conducive to norm-driven behavior and socialization increase in phases II and III.

Phase I: Initiation

This phase captures early support for NSMD systems, before any active efforts on the part of NGOs to change company evaluations through targeted boycotts, public shaming, or other information and publicity campaigns.[13] Thus, economic demand for certified products will be limited or nonexistent. Without firm support at this stage, the certification program will necessarily die.

Firm Evaluations

According to the utilitarian logic that dominates at this stage, firms must perceive the costs of NSMD governance to be less than current or potential economic benefits. Thus, everything else being equal, "model" firms already performing at, or close to, the requirements of the NSMD system will join first because the system will grant an outside stamp of approval that differentiates them from their competitors. For other firms, the high cost of changing practices to meet a system's requirements acts as a deterrent. A variety of intervening factors influence how firms make these cost–benefit calculations, especially whether to take into account strategic considerations and long-term risk exposure or only short-term profit maximization. First, non-publicly traded firms with a low debt load can more easily adopt a longer time-frame than firms with higher debt loads and publicly traded firms. Likewise, companies with highly recognized logos that render them de facto monopsonists, such as Nike, have greater leeway in how to evaluate support for certification programs. Third, managers may find a "business" case to adopt an NSMD standard for efficiency or as part of a long-term strategic decision. For example, they may be convinced the standards will help them become more efficient and lower costs, improve labor or community relations, attract investment, open new market opportunities, reduce a variety of risks, or anticipate and avoid future regulatory burdens. These arguments may be part of NSMD systems' attempts to convince firms to join or may be generated internally. They depend in part on corporate culture and/or the values of senior managers (Prakash 2001; Howard-Grenville & Hoffman 2003; Vogel 2005, pp. 19–24). Finally, firms that market environmentally or socially sustainable products have a clear incentive to join because their core values fit with the system. Indeed, when a firm faces uncertainty over its profit-maximizing choices, it may "fall back" on existing values, which could include environmental stewardship or social responsibility (Delmas & Toffel 2004). Such values vary significantly across firms in the same sector. At this point, a consequentialist logic dominates because firms still aim to maximize core values. However, because those values come in part from non-market norms, a logic of appropriateness plays a supporting role. To the degree such values overlap with values held by social and environmental groups, it can facilitate norm generation within the relatively small community at phase I.

Environmental and Social Group Evaluations

Like firms, environmental and social groups in phase I make choices driven by strategic calculations that fit their own core values and organizational self-interest. They have an incentive to participate in and positively evaluate governance systems that respond to their goal of ameliorating social and environmental problems.

Expected Result in The Marketplace

The dominance of strategic logic will first create segmented or "niche" markets that signal conformity of a small number of firms' practices with NSMD system requirements. As a result, phase I creates a well-defined, although small, "political community" of firms and social and environmental stakeholders, all of whom benefit from addressing global problems. Their overlapping values and strategic interests predispose them to develop "trust" ties, shared norms and understandings, as well as feelings that they are "fighting the good fight" amidst a wave of poor practices elsewhere.

However, the small group of participating firms will be unable to make a serious dent in ameliorating global problems for two reasons. First, solving them requires wide-

spread support. Second, because NSMD systems initially attract firms already practicing close to a system's standards, they make relatively limited impact "on the ground."

Evidence For Phase I

Although a full review is beyond the scope of this paper, there is no question that the empirical evidence on initial firm uptake of NSMD systems is consistent with our arguments. In the forestry case, the vast majority of industrial forest companies worldwide refused to support the FSC in the early days. Instead, support came from a handful of firms, such as Collin's Pine in Oregon, interested in distinguishing their practices from those of their heavily criticized competitors (MacArthur Foundation 1998). Many of those initial supporters were small private forest owners willing and able to put environmental values before profits (Hayward & Vertinsky 1999). Likewise, the first supporters of Fair Trade coffee tended to be small business cafe´s that marketed their concern with developing country coffee production to appeal to their educated clientele (Courville 2001). In addition, virtually every empirical study reveals that NGOs make strategic evaluations based on whether NSMD systems achieve core values of environmental or social improvement.

Phase II: Building Support

A major conundrum confronts systems vying for greater support: To attract firms that face higher compliance costs to join, systems face pressure to ease behavioral requirements, something strategically motivated environmental and social groups will resist. Phase II is thus marked by sector- or firm-level shaming and/or boycotting activity that targets initially recalcitrant companies in an attempt to raise the costs of non-participation.

If firms and NGOs followed this strategic logic, we would expect to see divergence of standards, fragmentation of systems, and the creation of distinct and polarized communities. Whereas some evidence supports this explanation for marketplace dynamics, this phase is also marked by convergence, or, in some sectors, oscillating divergence and convergence. To explain convergence, we argue that normative pressures from global social structure combined with the emergence of shared norms and learning can lead to a redefinition of disparate interests and the prerequisites for widespread community building. When convergence occurs, discerning strategic versus norm-governed behavior becomes more difficult because interests may be redefined. Below we explain these countervailing dynamics and assess these arguments against the empirical evidence.

Firms' Strategic Behavior

Firms' strategic choices during this phase fall into three categories. The first group comprises firms that initially joined the system because they easily met its standards. Their desire to see the system expand rests on the relative evaluation of the economic benefits they receive from a niche system that differentiates them from competitors and the costs they incur from already practicing at a higher standard. Only if costs outweigh benefits does expansion serve their interests, because it would "raise the bar" of competitors operating in less stringent regulatory environments. The second group comprises firms that initially joined because their organizational culture or values and financial health predisposed them to be proactive. They should generally support expansion as it would promote what they believe to be appropriate business practices.

The third group—comprising the vast majority of firms—are those firms that initially rejected participation because of perceived costs or fears of loss of autonomy to NGOs with limited knowledge of how markets function. This group is the primary target of environmental and social groups who aim to increase participation.

Utilitarian logic dictates that to attract this third group, in the absence of increased market demand and/or price premiums, certification systems must relax behavioral requirements to reduce compliance costs because this group has further to go to meet standards. Moreover, the experience of systems in Appendix I has been that price premiums and demand only develop incrementally because of hurdles in the supply chain, including fragmentation of producers and limited awareness of customers and consumers. Even if, miraculously, supply chain support quickly accounted for, say, 50% of demand, the unregulated 50% would still produce countervailing pressure on standards if compliance costs are high because it would leave a sizable market for certified companies that have an incentive to cheat or exit the system.

Environmental and Social Groups' Strategic Behavior

Environmental and social groups essentially fall into two camps: those supportive of the creation of NSMD systems and those who are either indifferent to or critical of such efforts. The strategic interest of the former group is to maintain or increase standards. They have "learned" that existing standards can be met (they can point to companies that joined at phase I) and are thus disposed toward shaming firms to meet those standards. They may even believe standards can be raised because some firms did not have to significantly change practices to meet them. Sasser (2002), for example, found that most NGOs would not be ready to grant legitimacy to non-state governance until the on-the-ground effects are shown to improve environmental or social integrity. The second camp is freer to criticize perceived deficiencies in existing systems. They point to unpopular firms receiving certification or rules and standards they deem inappropriate. Their interest is to raise standards. However, successful efforts to do so risk driving away firm support.

Evidence of Strategic Action in The Marketplace

The evidence indicates that these strategic dynamics do matter, but tell only part of the story. Supporting this logic, we observe many efforts to fend off certification, justify the status quo or existing government regulation, and discredit supporters. For example, most forest companies in North America and Europe initially balked at the FSC, explaining that public policies were wholly adequate (Cashore 2002). Similarly, companies criticized for using developing country "sweatshops," such as Nike, initially defended their practices. NSMD systems in their early stages, such as in fisheries and mining, continue to see limited uptake and little support from retailers along the supply chain. Likewise, Starbucks and Peet's coffee initially attempted to justify their coffee-purchasing practices as responsible.

Environmental and social groups responded strategically to denounce such claims. Tactics have included shaming companies through the media with evidence of their destructive practices, and obtaining support from customers, whose operations are not the target, for improved performance from their suppliers.[14] For example, the US apparel industry has been much more responsive to activists' "dirty gold" campaign than their mining industry suppliers.

When "fending off" fails, industry associations often move to a "plan B" strategy of

"pacifying" through the creation of new initiatives (Oliver 1991). These alternatives—mostly of the kind we contrasted to NSMD systems above—rarely include meaningful stakeholder governance or require significant behavioral changes. Forestry and tourism, in particular, have been marked by a proliferation of systems. Under such circumstances, the "community" becomes polarized with few shared norms.

Non-Strategic Behavior

An observed, though unintended, consequence of fragmentation has been increased public debate among supporters of competing systems. In such cases, as each side has argued about the appropriateness of its preferred responses, the sides simultaneously learned about causal mechanisms that permeate efforts to institutionalize NSMD governance. Moreover, various non-industry actors gained knowledge previously unavailable to them about how the industry actually works, including details of production and processes (McDermott 2003). Strong evidence for this pattern comes from forestry, the sector with the longest history in our phase II. In these cases, competition moved from binary opposition to more nuanced discussions of possible "win–win" solutions and learning among NGOs that some practices previously deemed detrimental may have positive social or environmental consequences.

The mechanisms under which this can occur may vary, but inductively we can discern two patterns. First, business-initiated competitors frequently move toward incorporating characteristics of NSMD systems—they engage in "mimetic isomorphism" or "mimicking the most prominent or secure entities in the field" (Suchman 1995, p. 589). For example, although the chemical industry maintains control over Responsible Care's governance, it started to require third-party verification of its standards in 2005. Similarly, the FLA, spawned by the US Apparel Industry Partnership, initially lacked mandatory standards or independent verification of compliance, but introduced mandatory third-party auditing in response to competition with the Workers Rights Consortium (Bartley 2003; Göbel 2004, pp. 51–52). And, whereas the American Forest & Paper Association (AF&PA) attempted to retain as much authority as possible over its Sustainable Forestry Initiative when it created an external advisory committee, this body's failure to fit the norms of what the marketplace considered appropriate led AF&PA to adapt again and create an independent multi-stakeholder board with control over rule development. This strategy is at once an attempt to buttress legitimacy by conforming to established models or standards *and* a signal that reinforces the legitimacy of the organizations mimicked, as it recognizes those entities as the accepted standard.

Second, these systems frequently act strategically to enlist "business-friendly" environmental and social groups in an attempt to gain credibility in the wider community, but with the consequence of opening up space for shared norms to emerge. This occurs because even business-friendly NGOs will attempt to influence understandings from the "inside" and will share information with mainstream activists. False claims and rhetoric on all sides become less tenable as greater information is made available to all parties. Together, these two patterns of behavior suggest that the transformation of many business-initiated NSMD competitors toward the NSMD model illustrates an appropriateness logic at play. In perhaps the clearest example, many firms and business associations in Europe and North America have recently begun to justify their support of forest certification as an engrained business practice (Cashore *et al.* 2004).

Convergence effects can be observed within both NSMD systems and competitors as a result. In the former case, as market support increases incrementally for certification

in general, more firms might join the original program in the hope of "working from within" to develop market-friendly standards. A greater sense of community can be expected to develop as systems focus on providing strategic advantages for firms that join, sharing experiences, and directing attention to the technical means of implementation. For example, initially, most leading environmental groups opposed certifying timber from plantations or old growth forests. However, intense discussions led activists to "learn" that fast growing plantations could play a role in reducing demand elsewhere and minimize environmental impacts. Likewise, discussions about how old growth forests function led FSC to accept responsible harvesting in them. Such discussions generated the concept of "high conservation value forestry"—a normative term that now permeates forestry discussions generally.

In the case of NSMD competitors, pressure mounts to "ratchet up" their efforts in response to market demand and the broader normative environment. For instance, many large scale coffee companies are working with the Rainforest Alliance to increase their own behavioral requirements in order to access a coffee certification market dominated by small growers (Fair Trade) and organic coffee (IFOAM) producers.

At this point, strategic versus norm-driven motivations and behavior become hard to disentangle. Such difficulties resonate with broader trends noted in the management literature, which points to shifts in business practices from viewing social and environmental initiatives as issues of regulatory compliance to matters of social responsibility or "strategic engagement" (Howard-Grenville & Hoffman 2003, p. 71). Core values of business may remain largely unchanged, but norms of the appropriate way to do business are shifting.

