GLOBAL GOVERNMENT NETWORKS, GLOBAL INFORMATION AGENCIES, AND DISAGGREGATED DEMOCRACY

*Anne-Marie Slaughter**

Can global governance be democratic? That is the question that brings protesters into the streets in Seattle and Prague and Washington and has national and international government officials working on a host of reforms to enhance "transparency" and "access" to their global deliberations. It has motivated a raft of efforts to define global governance and to distinguish it from government of various types. The next step, at least for many, is to redefine democracy.

Many analyses seek to elaborate a post-modern conception of democracy, one that can at least provide the foundation or the framework for democratic global governance. They proceed from the assumption that the old modern conception of democracy relies on an identifiable polity within defined boundaries that can be assumed to exercise a fictional unitary will to create a hierarchical body of law. Such a conception cannot be globalized without the creation of a world state, which is generally

* Dean, Woodrow Wilson School of Public and International Affairs, Princeton University.

agreed to be both impossible and undesirable. Conversely, however, these analyses agree that globalization cannot be stopped or shut down. The alternative, at least intellectually, is to redefine the terms of the debate.

The post-modernists begin with a redefinition of the self, and proceed to a redefinition of democracy, the state, sovereignty, and law. There are almost as many variations on these themes as there are authors, but within this radically reconceptualized world, many new possibilities for self-government within a globalized economy and society emerge. These are fundamentally optimistic scenarios, fashioned by scholars unafraid to grapple with seismic shifts in human self-perception, technology, and mental geography. They are genuinely breaking the boundaries of political possibility.

The results are heady, exciting, and likely to be unintelligible to the vast majority of policymakers, activists, and citizens who seek to achieve specific goals in an age of globalization, information, and politicization. Reinterpreting Rousseau's theory of the general will, as compelling as it may prove to political philosophers, will not change the view of those who perceive themselves to be disenfranchised through globalization. These actors may in fact be making a post-modern world, but the purportedly outdated "modern" ideas of democracy—electoral accountability, the control of the elite by the mass, a clear understanding of who is governing whom and by what means—remain remarkably potent.[1] Perceptions that international institutions, much less shadowy "networks" of government officials, are fundamentally undemocratic are easy to promulgate and hard to erase.

The problem is not merely rhetorical. Proponents of global governance, particularly through multiple parallel networks of public and private actors, must offer at least a partial response to the problems of democracy as traditionally defined, before redefining it. After all, in true post-modern fashion, post-modernity cannot displace modernity, but only exist alongside it.

I propose in this essay to develop a typology of more concrete and prosaic accountability problems connected with a rapidly growing form of global governance: transgovernmental regulatory networks, or, more generally, "government networks."[2] These are networks of national

1. Robert Dahl, who, in a sense, has devoted his life to defining democracy, nevertheless suggests for the purposes of one of his books that "we can get along adequately with the notion of democracy as 'rule by the people,' or, to narrow down the idea a bit more, as rule by a demos, a citizen body consisting of members who are considered equals for purposes of arriving at governmental decisions." ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 83 (1989).

2. Various authors have various names for these networks; in my terminology they are a subset of the larger and growing phenomenon of "government networks": networks of different types of government institutions from courts to legislatures. *See* Anne-Marie Slaughter,

government officials exchanging information, coordinating national policies, and working together to address common problems.[3] For some, they herald a new and attractive form of global governance, enhancing the ability of states to work together to address common problems without the centralized bureaucracy of formal international institutions.[4] For others, however, these networks portend a vast technocratic conspiracy, a shadowy world of regulators bent on "de-politicizing" global issues in ways that will inevitably benefit the rich and powerful at the expense of the poor and weak.[5]

This essay seeks to broaden our understanding of government networks by placing them in more historical context and by elaborating different types of government networks within and without traditional international institutions. After a brief overview of the literature on transgovernmentalism since the 1970s in Part I, Part II sets forth a typology of three different categories of government networks. Part III then seeks to pinpoint the specific accountability concerns associated with each type. Part IV offers one approach to answering some current accountability concerns by adapting the concept of "information agencies" from the European Union to the global level. This analysis rests on a claim of similarity between global government networks and a number of EU governance structures, primarily the "comitology" system and related transgovernmental and public-private networks. Finally, building on the

---

The Real New World Order, FOREIGN AFF., Sept.–Oct. 1997, at 183–97 [hereinafter *The Real New World Order*]; Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 1103–24 (2000).