Accordingly, we observe business-led efforts that appear strategically motivated, but operate within a new understanding of appropriate marketplace behavior. The new market environment creates an incentive for firms to convince purchasers down the supply chain to recognize all NSMD certification programs as appropriate. In response, some entrepreneurial environmental groups have opted for a "third way" of initiating programs that fit the NSMD governance category, but with more relaxed standards than earlier programs. In addition, we see the rise of umbrella organizations such as ISEAL to build consensus on best practices, and multi-stakeholder efforts designed to encourage increased understandings, collaboration, and reduction of uncertainty. Such efforts include formal meetings of supporters of different programs or approaches and new proposals to address the legitimacy and appropriateness of both specific standards and "rules of the game." In the forest sector, this resulted in the International Forest Industry roundtable publicly adopting virtually all of the FSC principles and criteria. When these efforts failed to address environmental NGO concerns, it actively sought agreements with environmental groups through a global multi-stakeholder process, the Forest Dialogue.

Phase II can lead to at least three scenarios. First, the combination of increased public awareness and competition among systems can put pressure on governments to regulate the problem. However, this seems unlikely at the global level because collective action and political obstacles to international agreement remain on problems that prompted most NSMD systems. Second, institutionalization may continue to be elusive, with pressures for divergence and convergence fluctuating. This might be owing to resistance to learning, mistrust, or deep divisions within the NSMD community, whether between firms and NGOs, among NGOs, or because other relevant actors such as indigenous communities may disagree on what governance norms are appropriate. Here, we would

expect to see pockets of success, but also confusion in the marketplace and little progress on the broader global problems driving NSMD governance attempts. A third possibility (our phase III) is the institutionalization of NSMD governance to the point that a critical mass of actors in a sector agree on a common project and to abide by the rules of systems to which they are bound.

Phase III: Political Legitimacy

Reflecting our description of political legitimacy, in this phase the full range of stakeholders within a targeted sector recognize their membership in a political community that grants an NSMD system authority to govern. Power struggles do not end—thus strategic action still occurs—but the community recognizes NSMD systems as legitimate arenas in which to mediate disputes and address policy problems. While market transactions along the supply chain still provide the mechanisms through which authority is embedded, and supply chains and product labeling are still critical for recognizing and enforcing compliance, firms no longer evaluate from a strictly strategic perspective whether to grant support to NSMD systems. Instead, they work through them to advance their interests. Similarly, environmental groups move from contingent support based on a specific standard to an acceptance that the NSMD system is a legitimate arena in which to develop appropriate standards. Institutional arrangements facilitate processes in which firms and non-business stakeholders jointly participate to develop standards that best encourage efficient and effective ways to address social and environmental problems. As no current system operates fully at this phase, we cannot give empirical illustrations, nor can we pre-judge the exact institutional form NSMD governance will take. It could be centered on a single sector-wide system, a coordinated network bound together by shared norms, or a common set of minimal standards and practices. Regardless of its institutional form, once fully institutionalized, NSMD governance standards and behavioral requirements can be *increased* without putting supporters at a competitive disadvantage as virtually all firms in the legitimate marketplace would be part of the NSMD community.[15]

Toward Theory-Building: Conditions for Achieving Phase III

Up to now, our framework has been largely inductively generated, based on our observations of how NSMD systems have formed and unfolded over time. The evidence presented above suggests that strategic action alone is insufficient to explain the dynamics of what has occurred so far in the development of NSMD systems (i.e. phases I or II), and that a rationalist account, by itself, is even more unlikely to explain further movement toward full political legitimacy (Phase III). It also suggests that the most promising avenue for theory development is to focus on norm generation and community building.[16] Developing propositions on the conditions for moving from phase II to phase III cannot proceed inductively, however, as NSMD systems have yet to gain this status, which, as we detail, is far from inevitable. We thus proceed deductively, drawing from two distinct literatures that address how diverse members of a policy community may come to accept as appropriate particular procedures and/or policies even as they maintain distinct core values.

The first literature we draw upon is the "advocacy coalitions framework" (ACF) (Sabatier & Jenkins-Smith 1993). The most relevant finding from this literature for our purposes here is that "policy-oriented learning across coalitions" can lead to congruence, or at least mutual understanding, among groups with distinctly different core values under certain conditions. As phase III concerns legitimacy of systems rather than agreement on outcomes among groups, we would expect that such learning

processes are essential; that is, we hypothesize that they constitute necessary conditions for moving to phase III. This literature finds that a key mechanism for policy learning is a forum where expert knowledge from either side can be presented, criticized, and justified. A related set of conditions, identified in a recent study that expanded the ACF to include the psychology of stakeholders, concerns procedural factors. It found the strongest statistical associations were among trust, procedural fairness, and a consensus on the legitimacy of their collaborative policy process (Leach & Sabatier 2005, p. 498). These findings resonate with pressures on NSMD systems toward democratic decision-making, as well as recent empirical findings that suggest a lack of participation and accountability in NSMD rule-making, or lack of resources to enable participation, prevents a sense of "ownership" among participants in the scheme, which can in turn influence perceptions of justice and fairness (Raines 2003; de Azevedo 2004, pp. 88–89).

A second literature, which adapts insights from Jürgen Habermas's theory of communicative action to international relations, reinforces the importance of shared understandings and fairness (Risse 2000, 2005). This scholarship argues that legitimacy is enhanced under conditions in which actors share enough of a "common lifeworld," of collective interpretations of the world and themselves, upon which they can draw to make truth claims and interact within a system of norms and rules perceived as legitimate. Actors must also be open to arguing and persuasion and avoid pulling rank, using private information, or coercive tactics.

The most important empirical finding in this literature for our phase III is that argumentation as described above, which facilitates legitimacy, has been found mainly to play a dominant role when norms are already well institutionalized (Risse *et al*. 1999; Risse 2005, pp. 164–165). Although this creates a circularity problem as the legitimacy of the system is required for participants to be willing to forego strategic behavior, it also leads us to hypothesize that learning processes in the lead-up to phase III are important in designing formally democratic or deliberative procedures, because practices associated with true deliberation are unlikely to take hold until late in a process of socialization to the norms of the system.

These findings suggest two additional propositions about the conditions under which NSMD systems might move to phase III. First, learning processes must be established that include forums for exchanges of expert information, the building of databases of experiences, and the development of best practices. Second, systems must be designed to create a learning environment in which stakeholders can "build community" that taps into shared understandings of legitimacy among participants. These understandings in turn often stem from broader legitimating norms globally. One value, fairness, stands out as important, but depends less on formal procedures than on a sense that weaker actors have a reasonable ability to influence outcomes and that mechanisms are in place to ensure, for all actors, a sense of ownership of decisions that affect them. As the FSC and MSC examples indicate, and best practices developed by organizations such as ISEAL dictate, this is currently a priority, although challenging to achieve in practice. Virtually all systems identified in Appendix I are involved in processes to enable better access, transparency, and a sense of ownership among disempowered players, especially firms and social groups in the South, and small producers generally.

Conclusion

Our framework makes three theoretical contributions. First, it reveals the signifi-

cant influence of social structure on the emergence and institutionalization of NSMD systems. Second, it demonstrates the limits of static analyses where preferences are treated as given, and demonstrates how the interactions of firms and social and environmental actors can create new identities and shared norms that drive the evolution of NSMD governance systems. As our analysis suggests, and empirical examples illustrate, many NSMD arrangements are engaged in legitimating processes that contain elements of logics of "appropriateness" and "argumentation" in which stakeholders and targeted actors can discuss, argue, and deliberate in increasingly legitimate arenas about NSMD governance and standards.

This last point reveals a contribution to the ongoing dispute in International Relations theory over which "logic of action" takes priority. Our analysis supports the growing recognition that both a "logic of consequences" and a "logic of appropriateness" are almost always at play, but one or the other may appear to take priority in different contexts. In the case of NSMD governance systems, the need to pay attention to the explanatory power of a logic of appropriateness increases as institutionalization progresses. This proposition, built upon our preliminary empirical assessment, is especially significant as the governance in question takes place in the global marketplace, a realm in which utilitarian logic is assumed to dominate.

In addition, our framework suggests a number of implications for the future of NSMD systems. First, their transformative potential to socially embed markets is greater than that of other non-state, hybrid, and voluntary initiatives with which they have been conflated. However, if we are right that political legitimacy ultimately rests on community building, achieving it will be much more challenging for NSMD systems than for other forms of private authority. NSMD systems engage a wider array of stakeholders with multiple identities (producers, consumers, environmentalists), geographic locations, and interests. Thus, actors within an NSMD network are more likely to disagree on which performance criteria produce legitimacy and their relative importance vis-à-vis procedural norms.

Second, our framework suggests that analyses based solely on utilitarian firm-level responses severely underestimate the potential of NSMD systems and misrepresent their wider transformative goal of socially embedding the global marketplace. Such analyses would erroneously conclude that while NSMD systems are currently doing some good in niche markets, the prospects for widespread adoption are minimal. Instead, they will serve a purpose mostly of rewarding companies already engaging in good practices or easing the guilt of consumers purchasing those products.

To correct for this truncated picture, which is not supported by the empirical record, our analytical framework identified processes through which authority is generated. While we are not Pollyannish about the prospects for successful transformation—the necessary conditions present formidable hurdles—preliminary evidence of the evolution of some systems in this direction justified our attempt to better understand how and whether such transformations might occur. The analytical framework and preliminary set of theoretical propositions developed here positions the next step for empirical research: theory testing that includes a systematic assessment of the *full* range of actor motivations, and the factors that influence them, within and across NSMD communities as these systems evolve.

Acknowledgments

Notes

[1] This figure was derived from WTO (2003) by dividing the total trade in sectors represented in Appendix I with total global trade.

[2] For a fuller defense of this definition, see Bernstein (2005).

[3] Examples include the UN Global Compact, the Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises (revised in 2000), the Global Reporting Initiative, and, until 2005, the chemical industry's Responsible Care program.

[4] European forest owners originally created the PEFC as an "umbrella", "mutual recognition" program for national initiatives developed to compete with, or preempt, the FSC.

[5] Most of the commercial forest lands in the US, Canada, and Europe are under a third-partycertification system and concerted efforts are under way to expand support for certification in developing countries (Cashore *et al.* 2004).

[6] Wedo not equate law and legitimacy, but law can be an important source and indicator of legitimacy.

[7] Still, sovereignty has worked against legitimacy at the national level in some developing countries where some NSMD schemes are seen as reflecting Northern interests.

[8] Personal interview, senior executive of the Forest Stewardship Council, 12 January 2006.

[9] The impetus for the proposal came from the Clinton administration as part of its promotion of labor standard certification, which eventually evolved into the NSMD system FLO.

[10] Our depiction of firms' values and environmental and social groups' values are stylized in order to capture the core conflict within NSMD communities.

[11] Functional legitimacy corresponds roughly to Suchman's (1995) concept of "pragmatic" legitimacy, where actors evaluate an organization based on whether it produces benefits for an audience, is responsive to its larger interests, or reflects its values.

[12] Ontologically, our approach embraces the notion that markets are always socialized to some degree (Polanyi 1944). We are concerned with how changes in the logic of appropriateness can modify the context in which actors define their interests and identities.

[13] In practice, some firms may be targeted as programs emerge, but for analytical reasons we address targeting as part of phase II.

[14] A general empirical finding in all sectors represented in Appendix I is that firms that are only required to give "preference to" certified products in their procurement policies, but whose own practices are not the target of NSMD systems, are much more likely to give support than firms required to undergo behavioral changes.

[15] Black markets could still exist, but they are a problem not specific to non-state governance.

[16] We offer these as plausible but not exclusive explanations for the movement from phase II to phase III.

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Examples of Non-State Market Driven (NSMD) Governance Systems

	Origin	Initiators	Policy problem	Market	Regulatory target	Tracking process?
Fair Labor Association (FLA)	2001*	Industry, Clinton administration, consumer and labor rights organizations	Labor conditions, workers rights	Apparel, shoes	Producers, that is, sweatshops	Yes
Forest Stewardship Council (FSC)	1993	Environmental groups, handful of socially concerned forest management companies	Global forest deterioration	Forest products	Industrial forest companies and forest owners	Yes
Fair Trade Labelling Organization (FLO)	1997**	European non-government organizations (NGOs) and consumer groups	Poor and marginalized producers in the developing world, working conditions	Includes coffee, tea, cocoa, sugar, bananas, soccer balls	Primary and value added producers	Yes
International Federation of Organic Agriculture Movements (IFOAM)	1997***	Organic-focused farmers' organizations and extension specialists	Impacts of food production (chemicals in soil, water, human health)	Agricultural products	Farmers and processors	Yes
Leadership in Energy and Environmental Design (LEED)	2000	US Green Building Council	Environmental impacts of construction industry	Home and business builders	Building sector	N/A

Examples of Non-State Market Driven (NSMD) Governance Systems (Continued)

	Origin	Initiators	Policy problem	Market	Regulatory target	Tracking process?
Marine Aquarium Council (MAC)	1998	Environmental groups, aquarium industry, public aquariums and hobbyist groups	Ecosystem fisheries management and fish handling	Hobby aquarium trade	Fishers	Yes
Marine Stewardship Council (MSC)	1996	World Wide Fund for Nature (WWF), Unilever	Fisheries depletion	Fish sales	Industrial fishers	Yes
Mining Certification Initiative (still in formulation phase)	2001	WWF, Placer Dome	Natural resource destruction	Mining products, including gold and jewelry	Mining companies	Anticipated
Program for the Endorsement of Forest Certification (PEFC) (umbrella for several national schemes)	2000	European forest owners association	Sustainable forestry	Forest products	Industrial forest companies and forest owners	Yes (in some countries)
Rainforest Alliance Certification	1993	Sustainable Agriculture Network (SAN) (environmental groups)†	Impacts of tropical agriculture on biodiversity, waterways, deforestation and soil erosion	Agricultural products including bananas, coffee, cocoa, citrus, flowers and foliage	Tropical farmers, especially in Central America	Yes

Examples of Non-State Market Driven (NSMD) Governance Systems (Conitnued)

	Origin	Initiators	Policy problem	Market	Regulatory target	Tracking process?
Social Accountability International (SAI)	1997	Council on Economic Priorities, and handful of firms	Workers rights, community involvement	Wide range of factory products including toys and cosmetics (excludes by design extractive operations)	Factories (manufacturing facilities)	Yes
Sustainable Forestry Initiative (SFI) Certification	1994††	American Forest & Paper Association	Sustaining forests	Forest products	Forest companies	Yes
Sustainable Tourism Stewardship Council	2003†††	Rainforest Alliance, multilateral agencies and industry representatives	Impacts of tourism on biodiversity	Tourism	Tourism facilities, operators, organizers, and tourists	Emerging

*Year FLA established a system in which auditors verified samples of companies for compliance. In 2002, the FLA Board, rather than companies, decided which companies to monitor and assigned monitors to them.

**FLO united 15 separate initiatives, the first of which was the 1988 Fair Trade Initiative based in the Netherlands.

***Founded in 1972, but gradually evolved into an NSMD system. In 1997 established an arm's-length body to accredit certifiers.

†SAN was created in 1992 to develop standards and pave the way for Rainforest Alliance certification of agricultural products, the first of which occurred in 1993. Its first coffee certification took place in 1996.

††1994 was the year that the SFI provided for a third-party verification component.

†††Effort to unify disparate ecotourism programs operating globally.

Sources: Primary research, including in-person interviews and communications, as well as Bartley (2003), Courville (2003), and Vallejo and Hauselmann (2004).

PART 2

RETHINKING INTERNATIONAL RELATIONS

Where do states meet each other? Munk scholars introduce us to the changing stages on which global dynamics play out—stages that look very different than do traditional battlefields, summit meetings or the U.N. Security Council.

Munk Professor Ron Levi and Northwestern University's John Hagan investigate the emerging influence of lawyers—especially U.S. lawyers—in humanitarian crises. Traditionally public health professionals had the tacit authority to tell policy makers when a humanitarian crisis required some kind of intervention. But in 2004, lawyers and legally-trained investigators applied the criteria of genocide and told the U.S. government that a genocide was taking place in Darfur. Now, the professional cultures of law and law enforcement are starting to shape international relations itself, Levi and Hagan suggest.

Munk Prof. John Kirton is a world leader on the analysis of G8 and G20 multilateralism. Writing in early 2011, he rethinks how we should measure the effects of multilateralism and calls for the G8 and G20 to implement clear performance metrics. Citizens, he argues, will no longer settle for vague statements of intent in summit communiques.

And we present a full paper by Munk researcher Alan Alexandroff, about how G20 multilateralism is shaping China's sense of itself in the world.

The Gx Global Governance: China Faces G20 Leadership

BY

Alan S. Alexandroff

Alan S. Alexandroff is Co-Director of G20 Research Group, Munk School of Global Affairs, University of Toronto.

The Enlarging Gx Leadership

Since the 2005 G7/8 summit at Gleneagles, China's leader and the leaders of the other G5 countries—China, India, Brazil, South Africa and Mexico—have regularly been invited to attend a portion of the annual Gx summit. But none of these rising powers, or their leaders, was invited to attend as permanent members of the original G7/8. It is only with the mounting global financial crisis did the G20 leaders receive the call to attend an enlarged leaders summit—first in Washington in November 2008, then in London in April 2009 and then in Pittsburgh in September 2009. And it was there in Pittsburgh that the G20 leaders summit was declared to be, "the premier forum for our international economic cooperation."

With that China had become one of the global governance leaders. No longer is the club of the rich that had, some argued, arrogated leadership through the G7 and then the G8 summit of the global economy, this new enlarged leader summit represents more than 85 percent of global GDP, 80 percent of international trade and about two-thirds of the planet's population. For China, a milestone had been reached that stretched back to the reform and opening (gaige kaifang).

China and The Shape of Global Governance Leadership

China's views of global leadership have evolved strikingly since it emerged out of the shadow of the 'Gang of Four.' Though initially suspicious of multilateral relations, focusing instead on bilateral relations and regional relations in Asia, China has become a major multilateral participant—from the United Nations, including a permanent, and veto-holding member of the, Security Council, a member of most UN-Bretton Woods institutions, including the IMF and the World Bank, the World Trade Organization and numerous Asian regional organizations including both economic and security. In addition, it has more clearly signaled that its regional policy is not designed to exclude the United States. And as China has become more familiar with and more comfortable with regional organizations and participation in numerous plurilateral and multilateral organizations, China has built its global face on a number of crucial principles:[1]

- China recognizes the United States as a 'superpower,' and the dominant power in the international system for the foreseeable future. From China's perspective, as long as the U.S. recognizes and takes into account China's interests, China is unlikely to challenge the U.S. leadership overall;

- China will cooperate with the United States in as many areas as it is possible to do for China in international relations; and
- China will continue to increase its strength, including military strength, and raise its status and influence both regional and globally.

As Zhang Yunling and I concluded recently in surveying U.S.-China relations:

In the final analysis, the most significant question for China is, how can it balance its support for democracy, domestically and externally, with a defense of sovereignty whether in Taiwan, Central Asia or the Asia-Pacific generally?[2]

While there is a 'strong running' debate, especially in Washington circles—which continues over the so-called China threat, and the prospect for war between China and the United States the position of Harvard's Alastair Ian Johnson, remains apt: Rather, to the extent that one can identify an international community on major global issues, the PRC [China] has become more integrated into and more cooperative within international institutions than ever before.[3]

Thus, China has become a significant player in global governance and that is now increasingly acknowledged for its participation in the G20 leaders summit (obviously before this was China's participation in the G20 finance that was created over 10 years ago involving China's minister of finance and the governor of the People's Bank of China).

But the key question raised by such involvement and participation, is what China should do with this 'seat at the table.' What can China's leadership contribution be? How does China face global governance leadership?

The Landscape of Contemporary International Relations

The starting point for determining China's leadership role in this new global governance environment requires grappling with the shape of the current international relations context. There are a number of aspects that may well condition China's behavior: the role and behavior of U.S. leadership; the contours and character of contemporary inter-national multilateral institutions; and the consequences that arise from the institutions in overcoming the collective action problem in international relations.

With a new American administration in place for just over a year, we are still trying to piece together the consequences of the stated reengagement of the Obama administration after eight-years of rather radical international politics. Multilateralism does appear to be back in Washington. But has the past just gone away—the unilateralism, à la carte multilateralism, the 'coalitions of the willing'? Is global leadership assured now that the U.S. appears to have recommitted for the long-term to multilateralism? And if the new Obama administration is committed, what shape is this likely to take. Will U.S. leadership adopt a more reflective and accepting collective leadership or will the U.S. be determined to reestablish the hegemonic position that governed its behavior over the greater part of the Cold War and post-Cold War period?

The evolution in U.S. thinking on global governance is usefully presented by Richard Haass formerly a director of policy planning in the Bush's State Department and currently the President of the Council on Foreign Relations (CFR). In his earlier governmental position, and shortly after the 9/11 terrorist attack, Haass described the Bush administration's foreign policy, particularly its selective abandonment of a number of international agreements and its refusal to sign on to new interna-

tional agreements, as a policy of, "à la carte multilateralism." In the blossoming of the U.S. 'unilateralist moment', the Bush Administration sought avoid those organizations and agreements that appeared to impede progress and to build where necessary transactional coalitions around challenges and specific tasks that that U.S. administration saw required attention. Stewart Patrick, another international relations expert, and now also at the CFR, has chronicled the evolution of U.S. post 9/11 policy:

Unlike large, formal bodies that constrained U.S. options, empowered spoilers, and forced the United States to strive for bland consensus, these selective arrangements would be restricted to capable, like-minded countries, permitting decisive action in the service of U.S.[4]

Haass recently has described contemporary multilateralist policy not as, "à la carte multilateralism," but as, "messy multilateralism." This new conception of American policy no longer focuses on opting in or out of arrangements as the earlier Bush policy did. Nor is about unilateralism or the creation of ad hoc coalitions of the willing. Rather global governance as Haass now sees it consists of a variety of platforms that seek to provide, "the collective effort" that not even the United States can face alone. Thus we see that multilateralism consists of democratic multilateralism (universalist institutions, Copenhagen Conference, United Nations General Assembly), elite multilateralism (G7 Leaders Summit and now G20), functional multilateralism (coalitions of the willing and relevant to the specific policy subject), informal multilateralism (financial and standard setting reforms) and even regionalism (bilateral and regional trade and investment regimes).

In the face of this growing jumble of international organizations what are we likely to see the United States do? The secretary of state Hillary Clinton has suggested that the U.S. will work to create a collaborative environment where states are likely to be incentivized to act together:

So these two facts demand a different global architecture, one in which states have clear incentives to cooperate and live up to their responsibilities, as well as strong disincentives to sit on the sidelines or so discord and division. ... We'll work through institutions and reform them, but we'll go further. We'll use our power to convene, our ability to connect countries around the world, and sound foreign policy strategies to create partnerships aimed at solving problems. ... In short, we will lead by inducing greater cooperation among a greater number of actors and reducing competition, tilting the balance away from a multi-polar world and toward a multi-partner world.[5]

An examination then of the contemporary international relations context becomes very valuable. When the Cold War ended in the early 1990s, analysts puzzled over the new structure of international relations with the collapse of one of the two superpowers—the Soviet Union. International relations theorist, Richard Rosecrance, then at the University of California, Los Angeles, was one of the first to examine and compare the international system with the early nineteenth century European concert.[6] The fact that conflict between the two superpowers had ended—and so the bipolar world—and in its place a number of powers were left standing where there was no strong division or ideological gulf among them seemed to suggest the aptness of the comparison to a 'club' of leadership. Indeed, there appeared to be the prospect of a 'new concert' in the face of the end of the Cold War struggle.

Rosecrance warned us, however, that periods of central coalition were few indeed.
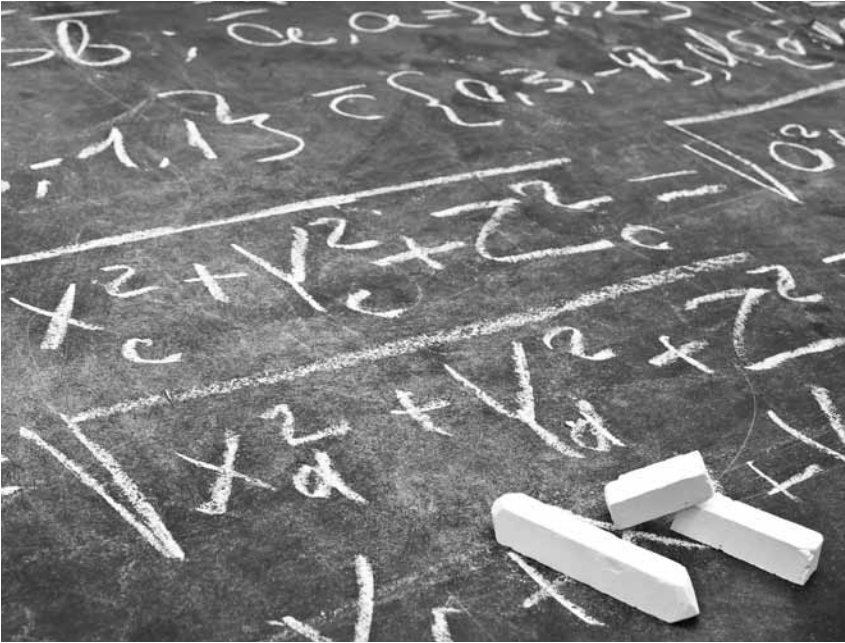
Making Multilateralism Accountable

As multilateral organizations proliferate and become more complex, Munk Professor John Kirton raises a pressing new question: How do we actually measure and monitor their work? And how can that measurement make multilateralism better? These questions are well established in the business world, and are increasingly common among governments in their domestic affairs. But measuring accountability is new to the world of international affairs and diplomacy.