3. *See, e.g.*, Sol Picciotto, *Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism*, 17 NW. U. L. REV. 1014 (1996–97) [hereinafter *Networks in International Economic Integration*]; Sol Picciotto, *Fragmented States and International Rules of Law*, 6 SOC. & LEGAL STUD. 259 (1997) [hereinafter *Fragmented States*]; Scott H. Jacobs, *Regulatory Co-operation for an Interdependent World: Issues for Government*, *in* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), REGULATORY CO-OPERATION FOR AN INTERDEPENDENT WORLD 15 (1994); Anne-Marie Slaughter, *Governing the Global Economy through Government Networks*, *in* THE ROLE OF LAW IN INTERNATIONAL POLITICS 177 (Michael Byers ed., 2000) [hereinafter *Governing the Global Economy*]; *The Real New World Order*, *supra* note 2; THOMAS RISSE-KAPPEN, COOPERATION AMONG DEMOCRACIES 38 (1995) (defining "transgovernmental coalitions" as "transboundary networks among subunits of national governments forming in the absence of central and authoritative national decisions").

4. *The Real New World Order*, *supra* note 2, at 185; *Governing the Global Economy*, *supra* note 3, at 179–80. I continue to argue the merits of this form of governance; however, I am increasingly aware of the actual and potential problems associated with these networks. Hence, the importance of focusing on accountability.

5. *See, e.g.*, *Fragmented States*, *supra* note 3, at 273 (arguing that "dispersal of politics [into] functional arenas . . . appears to allow particular issues to be regulated in a depoliticized, technocratic manner, by managers or professionals who are directly accountable to their 'customers' "); *see also Networks in International Economic Integration*, *supra* note 3, at 1037.

same premise, Part V briefly surveys some of the more fundamental reconceptualizations of democracy and distills various elements of these visions that could be useful in strengthening the democratic pedigree of government networks. It concludes with an appeal to add global legislative networks to the pluralist mix of global governance mechanisms.

I. A SHORT AND SELECTIVE HISTORY OF TRANSGOVERNMENTALISM

Analysts have spent more time identifying and labeling government networks than distinguishing among them. They are typically identified as part of the larger phenomenon of "transnationalism." Philip Jessup introduced international lawyers to "transnational law" in 1958, defining it as "all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories."[6] Henry Steiner and Detlev Vagts later translated this concept into a casebook, collecting materials designed to bridge the gap between the domestic and international legal world.[7]

Political scientists embraced transnational relations somewhat later, in the late 1960s and 1970s, acknowledging the plethora of nontraditional actors in the international system and trying to relate them both to states and international organizations. The theoretical debate initially focused on whether to define transnationalism in terms of the identity of the actors or the nature of the activity. In an influential edited volume, TRANSNATIONAL RELATIONS AND WORLD POLITICS, Robert Keohane and Joseph Nye defined transnational relations as "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments."[8]

---

6. PHILIP C. JESSUP, TRANSNATIONAL LAW 2 (1956). In footnote 3 of the first chapter, Jessup cites Joseph Johnson as one of the originators of the term in an address of June 15, 1955, to the Harvard Foundation.

7. HENRY J. STEINER & DETLEV F. VAGTS, TRANSNATIONAL LEGAL PROBLEMS xv–xvi (2d ed. 1976). Steiner and Vagts built on Jessup's broad definition and focused on topics including aspects of national legal systems dealing with principles and procedures for decisionmaking that have been specifically developed to regulate problems with some foreign element. The relevant participants in transnational activity include private individuals or firms, national courts or legislators or treaty-makers, governmental instrumentalities, international officials, and regional and international organizations. *Id.* at xvii.

8. TRANSNATIONAL RELATIONS AND WORLD POLITICS xi (Joseph S. Nye, Jr. & Robert O. Keohane eds., 1972) [hereinafter TRANSNATIONAL RELATIONS]. They identify a separate subset of "international interactions" as "the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization. *Id.* at xii–xvi.

In an article several years later, Nye and Keohane explicitly distinguished "transgovernmental" activity from the broader category of transnational activity, defining "transgovernmental relations" as "sets of direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments."[9] They quoted Francis Bator for the proposition that "[i]t is a central fact of foreign relations that business is carried on by the separate departments with their counterpart bureaucracies abroad, through a variety of informal as well as formal connections."[10] Their principal interest in this article was to identify the various ways in which the existence of transgovernmental politics, as well as transnational politics, offered ways for international organizations to play an important role in world politics.[11] Nevertheless, they identified different types of transgovernmental activity—policy coordination and coalition-building—specified the conditions under which transgovernmental networks are most likely to form, and specified different types of interactions between international organizations and transgovernmental networks.