Citizens often complain that multilateral organizations like the G8 don't actually achieve much, Prof. Kirton notes. And governments have no commonly accepted way of knowing which organizations or conferences are more effective than others.

In a paper presented at the second annual Princeton University Global Governance Conference in January 2011, Prof. Kirton argues that measuring the effectiveness of multilateralism is increasingly vital. That's partly because the financial costs of multilateralismn are rising. Cash-strapped governments around the world must now decide which multilateral efforts are most worthy of their staffs' time and their taxpayers' money. Just as importantly, the U.S. itself is increasingly dependent on multilateralism to secure its own interests—and so must choose where best to invest its authority as well as its resources.

Thus far, he notes, think tanks, universities, governments and international institutions have measured the effectiveness of mulitateralism largely through the intentions that organizations declare at their meetings. Now they need to measure those organizations and their members' actors' behaviours precisely. Building those tools, in turn, requires more clarity about the kind of consensus achieved in a multiateral fora, and clearer definitions of what these organizations are trying to achieve.

This paper can be read at: www.g20.utoronto.ca/biblio/kirton-princeton-2011.pdf

The classic concert period, for instance, lasted only from 1815 through 1822. Indeed most the nineteenth century and thereafter was built on classic balance of power and competitive relations among states. And it is that dynamic experts looking at global governance today often assume operate notwithstanding that Rosecrance pointed to the failure of most balance of power and deterrence efforts in the nineteenth and twentieth centuries. States balancing one another and building a stable international system were not at the heart of international relations. And it is not today. As secretary of state Clinton suggests in her examination of American foreign policy this is not a balancing of powers but a collective partnership. Rosecrance, further reminded us what is required—what the fundamentals are—for such a collaborative 'concert-like' system: (i) involvement of all; (ii) ideological agreement; and (iii) renunciation of war and territorial expansion replacing it with a collective drive for economic growth and the achievement of national prosperity.[7]

In a very recent piece—again by Richard Rosecrance, now at Harvard University's Kennedy School but in addition China international relations expert, Jia Qingguo, Associate Dean of School of International Studies at Peking University, examines closely the landscape of international relations and in particular the path of U.S.-China relations.[8]

Among other things these two experts evaluate the likelihood of war between these two great powers and find it lacking. In doing this they describe a world quite distinct from 19th and 20th century international relations. They point to three quite significant changes in the international relations landscape:

• Nuclear weapons and the deterrence nuclear weapons have generated among the great powers have dampened major power enthusiasm for conflict and its consequences;
• Globalization and growing interdependence have allowed, and impelled, major powers to focus on trade and investment in their efforts to insure growth and national prosperity; and
• Territorial expansion as a means to enhanced wealth and prestige has little appeal—states and importantly their publics in general do not favor territorial expansion and conflict.[9]

In the China-U.S. relationship and indeed for all the major powers, the tight inter-dependence (both positive and negative) causes states to explore the necessary collaboration even where conflict continues to exist. As the authors suggest, "… after years of interaction, China and the U.S. have developed a shared stake in cooperation."[10]

Global leadership is today built on national interest, not surprisingly, but also on interdependence and growing globalization. Such a foundation does not rely on the mechanisms of balancing and great power rivalry, as we have understood those concepts. Today we see the great powers struggling to overcome the problem collective action and to fashion collective decisions in global governance. This is not a focus on the distribution of power of the leading states but on the negotiated agreement of states.

So contemporary global governance is constructed on a foundation of national interest and globalization. The classic elements of balancing and power relations, so evident in the European system of the 19th century, are reconfigured in the light the international relations landscape of the post-Cold War world.

The World of Gx Global Governance

But the structure—meaning the institutions—has been altered as well. Today the Gx process dominates the multilateral system of global governance. While the multilateral system was built after World War II on formal, treaty-made, legally binding institutions—collectively the UN-Bretton Woods system of international organizations—today the most dynamic elements of global governance arise from the Gx process.

The emergence of Gx institutions sends us back to the early 1970s. The creation of the G7, actually the G6 in 1975 with the first summit at Rambouillet included France, the U.S., the UK, Germany, Japan and Italy. By the next meeting this informal leaders gathering in Puerto Rico, hosted by the United States, included a seventh leaders—the Canadian prime minister.[11] With that this G7 leader's summit was born and continued uninterrupted annually until the formal enlargement to the G8 in 1998 with the inclusion of Russia at the Birmingham Summit.

This Gx process emerged because of forces driving global affairs. Issues requiring collective action remained unresolved. As the decades past the deadlock over reform and leadership in many of the Bretton Woods and UN institutions became an even clearer impetus for other action at the Gx level.

While the G7 summit became an annual meeting on the calendar of global governance, it remains evident that even today there is no consensus on the purpose or expectations over results of these leaders meetings. The rise of the Gx process—the G5, the G7/8 and the G20[12]—is structurally and procedurally at odds with the earlier treaty-based organizations of the post war world. Many officials and commentators have not accepted such an institutional transformation with any degree of equanimity.

For those like John Kirton, the director of the G8 Research Group at the University of Toronto, who champions these informal global governance institutions, these summits provide, "core functions of forging co-operative agreements, inducing national compliance with those collective commitments, and responding to regional cries before they endanger systemic stability."[13] A somewhat less favorable review suggests that the summits may provide primarily deliberative functions. In this view the summit performs the core functions of stability maintenance through ongoing communication, consensus formation and crisis response. Leaders are provided frank face-to-face discussions and information on national policy action. The summit becomes much more in the way of information sharing. While the deliberative function may encourage direction setting, possibly a convergence of some

Lawyers and the Darfur Genocide

At the height of the Darfur genocide in 2004, the U.S. State Department's Atrocities Documentation Team—made up of police, lawyers and other legal experts—interviewed over 1,100 Darfurian refugees who had taken shelter in refugee camps in neighboring Chad. Their work prompted the U.S. to declare a genocide in Darfur and signaled the emergence of legal experts as a new power in international humanitarianism.

A forthcoming chapter by Munk Professor Ron Levi and Northwestern University's Prof. John Hagan in *Lawyers and the Construction of Transnational Justice*, edited by Yves Dezalay and Bryant Garth, investigates how U.S.-based lawyers and their colleagues are actually redefining international humanitarianism. This research reveals a competition between legally trained professionals and public health professionals, who conventionally dominate humanitarian work, over how best to determine the size of a humanitarian crisis. These are more than just technical turf-wars. Because lawyers and public health professionals produce different results from their investigations, the world's most powerful states can be caught in the crossfire between their approaches. At stake is nothing less than how major powers like the United States define crises like genocide and calibrate their response.

The full article will appear as a chapter in *Lawyers and the Construction of Transnational Justice*, Edited by Yves Dezalay and Bryant Garth, to be published September 15th 2011 by Routledge.

national policies and in some instances collective agreements, there may be no agreement.[14] Finally, for many observers, those most critical of the Gx process, the summit is really no more than a consultative forum. Leaders come together, get to know each other, understand the challenges faced by leaders and their domestic pressures. The statements issued at the end of such summits are generally aspirational and often hide the differences that represent distinct national positions.

The criticisms of the Gx process are then numerous. Many international relations experts are dismissive of the informal system especially the annual leaders' summits. CFR's Richard Haass believes that all these various informal institutions, which are, as he puts it, "... invariably less inclusive, less comprehensive and less predictable" and also for good measure less legitimate than the, "formal global accords" that are "doable and desirable."[15] For Haass these informal club-like efforts can lead or complement classic multilateralism. While a positive appraisal—if evidently qualified— Haass implies that the multiplicity of institutions—a far cry from the 'neat world' of the UN-Bretton Woods system—is a 'second best' solution to the challenge of global governance in the 21st century.

CFR's Stewart Patrick has examined the various informal structures that were created in the Gx process and he expresses the prevailing sense, at least in Washington, that these institutions remain at best, a 'second best' response to global governance:

Regardless of which format emerges [Gx process], the Obama administration should be wary of indulging in unrealistic expectations. It is implausible that any annual summit can morph into a true decision-making (much less decision-implementing) body that could substitute for the authority, legitimacy or capacity of formal institutions like the United Nations, WTO, International Monetary Fund (IMF), or The World Bank. Going forward, a priority for the Obama administration and its counterparts abroad will be to design systematic procedures for linking the initiatives launched and commitments made in these consultative forums with the ongoing work streams and reform agendas within the world's formal organizations.[16]

On the membership, or representation front, many have long criticized the self-appointed G7 annual gatherings made up of what critics called the 'club of the rich'. Each of the rising powers—China, India, Brazil criticized the narrow membership of the G7/8 process and expressed deep skepticism about joining leadership organizations as they were traditionally constituted. As Celso Amorim, Brazil's foreign minister, declared just before the 2008 G8 Summit, "you simply can't ignore" the emerging countries such as Brazil, India, and China. He further argued that the G20 leaders' summit was a "better model" than the G8 leadership, adding that the "G-8 is over as a political decision group."[17] Chinese commentators and experts also opposed China's membership in an only slightly enlarged G8, but China has warmed, it seems, to the G20 Leaders' Summit, where it has an opportunity, perhaps, to influence the G20 agenda— particularly in support of developing countries—and leverage its own position. For China and the other large emerging market countries, their inclusion—through the G20 enlargement—appropriately acknowledges their status as rising powers and their increasing influence on views of global governance leadership. It also seems to have stilled, if only, criticism of Gx process legitimacy. It is clear, however, that the 'uninvited' remain suspicious. The Nordic countries, for example, following the Pittsburgh summit, expressed disappointment in not being included. Many smaller countries have expressed distaste for the informal summits even if they have been enlarged. It may be that there is ultimately no resolution of the question of 'legitimacy' and critical voices

would only be quieted with a UN General Assembly–like institution.

Is all this skepticism warranted and how should China approach these new structures of global governance? Is it indeed, "implausible" that these annual summits can be no more than a consultative forum, with at best aspirational statements and deliberative functions with little or no capacity to engineer and implement collaborative decision-making at the international level?

Critics of the Gx process and the informal institutions the process has generated tend to focus on, or limit their gaze perhaps to, the annual leader's summits. But the Gx process has been about far more than summits and for quite some time. Increasingly a thick institutional support structure and framework surrounds the leader's summits. Anne-Marie Slaughter, the current director of Policy Planning at the U.S. state department, and formerly dean of the Woodrow Wilson School at Princeton University has for some time argued the growing importance of transgovernmental networks in international relations.[18] And this is certainly the case for the G7 and now for the G20. At the first summit at Rambouillet in 1975, finance and foreign ministers, as well as personal representatives (later called sherpas) accompanied leaders and joined at the summit gatherings. This collective group continued to gather at the annual G7 summits up until Birmingham 1998. There, on the advice of then Prime Minister Tony Blair, the foreign and finance ministers held separate meetings a few days before the leader's summit and the leaders met separately with their personal representatives sitting behind the leaders but otherwise taking no part in the proceedings. This 'heads-only' format has continued right up to the present and is also the format for G20 leaders meetings.

But, and in addition, finance and foreign ministers met periodically throughout the years of the G7 ad the G8. And not only these two sets of ministers but also other ministry officials began to meet. The following details the starting date for separate minister meetings:

Trade—first met in 1978. In 1982 formed the quadrilateral—EU, U.S., Canada and Japan that met 3 to 4 times a year.

• Ceased to meet after 1999
• Foreign affairs—1984
• Finance ministers—1986
• Environment—1992
• Employment—1994
• Information—1995
• Terrorism—1995

In the case of finance, not only do the finance ministers meet periodically but deputy ministers also meet periodically. "Indeed the annual gathering of the leaders, as John Kirton has pointed out, is now supplemented by a year-round sequence of ad hoc meetings of the leaders and their finance and foreign ministers, regular forums collectively embracing a majority of the ministries of government, and a subterranean web of working groups that even the leaders' personal representatives find it difficult to monitor an control."[19] The sherpas and sous sherpas (two for each leader) are key official elements of the Gx process. They gather several times a year and are responsible for preparation of the upcoming yearly summit. These representatives take notes at the leaders meetings and they transmit any decisions that the leaders make. And the sherpas follow up

with each other after the summits.

Beyond these ministerial networks regular and ad hoc task forces and working groups have also become part of the Gx process. An Africa Forum, a major venue for the discussion and monitoring of policies, strategies and priorities to support Africa's development was created. The G8 in 2001 at Genoa launched the Global Fund to Fight AIDS, Tuberculosis and Malaria. A counter-Terrorism Action Group was set up as early as 2002.

In the financial area a number of rather prominent task forces were created. The Financial Action Task Force (FATF) was created in 1989 to co-ordinate efforts to fight drug-related money laundering. The FATF is purposed to develop and promote national and international policies to combat money laundering and terrorist financing. The task force has enlarged its membership beyond the original G7 and then G8. In fact as early as 2005 China sent members as observers. An expert group on financial crime was set up by the 1997 Denver summit. Finally, and importantly, the Financial Stability Forum (FSF) was established by the G7 finance ministers and central bankers in 1999. This Forum was designed to improve the functioning of financial markets and to reduce systemic risk. The FSF has grown quite significantly and in the global financial crisis the G20 enlarged it further, gave it a new name, the Financial Stability Board (FSB) and has tasked it with a variety of regulatory proposals that initially were lodged in a number of G20 finance working groups.

And it is worth recalling that the G20 leaders summit was called into existence ten years earlier—at the time of the Asian financial crisis—as the G20 Finance Ministers. This transgovernmental network has continued to meet and, according to John Kirton of the G8 Research Group, "The G20 finance ministers collectively confront complex systemic crises and issues rather than allowing the traditional powers to dictate decisions.[20]

These are but some of the groups created by the Gx process. The Gx process, in sum then, is then a much more complete system of global governance than is identified if one looks narrowly only at the annual summit process. If all that Gx ministerial and network development is insufficient, then it also the case that there is an additional piece to global governance—the growing relationship between the Gx and UN-Bretton Woods institutions. Frequently proponents and critics have emphasized the possible zero sum nature of the two systems—one formal and one informal. John Kirton and his colleagues, however, have described the global governance institutions as two systems, "two great galaxies." For Kirton and his colleagues the central feature of this two-system global governance environment arises from the fact that the new institution building of the Gx process that has occurred over several decades did not follow on from the destruction of the prior system.[21] Rather, following the demise of the Cold War system in 1989, "The institutions and ideals of a new and old order thus had to compete, converge and cooperate with each other as they sought to govern this ever more demanding and globalizing system."[22] The Bretton Woods-UN system had been build on a formal, 'hard law', broadly heavily organized bodies. Over the decades this formal system was joined by 'softer' organizations with more limited membership, less bureaucracy and more flexible organizations. Included in these institutions is the Organisation for Economic Co-operation and Development (OECD), the International Energy Agency (IEA) and the Bank for International Settlements (BIS). As we have described above, the Gx system is one built on club-like limited membership, informal organizations, and now a widely developed transgovernmental network of institutions.

As with so much of the analysis on the Gx process there is no consensus of the relationship between these two global governance systems. Views range from the two being totally isolated from each other, through the two systems acting as rivals towards each other, to a perspective where the G7/8 and now the G20 act as a kind of 'inner cabinet' and the international organizations provide a civil service that can be tasked to implement commitments made at the Gx summit or at the ministerial level. Certainly in the global financial crisis the G20 leaders summit, especially in the 2008 Washington communiqué, tasked the IMF to carry out a number of leaders' commitments identified at the summit. It is likely that the relationship between the UN-Bretton Woods system and the Gx process system is one where there is a "pulling together" with, "support flowing both ways," as suggested by Kirton. Indeed there is collaboration and support through many of the Gx phases from preparation, commitment and finally implementation. In that continuum the international organizations can provide, among other things, expertise, officialdom, and compliance monitoring. In addition the heads of some of the key institutions such as the UN, the IMF, OECD and the World Bank attend the G20 summits.

China Faces Global Governance Leadership

So, how should China look at the system and the role it has acquired through the creation of the G20 leaders summit? As the article points out there are two systems of global governance that have been built since the end of World War II. First there is the Bretton-Woods-UN system of treaty-created legally binding multilateral structures of global governance. Beginning in the 1970s and accelerating from the 1980s there is the informal Gx process institutions—built on leader summits and an ever enlarging web of transgovernmental networks—that today constitute the most dynamic elements of global governance. China has achieved leadership in both systems. China sits atop the security system as one of the five permanent veto-wielding members of the UN Security Council (UNSC). With respect to the Gx system, China has achieved a place at the leaders table with the enlargement of the leaders summit for economic purposes from the G7/8 to the G20.

Though the rising states—China, India, Brazil and possibly South Africa and Mexico—all members of the G20 leaders summit—continue to express support for the institutions of the Bretton Woods—UN system (support in particular for the 'universalism'—one country, one vote—character of these institutions) the evident collaborative decision-making in global governance today appears to be taking place in informal organizations.

While that Gx dynamic is most evidently present in economic issues (the series of summits to tackle the global financial crisis), it is also present in issues such as climate change and in proliferation. While the climate change issue was most recently addressed in the UN Copenhagen Conference (COP-15) that included the '192'—all leaders of the UN Assembly—and a host of non-governmental organizations, the key leadership—Brazil, India, South Africa, China's Wen Jiabao and U.S. President Barack Obama concluded the Copenhagen Accord at the Conference.[23] Though not a legally binding instrument, it appears to be the basis for further elaboration of a global governance accord on climate change. And with respect to critical non-proliferation questions—notably North Korea and Iran—informal organizations—the 6-Party members over North Korea and the EU-3 plus the U.S., Russia and China have sought to restrain Iran's nuclear enrichment program. In both cases the informal group interacts with larger and often formal global governance institutions but the collaborative decision-making effort is tackled at the informal level.

China's global governance leadership will be tested—whether the leadership prefers this it or not—at the Gx and informal level. Experts have generally agreed on the key dimensions of the Gx process, though as we'll see there is little consensus on how to evaluate these dimensions. Still most experts recognize these Gx features:

• Legitimacy;
• Informality;
• Effectiveness
• Equality; and
• Likemindedness

Examining these dimensions is important, as the same dimensions will impact the prospect for collective decision-making.

We have already examined legitimacy and the critics' denunciation over the limited and qualified membership of the Gx process; it has been recently quieted by the enlargement of the G7/8 to the G20.

Informality is a dimension that is largely ignored by experts. But the same cannot be said of participants. Leaders and others identify this dimension and express support for the value of the small group setting and which they come to know each other personally. Over time leaders come to know each other and the problems they face in their own domestic settings; they can speak directly and often forthrightly. Equalness is likely linked to informality; it is certainly linked to hierarchy, or more precisely, the absence largely of hierarchy in these settings. The Gx process id at least formally built on an equality foundation. The leaders are accorded the same strength of voice. This obviously contrasts with the UN where the conflict resolution setting—the United Nations Security Council (UNSC) distinguishes permanent representatives (the P5) with the no permanent and non-veto holding members of the UNSC.

In many respects there is no more vital dimension than effectiveness in the analysis of global governance. Effectiveness is a complex dimension that includes at least two parts. There is what most refers to as, 'commitment.' Commitments are most readily identified in the communiqués of the leaders. Thus, as set out below in the most persistent evaluative program of the Gx process and the leader's statements—the G8 research group—as described below has the most comprehensive definition of commitment. Thus, to the G8 Research Group at the University of Toronto (G8 Research) a commitment is, "a discrete, specific, publicly expressed, collectively agreed statement of intent, a "promise" or "undertaking" by Summit members that they will take future action to move toward, meet or adjust to an identified welfare target."

But effectiveness is not limited to commitments. The evaluation of effectiveness must necessarily also encompass implementation or what the G8 Research has identified as compliance. Compliance" is, "national government action towards the domestic implementation of the necessary formal legislative and administrative regulations designed to execute Summit commitments. National governments alter their own behavior and that of their societies and outsiders, in order to attain summit-specific welfare targets."[24] What is evident about implementation or compliance is that the actions take place in the national capital. Though there are commitments that can be implemented at the international level in, say, an international organization, the international commitments must be implemented generally at the national level. Global governance is not global when it comes to implementation. It is local. For a number of the leaders this focus on implemen-

tation at the national level underlines the difficulty in not only jointly committing to an effort or a program but to implementing that collective decision. Certainly a focus on domestic politics and the structure and process of governing there highlights the difficulty for a U.S. administration in achieving implementation. But the obstacles presented by domestic politics are not confined to the United States alone. Thus, using the Gx setting with the informality provided to leaders is an important feature of the informal process. Much can be learned and it may well be that leaders may have to publicly and more openly support collective decisions in order to support those leaders who face a tough 'domestic road' to national implementation.

Enlargement may well pose serious challenges to collective decision-making. The increase in size to a G20 leader's summit brings added diversity and raises the challenge to achieving a collective global governance decision. Likemindedness in the Gx leadership appears to have diminished with enlargement. While it is the case that traditional powers of the G7 have often disagreed, their disagreements—Germany, France, the UK, the United States and Japan—have been principally over policy choices and not over differences in norms and values in the international system. The 'values gulf' today between rising and traditional powers threatens to weaken, perhaps fundamentally, Gx global governance institutions just as they have eroded collaboration in the Bretton Woods-UN formal institutions. The most acute aspects of the 'values gulf' among the enlarged leadership, especially China, include a number of aspects in global governance.

In the enlarged leadership of Gx there are strong differences over the character and defense of 'national sovereignty'. This critical value is often expressed as non-interference in the domestic affairs of other states. China has long defended (going back to Bandung in 1955) the most traditional notions of national sovereignty. But China is not alone. As is evident both India and Brazil support strongly non-interference in such contexts as responsibility to protect and humanitarian intervention. But this defense of the primary value of the Westphalian system of states is not just limited to the new values of humanitarian intervention. Recently we saw the Chinese leadership raise the same defense over the U.S. insistence that international verification of carbon reductions was a requirement of the new climate change regime. Yet the appeal to such values may not reflect China's national interest in climate change. Furthermore, in a small group decision-making setting—not motivated by balancing or a competitive mode—the assertion of values may only 'cloud' China's legitimate interests over a climate change treaty that focuses on mandatory levels of emission, technology transfer and financing, among other policy objectives.

The appeal to the development gap and the attack on traditional states and their policies invoking the defense of the global south (a policy of 'developmentalism') is a policy that various rising states have appealed to at different times. In opposing, for example, trade and development aid policies the rising states emphasize the gulf between north and the global south and demand greater equity and participation for the global south. These states appeal to their own status as developing countries and demand satisfaction for the global south. The creation of this divide in leadership only raises the difficulties of reaching consensus and overcoming the problems to collective action in this informal small group setting. There is, of course, recognition that rising states such as India and China contain large populations and that there remain significantly poor populations in both. But national growth and prosperity are dramatic—historically unparalleled—and these dynamics underline why rising

powers—India and China included—have been included in an enlarged leadership. Thus emphasizing the gulf between rising powers and developing countries from those of the traditional states again obscures the national interests that need to be satisfied at least in part in collective decision-making.

Universalism and hierarchy are often the opposite sides of the same value issue. Universalism insists on a one-country-one vote principle, or implies, if not necessitating consensus as in the World Trade Organization. Hierarchy permits differences of influence whether in the context of universal settings as the UNSC or in smaller clubs where formally or not some states hold greater sway than others. As has pointed out above universalism has retained a strong attraction and China and other rising powers have expressed support for those organizations where universalism governs. The Gx process has been strongly attacked for its exclusions. Yet the universalism has been shown too often—the Doha Round in the WTO or COP-15—to rob us of collective (though not universal) governance and the resulting commitments.

The Gx system has been both harshly criticized and frequently declared irrelevant. For supporters of traditional multilateralism, the Gx process is a 'second best solution' to the serious effort to forge collective decisions. This analysis casts a different light on the Gx process. While the Gx process is informal it is also an influential world of summits and a system of support structures that have promoted collective decision-making in economics, finance, development and beyond that to institutional reform and even security. The G20 is focused currently on the economic but there are calls to extend its attention beyond questions of the global financial crisis to include climate change, politics, institutional reform and security.

This analysis has examined the contemporary realm of informal global governance institutions and the ability of the Gx system to organize collective decisions and meet the challenges facing the global economic and political system. The Gx process retains the landscape, the structures and the dimensions that can generate successful collaborative decision-making. National interest has not fled. But it has to be both understood and expressed transparently. And the tight interdependence that has raised consequences for societies across the globe from the actions of others, if anything, is even more evident.

Paradoxically, it may be that some of the most difficult issues—the existential problems of climate change and non-proliferation—that may be most susceptible to collective decision-making. Here both national interest and the 'bindingness' of interdependence may create the 'playing field' for forging hard-fought collective decision.

China now faces global governance leadership in what still remains a small group environment where: informal leadership encounter is routine; persuasion dominates; and where disingenuous behavior is remembered. It places demands on the collective leadership to determine national interest and provide enough flexibility to enable leaders in these leadership environments to achieve collective commitment. China can face and be part of global governance leadership. **M**

Notes

1 These principles were articulated in Zhang Yunling and Alan S. Alexandroff, "Cooperation in Governance: The Regional Dimension in a U.S.-China Shared Vision for the Future," in Richard Rosecrance and Gu Guoliang (eds.), *Power and Restraint: A Shared Vision for the U.S.-China Relationship*, New York: Public Affairs, 2009, p.180.

2 Yunling & Alexandroff, p.181.

3 Alastair Ian Johnson, "Is China a Status Quo Power?" *International Security*, Vol.27, No.4, 2003, p.49.

4 Stewart Patrick, "Prix Fixe and a la Carte: Avoiding False Multilateral Choices," *The Washington Quarterly*, Vol.32, No.4, 2009, p.83.

5 Hillary Rodham Clinton, "Council on Foreign Relations Address by Secretary of State Hillary Clinton," July 15, 2009, *http://www.cfr.org/publication/19840/*.

6 Richard Rosecrance, "A New Concert of Powers," *Foreign Affairs*, Vol.87, No.4, 1992, pp. 64-82.

7 Rosecrance, p.75.

8 Jia Qingguo & Richard Rosecrance, "Delicately Poised: Are China and the U.S. Heading for Conflict?" *GlobalAsia*, Vol.4, No.4, 2010, pp.72-81.

9 Jia Qingguo & Richard Rosecrance, p.79.

10 Jia Qingguo & Richard Rosecrance, p.80.

11 For a practical summary of these summit initiatives, see Peter Hajnal, "The G7/G8 as an International Institution," in Peter Hajnal, *The G8 System and the G20: Evolution, Role and Documentation*, Aldershot, UK: Ashgate Publishing Limited, 2007, pp.1-12. In fact the extensive analysis and information on the Gx process history here in this PAB has been provided through two multivolume series from Ashgate Publishing entitled, "Global Finance" and "The G8 and Global Governance". The Global Finance series is currently edited by, John Kirton, University of Toronto, Michele Fratianni, Indiana University and Paolo Savona, LUISS University in Italy. The G8 and Global Governance Series were edited by John Kirton and is now completed.

12 The G20, which is actually consists of the G7/8, U.S., Canada, UK, France, Italy Japan, Germany, Russia and the EU plus the G5, China, India, Brazil, South Africa and Mexico and then additionally Argentina, Australia, Indonesia, Saudi Arabia, the Republic of Korea and Turkey. Unofficial countries include Spain, Holland and Belgium plus the heads of the key multilateral financial institutions and the UN and the OECD.

13 John Kirton, "Explaining G8 Effectiveness," in Michael Hodges, John Kirton and Joseph Daniels (eds.), *The G8's Role in the New Millennium*, Aldershot, UK: Ashgate, 1999, p.53.

14 John Kirton, "Economic Co-operation: Summitry, Institutions, and Structural Change," paper prepared for a conference on "Structural Change and Co-operation in the Global Economy," The Center for International Business Education and the Center for Global Governance, Rutgers University, May 19-20, 1997.

15 Richard Haass, "The Case for Messy Multilateralism," *Financial Times*, January 5, 2010, *www.ft.com/cms/s/0/b68ad6a2-ff1a-11de-a677-00144feab49a.html*, accessed January 22, 2010.

16 Stewart Patrick, "Global Governance Reform: An American View of U.S. Leadership," *Stanley Foundation Policy Analysis Brief*, forthcoming, 2010, p.14.

17 Quoted in "Brazil Considers the G-8 Is No Longer a Valid Political Decision Group," *MercoPress*, June 12, 2009.

18 Anne-Marie Slaughter, *A New World Order*, Princeton, NJ: Princeton University Press, 2004. For a more contemporary focus on transgovernmental networks, Anne-Marie Slaughter and Thomas Hale, "Transgovernmental Networks and Emerging Powers," in Alan S. Alexandroff and Andrew F. Cooper (eds.), Rising States, *Rising Institutions Challenges for Global Governance*, Washington, DC: Brookings Institution Press, forthcoming May 2010.

19 John Kirton, *Explaining G8 Effectiveness*, p.46.

20 John Kirton, "The G-20 Finance Minister: Network Governance," in Alan S. Alexandroff and Andrew F. Cooper (eds.), *Rising States, Rising Institutions: Challenges for Global Governance*, Washington, DC,: Brookings Institution, 2010, p.197.

[21] One of the classic examinations of global governance development is chronicled by Princeton University's, G. John Ikenberry. This much praised work looks at the creation of new international orders following major wars. G. John Ikenberry, "*After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, Princeton, NJ: Princeton University Press, 2001. In part, because of the analysis in this book many have come to believe that new international institutions and indeed orders can only be constructed on the debris of the former international system.

[22] John Kirton, Marina Larionova and Paolo Savona, "Introduction, Argument and Conclusions," in John Kirton, Marina Larionova and Paolo Savona (eds.), *Making Global Economic Governance Effective: Hard and Soft Law Institutions in a Crowded World*, Aldershot, UK: Ashgate Publishing Limited, 2010, p.4. For a thorough examination of the emergence of the two systems and the growing interaction between the Bretton Woods-UN system and the Gx process system, see especially John Kirton, "Multilateral Organizations and G8 Governance: A Framework for Analysis," pp. 23-42.

[23] http://unfccc.int/resource/docs/2009/cop15/eng/l07.pdf.

[24] The definitions and the operationalization of the G8 compliance assessments can be found at: G8 Research Group, "Analytical Studies," *www.g7.utoronto.ca/evaluations/methodology/g7c2.htm*.

PART 3

RETHINKING CITIZEN POWER

Ultimately, citizens themselves determine how states and other actors function on the global stage. That's why Munk scholars are also rethinking the way citizens shape, and are shaped by, their states.

Munk Professor Ritu Birla discovers that the roots of contemporary Indian capitalist culture, for instance, lie in a dialogue between late nineteenth century colonial policymakers interested in standardizing market practice under laws of contract, and "vernacular" capitalists, who mobilized capital through kinship networks.

Munk Professor Jeffrey Kopstein, writing with University of California, Berkeley's Prof. Jason Wittenberg, discovers that while class structure may have shaped regimes in Western Europe, Eastern European regimes before World War Two reflected the *ethnic* dynamics of their citizenries. The way competition played out between ethnic groups in Czechoslovakia and Poland, he notes after close data analysis, determined which one became a dictatorship and which a democracy.

We present a full paper by Munk Prof. Ron Deibert, one of the world's leaders in the political analysis of cyberspace, and Rafal Rohozinski, a principal with the SecDev Group. They have revolutionized the way we understand how citizens, states and non-state actors confront one another in cyberspace. In this 2010 paper, Diebert and Rohozinski dismantle our traditional understanding of cyberspace as a platform for citizens' liberation. Instead, they argue, we can only understand the political dynamics of cyberspace as a complex ecosystem of citizens, states, private regulators and criminals—each struggling against the others.

Liberation Vs. Control:
The Future of Cyberspace

BY

Ronald Deibert AND Rafal Rohozinski

Ronald Deibert is associate professor of political science and director of the Citizen Lab at the Munk School of Global Affairs, University of Toronto. Rafal Rohozinski is a principal with the SecDev Group and former director of the Advanced Network Research Group of the Cambridge Security Programme. Together they are the founders of the Information Warfare Monitor and the OpenNet Initiative. The following essay is adapted from their *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace* (MIT Press, 2010), coedited with John Palfrey and Jonathan Zittrain.

Every day there seems to be a new example of the ways in which human ingenuity combines with technology to further social change. For the Green Movement in Iran, it was Twitter; for the Saffron Revolution in Burma, it was YouTube; for the "color revolutions" of the former Soviet Union, it was mobile phones. No matter how restrictive the regulations or how severe the repercussions, communities around the world have exhibited enormous creativity in sidestepping constraints on technology in order to exercise their freedoms.

Looking at the seemingly endless examples of social innovation, one might easily assume that cyber-technologies possess a special power, that they are "technologies of liberation."[1] No other mode of communication in human history has facilitated the democratization of communication to the same degree. No other technology in history has grown with such speed and spread so far geographically in such a short period of time. Twitter, to take just the latest cyber-application as an example, has grown from an average of 500,000 tweets a quarter in 2007 to more than four-billion tweets in the first quarter alone of 2010. The continual innovations in electronic communications have had unprecedented and far-reaching effects.

Yet some observers have noted that the very same technologies which give voice to democratic activists living under authoritarian rule can also be harnessed by their oppressors.[2] Cyber-communication has made possible some very extensive and efficient forms of social control. Even in democratic countries, surveillance systems penetrate every aspect of life, as people implicitly (and perhaps unwittingly) consent to the greatest invasion of personal privacy in history. Digital information can be easily tracked and traced, and then tied to specific individuals who themselves can be mapped in space and time with a degree of sophistication that would make the greatest tyrants of days past envious. So, are these technologies of freedom or are they technologies of control?

This dichotomy is itself misleading, however, as it suggests a clearcut opposition between the forces of light and the forces of darkness. In fact, the picture is far more nuanced and must be qualified in several ways. Communications technologies are

neither empty vessels to be filled with products of human intent nor forces unto themselves, imbued with some kind of irresistible agency. They are complicated and continuously evolving manifestations of social forces at a particular time and place. Once created, technologies in turn shape and limit the prospects for human communication and interaction in a constantly iterative manner. Complicating matters further is the inescapable presence of contingency. Technical innovations may be designed for specific purposes but often end up having wildly different social uses and effects than those intended by their creators. Yet these "alternative rationalities"— systems of use based on local culture and norms, particularly those that originate outside the developed world—often become the prevailing paradigm around which technologies evolve, until they in turn are disrupted by unanticipated uses or new innovations.[3]

The concepts of "liberation" and "control" also require qualification. Both are socially constructed ideas whose meaning and thus application can vary widely depending on the context in which they appear. Different communities work to be free (or "liberated") from different things—for example, colonial rule or gender or religious discrimination.

Likewise, social control can take many forms, and these will depend both on the values driving them as well as what are perceived to be the objects of control. Countless liberation movements and mechanisms of social control coexist within a shared but constantly evolving communications space at any one time. This makes any portrayal of technology that highlights a single overarching characteristic biased toward either liberation or control seem fanciful.

This social complexity is a universal characteristic of all technological systems, but it is especially marked in the communications arena for several reasons. Processes of globalization, which are both products of and contributors to cyberspace, intensify the mix of actors, cultures, interests, and ideas in the increasingly dense pool of communications. Although it may seem clichéd to note that events on one side of the planet can ripple back at the speed of light to affect what happens on the other side, we must not underestimate the proliferation of players whose actions help to shape cyberspace and who in turn are shaped by their own interactions within cyberspace. This "dynamic density" also accelerates the pace of change inherent in cyberspace, making it a moving target.[4] Innovations, which potentially may come from any of the millions of actors in cyberspace, can occur daily. This means that rather than being a static artifact, cyberspace is better conceptualized as a constantly evolving domain—a multilevel ecosystem of physical infrastructure, software, regulations, and ideas.

The social complexity of cyberspace is compounded by the fact that much of it is owned and operated by thousands of private actors, and some of their operations cross national jurisdictions. Guided by commercial principles, these enterprises often make decisions that end up having significant political consequences. For example, an online chat service may handle or share user data in ways that put users in jeopardy, depending on the jurisdiction in which the service is offered. Such considerations are especially relevant given the current evolution toward "cloud computing" and software-as-a-service business models. In these models, information and the software through which users interact are not physically located on their own computers but are instead hosted by private companies, often located in faraway jurisdictions. As a result, we have the curious situation in which individuals' data are ultimately governed according to laws and regulations over which they themselves have no say as citizens. This also accelerates existing trends toward the privatization of authority.[5]

How Eastern Europe's Citizens Chose Dictatorships and Democracies

Scholars have long argued that, in Western Europe at least, countries become either dictatorships or democracies based on the political preferences of their middle classes. But Munk Prof. Jeffrey Kopstein and University of California, Berkeley's Prof. Jason Wittenberg reveal the limits of this well established theory.

Through a close analysis of data from periods of regime change in Czechoslovakia and Poland between World War I and World War II, Kopstein and Wittenberg demonstrate that pre-war political dynamics in both countries reflected ethnicity more than economic class. The authors explore the different ethnic and social coalitions on which political authority was built and the circumstances under which these two countries made the transition from one regime type to another. The depth of the ethnic divide, they discover, meant that Eastern European democracies could only survive as long as the urban bourgeoisie of the majority ethnic group was sidelined in politics.

Although the decisions taken by businesses—the frontline operators in cyberspace—play a critical role, cyberspace is also shaped by the actions of governments, civil society, and even individuals. Because corporations are subject to the laws of the land in which they operate, the rules and regulations imposed by national governments may inadvertently serve to carve up the global commons of information. According to the OpenNet Initiative research consortium, more than forty countries, including many democracies, now engage in Internet-content filtering.[6] The actions of civil society matter as well. Individuals, working alone or collectively through networks, can create software, tools, or forms of mobilization that have systemwide implications—not all of them necessarily benign. In fact, there is a hidden subsystem of cyberspace made up of crime and espionage.

In short, the actions of businesses, governments, civil society, criminal organizations, and millions of individuals affect and in turn are affected by the domain of cyberspace. Rather than being an ungoverned realm, cyberspace is perhaps best likened to a gangster-dominated version of New York: a tangled web of rival public and private authorities, civic associations, criminal networks, and underground economies. Such a complex network cannot be accurately described in the one-dimensional terms of "liberation" or "control" any more than the domains of land, sea, air, or space can be. Rather, it is composed of a constantly pulsing and at times erratic mix of competing forces and constraints.

Liberation: From What and For Whom?

Much of the popular reporting about cyberspace and social mobilization is biased toward liberal-democratic values. If a social movement in Africa, Burma, or Iran employs a software tool or digital technology to mobilize supporters, the stories appear throughout the global media and are championed by rights activists.[7] Not surprisingly then, these examples tend to be generalized as the norm and repeated without careful scrutiny. But social mobilization can take various forms motivated by many possible rationales, some of which may not be particularly "progressive."[8] Due to both media bias and the difficulties of conducting primary research in certain contexts, these alternative rationalities tend to be obscured from popular view by the media and underexplored by academics.[9] Yet they are no less important than their seemingly more benign counterparts, both for the innovations that they produce and the reactions that they generate.

Consider, for example, the enormous criminal underworld in cyberspace. Arguably at the cutting edge of online innovation, cybercriminals have occupied a largely hidden, parasitic ecosystem within cyberspace, attacking the insecure fissures that open up within this constantly morphing domain. Although most cyber-crime takes the form of petty spam (the electronic distribution of unsolicited bulk messages), the sophistication and reach of cyber-criminals today are startling. The production of "malware"—malicious software—is now estimated to exceed that of legitimate software, although no one really knows its full extent. About a million new malware samples a month are discovered by security engineers, with the rate of growth increasing at a frightening pace.

One of the more ingenious and widespread forms of cyber-crime is "click fraud," whereby victims' computers are infected with malicious software and redirected to make visits to online pay-per-click ads operated by the attackers. Although each click typically generates income on the order of fractions of a penny, a "botnet" (a group of thousands of infected computers referred to as "zombies") can bring in millions of dollars for the criminals.

One such cyber-criminal enterprise called Koobface (an anagram of Facebook) exploits security vulnerabilities in users' machines while also harvesting personal information from Facebook and other social networking services. It creates thousands of malicious Facebook accounts every day, each of which is then directed toward click fraud or malicious websites that prompt the download of Trojan horses (malware downloads that appear legitimate). With the latter, Koobface can extract sensitive and confidential information such as credit-card account numbers from the infected computers of unwitting users, or deploy the computers as zombies in botnets for purposes of distributed computer network attacks. Like the mirror universe on the television series *Star Trek*, in which parallel Captain Kirks and Spocks were identical to the originals except for their more malicious personalities, these phony accounts are virtually indistinguishable from the real ones. The Koobface enterprise demonstrates extraordinary ingenuity in social networking, but directed entirely toward fraudulent ends.

Just as software, social-networking platforms, and other digital media originally designed for consumer applications may be redeployed for political mobilization, innovations developed for cyber-crime are often used for malicious political activity. Our research reveals the deeply troubling trend of cyber-crime tools being employed for espionage and other political purposes.

Twice in the last two years, the Information Warfare Monitor has uncovered major global cyber-espionage networks infiltrating dozens of high-level political targets, including foreign ministries, embassies, international organizations, financial institutions, and media outlets. These investigations, documented in the reports "Tracking *GhostNet*" and "Shadows in the Clouds," unearthed the theft of highly sensitive documents and the extensive infiltration of targets ranging from the offices of the Dalai Lama to India's National Security Council. The tools and methods used by the attackers had their origins in cyber-crime and are widely available on the Internet black market.[10] Indeed, "Ghost Rat," the main device employed by the cyber-espionage net-work, is available for free download and has been translated into multiple languages. Moreover, although the networks examined in both studies are almost certainly committing politically motivated espionage rather than crime per se, our

research suggests that the attackers were not direct agents of government but were probably part of the Chinese criminal underworld, either contracted or tolerated by Chinese officials.

Likewise, the OpenNet Initiative analyzed the cyber-attacks waged against Georgian government websites during the August 2008 war with Russia over South Ossetia. The computers that were harvested together to mount distributed denial-of-service attacks were actually botnets already well known to researchers studying cyber-crime and fraud, and had been used earlier to attack pornography and gambling sites for purposes of extortion.[11]

The most consistent demonstrations of digital ingenuity can be found in the dark worlds of pornography, militancy, extremism, and hate. Forced to operate in the shadows and constantly maneuvering to stay ahead of their pursuers while attempting to bring more people into their folds, these dark networks adapt and innovate far more rapidly and with greater agility than their more progressive counterparts. Al-Qaeda persists today, in part, because of the influence of jihadist websites, YouTube channels, and social-networking groups, all of which have taken the place of physical meeting spaces. Just as disparate human-rights groups identify with various umbrella causes to which they belong through their immersion in social-networking services and chat platforms, so too do jihadists and militants mobilize around a common "imagined community" that is nurtured online.

Perhaps even more challenging to the liberal-democratic vision of liberation technology is that much of what is considered criminal and antisocial behavior online increasingly originates from the young online populations in developing and postcommunist countries, many of whom live under authoritarianism and suffer from structural economic inequalities. For these young "digital natives," operating an email scam or writing code for botnets, viruses, and malware represents an opportunity for economic advancement. It is an avenue for tapping into global supply chains and breaking out of conditions of local poverty and political inequality—itself a form of liberation.

In other words, regardless of whatever specific characteristics observers attribute to certain technologies, human beings are unpredictable and innovative creatures. Just because a technology has been invented for one purpose does not mean that it will not find other uses unforeseen by its creators. This is especially true in the domains of crime, espionage, and civil conflict, where innovation is not encumbered by formal operating procedures or respect for the rule of law.

Enclosing The Commons: Next-Generation Controls

Arguments linking new technologies to "liberation" must also be qualified due to the ongoing development of more sophisticated cyberspace controls. Whereas it was once considered impossible for governments to control cyberspace, there are now a wide variety of technical and nontechnical means at their disposal to shape and limit the online flow of information. Like the alternative rationalities described above, these can often escape the attention of the media and other observers. But these control mechanisms are growing in scope and sophistication as part of a general paradigm shift in cyberspace governance and an escalating arms race in cyberspace.

To understand cyberspace controls, it is important first to consider a sea-change in the ways in which governments approach the domain. During the "dot-com" boom of the 1990s, governments generally took a hands-off approach to the Internet by adhering to a laissez-faire economic paradigm, but a gradual shift has since occurred. While

market ideas still predominate, there has been a growing recognition of serious risks in cyberspace.

The need to manage these risks has led to a wave of securitization efforts that have potentially serious implications for basic freedoms.[12] For example, certain security measures and regulations have been put in place for purposes of copyright and intellectual-property protection. Although introduced as safeguards, these regulations help to legitimize government intervention in cyberspace more generally—including in countries whose regimes may be more interested in self-preservation than in property protections. If Canada, Germany, Ireland, or another industrialized democracy can justifiably regulate behavior in cyberspace in conformity with its own national laws, who is to say that Belarus, Burma, Tunisia, or Uzbekistan cannot do the same in order to protect state security or other national values?

The securitization of cyberspace has been driven mainly by a "defensive" agenda—to protect against threats to critical infrastructures and to enable law enforcement to monitor and fight cyber-crime more effectively. There are, however, those who argue that "offensive" capabilities are equally important. In order to best defend key infrastructures, the argument goes, governments must also understand how to wage attacks, and that requires a formal offensive posture. Most of the world's armed forces have established, or are in the process of establishing, cybercommands or cyberwarfare units. The most ambitious is the U.S. Cyber Command, which unifies U.S. cyber-capabilities under a separate command led by General Keith Alexander of the National Security Agency. Such an institutional innovation in the armed forces of the world's leading superpower provides a model for similar developments in other states' armed forces, who feel the need to adapt or risk being left behind.

Not surprisingly, there have been a growing number of incidents of computer-network attacks for political ends in recent years, including those against Burmese, Chinese, and Tibetan human-rights organizations, as well as political-opposition groups in the countries of the former Soviet Union. It would be disingenuous to draw a direct line between the establishment of the U.S. Cyber Command and these incidents, especially since many of these practices have been pioneered through innovative and undeclared public-private partnerships between intelligence services in countries such as Burma, China, and Russia and their emergent cyber-criminal underclasses. Yet it is fair to argue that the former sets a normative standard that allows such activities to be tolerated and even encouraged. We should expect these kinds of attacks to grow as governments explore overt and declared strategies of offensive action in cyberspace.

Further driving the trend toward securitization is the fact that privatesector actors, who bear the brunt (and costs) of defending cyberspace's critical infrastructures against a growing number of daily attacks, are increasingly looking to their own governments to carry this burden as a public good. Moreover, a huge market for cyber-security services has emerged, estimated to generate between US$40 and $60 billion annually in the United States alone. Many of the companies that now fill this space stand to gain by fanning the flames of cyberwar. A few observers have questioned the motivations driving the self-serving assessments that these companies make about the nature and severity of various threats.[13] Those criticisms are rare, however, and have done little to stem fear-mongering about cyber-security.

This momentum toward securitization is helping to legitimize and pave the way for greater government involvement in cyberspace. Elsewhere, we have discussed "next generation" controls—interventions that go beyond mere filtering, such as those

Global Capitalism and the World of the Bazaar

In her 2009 book *Stages of Capital: Law, Culture and Market Governance in Late Colonial India*, winner of the 2010 Albion Book Prize, from the North American Conference on British Studies, Munk Professor Ritu Birla breaks new ground by investigating the colonial regulation of Indian capitalism, posing it as a key story in the history of liberal governance more broadly. This is a novel story about the roots of contemporary Indian capitalist culture seen through the historical production of that abstract thing that we call "the economy" as an object of governance.

Birla uncovers a previously unexamined archive of law to highlight a legal regime directed at standardizing market practice for the "free circulation of capital." This contract-based regime sought to regulate "vernacular" Indian capitalists who mobilized capital through ties of kinship, extended family and clan. The story sheds light on how states govern modern citizens as economic subjects; how discourses on culture and family are central to such forms of governing; and how contemporary Indian capitalism is tied both processes.

Colonial jurisprudence, case law, and statutes enforced an abstract British vision of modern society as a public comprised of economic actors contracting and exchanging with each other free of the supposedly anachronistic constraints of indigenous culture. Such measures marginalized India's kinship-based commercial groups as age-old cultural actors rather than as modernizing economic ones.

Neither entirely imposed, nor entirely indigenous, Birla finds the roots of contemporary Indian capitalism in the dialogue between colonial regulations over capital and indigenous capitalists.

Vernacular ways of managing finance and commerce didn't disappear from the Indian marketplace. Instead, indigenous capitalists secured their leading economic role by challenging colonial regulations and ultimately inhabiting colonial cultural categories, legitimizing, for example, the patriarchal extended family as an ancient system, and also as a seat of capitalist modernity.

Birla's unprecedented analysis of the negotiations between India's indigenous and colonial market systems is a novel addition to our understanding of the making of global capitalism in the name of local systems of economic and cultural value.

associated with the Great Firewall of China.[14] Many of these controls have little to do with technology and more to do with inculcating norms, inducing compliant behavior, and imposing rules of the road, and they stem from a multitude of motivations and concerns. Any argument for the liberating role of new technologies needs to be evaluated in the wider context of these next-generation controls.

Legal Measures

At the most basic level, government interventions in cyberspace have come through the introduction of slander, libel, copyright-infringement, and other laws to restrict communications and online activities.[15] In part, the passage of such laws reflects a natural maturation process, as authorities seek to bring rules to cyberspace through regulatory oversight. Sometimes, however, it also reflects a deliberate tactic of strangulation, since threats of legal action can do more to prevent damaging information from

surfacing than can passive filtering methods implemented defensively to block websites. Such laws can create a climate of fear, intimidation, and ultimately self-censorship.

Although new laws are being drafted to create a regulatory framework for cyberspace, in some cases old, obscure, or rarely enforced regulations are cited *ex post facto* to justify acts of Internet censorship, surveillance, or silencing. In Pakistan, for example, old laws concerning "blasphemy" have been used to ban access to Facebook, ostensibly because there are Facebook groups that are centered around cartoons of Muhammad.[16] Governments have also shown a willingness to invoke national-security laws to justify broad acts of censorship. In Bangladesh, for example, the government blocked access to all of YouTube because of videos clips showing Prime Minister Sheikh Hasina defending her decision to negotiate with mutinous army guards. The Bangladesh Tele-communications Commission chairman, Zia Ahmed, justified the decision by saying: "[T]he government can take any decision to stop any activity that threatens national unity and integrity."[17] In Lebanon, infrequently used defamation laws were invoked to arrest three Facebook users for posting criticisms of the Lebanese president, in spite of constitutional protections of freedom of speech.[18] In Venezuela, several people were arrested recently after posting comments on Twitter about the country's banking system. The arrests were made based on a provision in the country's banking laws that prohibits the dissemination of "false information."[19] Numerous other examples could be cited that together paint a picture of growing regulatory intervention into cyberspace by governments, shaping and controlling the domain in ways that go beyond technical blocking. Whereas at one time such regulatory interventions would have been considered exceptional and misguided, today they are increasingly becoming the norm.

Informal Requests

While legal measures create the regulatory context for denial, for more immediate needs, authorities can make informal "requests" of private companies. Most often such requests come in the form of pressure on Internet service providers (ISPs) and online hosting services to remove offensive posts or information that supposedly threatens "national security" or "cultural sensitivities." Google's recent decision to reconsider its service offerings in China reflects, in part, that company's frustration with having to deal with such informal removal requests from Chinese authorities on a regular basis. Some governments have gone so far as to pressure the companies that run the infrastructure, such as ISPs and mobile phone operators, to render services inoperative in order to prevent their exploitation by activists and opposition groups. In Iran, for example, the Internet and other telecommunications services have slowed down during public demonstrations and in some instances have been entirely inaccessible for long periods of time or in certain regions, cities, and even neighborhoods. While there is no official acknowledgement that service is being curtailed, it is noteworthy that the Iranian Revolutionary Guard owns the main ISP in Iran—the Telecommunication Company of Iran (TCI).[20] Some reports indicate that officials from the Revolutionary Guard have pressured TCI to tamper with Internet connections during the recent crises. In authoritarian countries, where the lines between public and private authorities are often blurred or organized crime and government authority mingle in a dark underworld, such informal requests and pressures can be particularly effective and nearly impossible to bring to public account.

Outsourcing

It is important to emphasize that cyberspace is owned and operated primarily by private companies. The decisions taken by those companies about content controls can be as important as those taken by governments. Private companies often are compelled in some manner to censor and surveil Internet activity in order to operate in a particular jurisdiction, as evidenced most prominently by the collusion of Google (up until January 2010), Microsoft, and Yahoo in China's Internet censorship practices. Microsoft's Bing, which tailors its search engine to serve different countries and regions and offers its services in 41 languages, has an information-filtering system at the keyword level for users in several countries. According to research by the OpenNet Initiative's Helmi Noman, users located in the Arab countries where he tested are prevented from conducting Internet searches relating to sex and other cultural norms in both Arabic and English. Microsoft's explanation as to why some search keywords return few or no results states, "Sometimes websites are deliberately excluded from the results page to remove inappropriate content as determined by local practice, law, or regulation." It is unclear, however, whether Bing's keyword filtering in the Arab world is an initiative of Microsoft or whether any or all of the Arab states have asked Microsoft to comply with local censorship practices and laws.[21]

In some of the most egregious cases, outsourced censorship and monitoring controls have taken the form either of illegal acts or of actions contrary to publicly stated operating procedures and privacy protections. This was dramatically illustrated in the case of Tom-Skype, in which the Chinese partner of Skype put in place a covert surveillance system to track and monitor prodemocracy activists who were using Skype's chat function as a form of outreach. The system was discovered only because of faulty security on the servers operated by Tom Online. In May 2009, the Chinese government introduced new laws that required personal-computer manufacturers to bundle a filtering software with all of the computers sold in the country. Although this was strongly resisted by many companies, others willingly complied. While this requirement seems to have faded over time, it is nonetheless indicative of the types of actions that governments can take to control access points to cyberspace via private companies.

Access points such as Internet cafes are becoming a favorite regulatory target for authoritarian governments. In Belarus, ISPs and Internet cafes are required by law to keep lists of all users and turn them over to state security services.[22] Many other governments have similar requirements. In light of such regulations, it is instructive to note that many private companies collect user data as a matter of course and reserve the right in their end-user license agreement to share such information with any third party of their choosing.

Presumably, there are many still undiscovered acts of collusion between companies and governments. For governments in both the developed and developing worlds, delegating censorship and surveillance to private companies keeps these controls on the "frontlines" of the networks and coopts the actors who manage the key access points and hosting platforms. If this trend continues, we can expect more censorship and surveillance responsibilities to be carried out by private companies, carrier hotels (ISP co-location centers), cloud-computing services, Internet exchanges, and telecommunications companies. Such a shift in the locus of controls raises serious issues of public accountability and transparency for citizens of all countries. It is in this context that Google's dramatic announcement to end censorship of its Chinese search engine

should be considered a watershed moment. Whether other companies follow Google's lead, and how China, other countries, and the international community as a whole will respond, are critical open questions that may help to shape the public accountability of private actors in this domain.

"Just-In-Time Blocking"

Disabling or attacking critical information assets at key moments in time—during elections or public demonstrations, for example—may be the most effective tool for influencing political outcomes in cyberspace. Today, computer-network attacks, including the use of distributed denial-of-service attacks, can be easily marshaled and targeted against key sources of information, especially in the developing world, where networks and infrastructure tend to be fragile and prone to disruption. The tools used to mount botnet attacks are now thriving like parasites in the peer-to-peer architectures of insecure servers, personal computers, and social-networking platforms. Botnets can be activated against any target by anyone willing to pay a fee. There are cruder methods of just-in-time blocking as well, such as shutting off power in the buildings where servers are located or tampering with domain-name registration so that information is not routed to its proper destination. This kind of just-in-time blocking has been empirically documented by the OpenNet Initiative in Belarus, Kyrgyzstan, and Tajikistan, as well in numerous other countries.

The attraction of just-in-time blocking is that information is disabled only at key moments, thus avoiding charges of Internet censorship and allowing for plausible denial by the perpetrators. In regions where Internet connectivity can be spotty, just-in-time blocking can be easily passed off as just another technical glitch with the Internet. When such attacks are contracted out to criminal organizations, determining attribution of those responsible is nearly impossible.

Patriotic Hacking

One unusual and important characteristic of cyberspace is that individuals can take creative actions—sometimes against perceived threats to their country's national interest—that have systemwide effects. Citizens may bristle at outside interference in their country's internal affairs or take offense at criticism directed at their governments, however illegitimate those governments may appear to outsiders. Those individuals who possess the necessary technical skills have at times taken it upon themselves to attack adversarial sources of information, often leaving provocative messages and warnings behind. Such actions make it difficult to determine the provenance of the attacks: Are they the work of the government or of citizens acting independently? Or are they perhaps some combination of the two? Muddying the waters further, some government security services informally encourage or tacitly approve of the actions of patriotic groups. In China, for example, the Wu Mao Dang, or 50 Cent Party (so named for the amount of money its members are supposedly paid for each Internet post), patrol chatrooms and online forums, posting information favorable to the regime and chastising its critics. In Russia, it is widely believed that the security services regularly coax hacker groups to fight for the motherland in cyberspace and may "seed" instructions on prominent nationalist websites and forums for hacking attacks. In late 2009 in Iran, a shadowy group known as the Iranian Cyber Army took over Twitter and some key opposition websites, defacing the home pages with their own messages. Although no formal connection to the Iranian authorities has been

established, the groups responsible for the attacks posted proregime messages on the hacked websites and services.

Targeted surveillance and social-malware attacks. Accessing sensitive information about adversaries is one of the most important tools for shaping political outcomes, and so it should come as no surprise that great effort has been devoted to targeted espionage. The Tom-Skype example is only one of many such next-generation methods now becoming common in the cyber-ecosystem. Infiltration of adversarial networks through targeted "social malware" (software designed to infiltrate an unsuspecting user's computer) and "drive-by" Web exploits (websites infected with viruses that target insecure browsers) is exploding throughout the dark underbelly of the Internet. Among the most prominent examples of this type of infiltration was a targeted espionage attack on Google's infrastructure, which the company made public in January 2010.

These types of attacks are facilitated by the careless practices of civil society and human-rights organizations themselves. As Nart Villeneuve and Greg Walton have shown in a recent Information Warfare Monitor report, many civil society organizations lack simple training and resources, leaving them vulnerable to even the most basic Internet attacks.[23] Moreover, because such organizations generally thrive on awareness-raising and advocacy through social networking and email lists, they often unwittingly become compromised as vectors of attacks, even by those whose motivations are not political per se. In one particuRonald larly egregious example, the advocacy group Reporters Without Borders unknowingly propagated a link to a malicious website posing as a Facebook petition to release the Tibetan activist Dhondup Wangchen. As with computer network attacks, targeted espionage and social-malware attacks are being developed not just by criminal groups and rogue actors, but also at the highest levels of government. Dennis Blair, the former U.S. director of national intelligence, recently remarked that the United States must be "aggressive" in the cyber-domain in terms of "both protecting our own secrets and stealing those of others."[24]

A Nuanced Understanding

There are several theoretical and policy implications to be drawn from the issues we raise. First, there needs to be a much more nuanced understanding of the complexity of the communications space in which we operate. We should be skeptical of one-dimensional or ahistorical depictions of technologies that paint them with a single brush. Cyberspace is a domain of intense competition, one that creates an ever changing matrix of opportunities and constraints for social forces and ideas. These social forces and ideas, in turn, are imbued with alternative rationalities that collide with one another and affect the structure of the communications environment. Unless the characteristics of cyberspace change radically in the near future and global culture becomes monolithic, linking technological properties to a single social outcome such as liberation or control is a highly dubious exercise.

Second, we must be cautious about promoting policies that support "freedom" software or other technologies presented as magic solutions to thorny political problems. Early on, the Internet was thought to be a truly democratic arena beyond the reach of government control. Typically, the examples used to illustrate this point related to heavyhanded attempts to filter access to information, which are relatively easy to by-pass. This conventional wisdom has, in turn, led to efforts on the part of governments to sponsor "firewall-busting" programs and to encourage technological "silver

bullets" that will supposedly end Internet censorship once and for all. This viewpoint is simplistic, as it overlooks some of the more important and powerful next-generation controls that are being employed to shape the global commons. Liberation, freedom, and democracy are all socially contested concepts, and thus must be secured by social and political means. Although the prudent support of technological projects may be warranted in specific circumstances, they should be considered as adjuncts to comprehensive strategies rather than as solutions in and of themselves. The struggles over freedom of speech, access to information, privacy protections, and other human-rights issues that now plague cyberspace ultimately pose political problems that are grounded in deeply rooted differences. A new software application, no matter how ingenious, will not solve these problems.

Third, we need to move beyond the idea that cyberspace is not regulated or is somehow immune to regulation. Nothing could be further from the truth. If anything, cyberspace is overregulated by the multitude of actors whose decisions shape its character, often in ways that lack transparency and public accountability. The question is not *whether* to regulate cyberspace, but rather *how* to do so—within which forum, involving which actors, and according to which of many competing values. The regulation of cyberspace tends to take place in the shadows, based on decisions taken by private actors rather than as a result of public deliberation. As the trend toward the securitization and privatization of cyberspace continues, these problems are likely to become more, rather than less, acute.

Finally, for the governance of cyberspace to be effective, it must uncover what is going on "below the surface" of the Internet, largely invisible to the average user. It is there that most of the meaningful limits on action and choice now operate, and they must be unearthed if basic human rights are to be protected online. These subterranean controls have little to do with technology itself and more to do with the complex nature of the communications space in which we find ourselves as we enter the second decade of the twenty-first century. Meaningful change will not come overnight with the invention of some new technology. Instead, it will require a slow process of awareness-raising, the channeling of ingenuity into productive avenues, and the implementation of liberal-democratic restraints. **MM**

Notes

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