Prominent international relations theorists largely lost interest in transnational and transgovernmental relations during the 1980s and early 1990s, as interest focused on security studies and inter-state "regimes." Events over the course of the 1990s, however, cast a spotlight on a new generation of transgovernmental networks. As the bipolar state system of the Cold War disappeared and non-state, substate, and supranational actors rode the tide of globalization, pundits and many scholars began heralding the era of complex, multi-level, global governance, tied together by networks.[12] Early on, Peter Haas explored the role and power

---

9. Robert O. Keohane & Joseph S. Nye, *Transgovernmental Relations and International Organizations*, 27 WORLD POL. 39, 43 (1974) [hereinafter *Transgovernmental Relations*]. They included in their definition the increased communication between governmental agencies and business carried on by separate departments with their counterpart bureaucracies abroad. *Id.* at 41–42. By contrast, a meeting of heads-of-state at which new initiatives are taken was still the paradigm of the state-centric (interstate) model. *Id.* at 43–44. Compare their earlier depiction of traditional "interstate" relations, in which "actors are behaving in conformity to roles specified or reasonably implied by the formal foreign policy structure of the state." TRANSNATIONAL RELATIONS, *supra* note 8, at 383.

10. *U.S. Foreign Economic Policy: Implications for the Organization of the Executive Branch: Hearings Before the Subcomm. on Foreign Economic Policy of the House Comm. on Foreign Affairs*, 92d Cong. 110–11 (1972) (statement of Francis M. Bator, Professor of Political Economy, Harvard University), *quoted in Transgovernmental Relations*, *supra* note 9, at 42.

11. *Transgovernmental Relations*, *supra* note 9, at 42.

12. *See generally* GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS (James N. Rosenau & Ernst-Otto Czempiel eds., 1992); JAMES N. ROSENAU, ALONG THE DOMESTIC-FOREIGN FRONTIER: EXPLORING GOVERNANCE IN A TURBULENT WORLD (1997); THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE (1999). For an

of "epistemic communities," which he defined as networks "of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area."[13] Later work absorbed the insights about the power of shared learning and knowledge production generated by the epistemic communities literature, but focused on more concrete and observable organizational forms. A number of convergent factors focused growing attention on the more specific phenomenon of transgovernmental regulatory networks.

First were observable changes in the organization and activities of national financial regulators. The Basle Committee on Banking Supervision was created in 1974 and is now composed of the representatives of thirteen central banks that regulate the world's largest banking markets.[14] Between 1975 and 1992, it issued the Basle Concordat, with several sets of subsequent amendments, to enhance cooperation between regulators of multinational banks by dividing specified tasks between home country and host country regulators. In 1988 the Basle Committee issued a set of capital adequacy standards to be adopted by all its members as the new regulatory standard within their countries, which had a sharp impact on the availability of credit in the world's most important economies.[15] The International Organization of Securities Commissioners (IOSCO) emerged in 1984, followed in the 1990s by the creation of the International Association of Insurance Supervisors (IAIS) and a network of all three of these organizations and other national and international officials responsible for financial stability around the world called the Financial Stability Forum.[16]

---

excellent review of much of the governance literature, see Gerry Stoker, *Governance as Theory: Five Propositions*, 155 INT'L SOC. SCI. J. 17 (1998). For an influential discussion of multi-level governance within the EU, see Fritz W. Scharpf, *Community and Autonomy: Multi-level Policy-making in the European Union*, 1 J. EUR. PUB. POL'Y 219 (1994).

13. Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1, 3 (1992); *see also* Special Issue, *Knowledge, Power, and International Policy Coordination*, 46 INT'L ORG. 1 (Peter M. Haas ed., 1992); PETER M. HAAS, SAVING THE MEDITERRANEAN: THE POLITICS OF INTERNATIONAL ENVIRONMENTAL COOPERATION (1990).

14. The members of the Basle Committee come from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States. *See* The Basle Committee on Banking Supervision, *at* http://www.bis.org/bcbs/aboutbcbs.htm (last visited June 28, 2003).

15. TONY PORTER, STATES, MARKETS AND REGIMES IN GLOBAL FINANCE 3 (1993); *see also* David Zaring, *International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations*, 33 TEX. INT'L L.J. 281, 284 (1998).

16. The Financial Stability Forum was initiated by the Finance Ministers and Central Bank Governors of the Group of Seven industrial countries in February 1999, following a report on international cooperation and coordination in the area of financial market supervision and surveillance by the President of the Deutsche Bundesbank. In addition to representatives from the Basle Committee, IOSCO, and IAIS, its members include senior representatives from national authorities responsible for financial stability in significant international financial centers;

As a number of scholars point out, these "organizations" do not fit the model of an organization held either by international lawyers or political scientists: they are not composed of states and constituted by treaty; they do not enjoy legal personality; they have no headquarters or stationery.[17] According to Sol Picciotto, however, they "form part of a more general shift from 'government' to 'governance,' involving the delegation or transfer of public functions to particularized bodies, operating on the basis of professional or scientific techniques."[18]

A second major impetus for the study of transgovernmental networks has been the emergence of a new "multi-layered regulatory system," concentrated among Organisation for Economic Co-operation and Development (OECD) countries.[19] These governments have had to respond to deepening economic and financial integration and increasing interdependence across a wide range of issues by developing strategies for regulatory cooperation and rapprochement. Transgovernmental networks have proliferated in response to these needs. However, as an OECD study concluded in 1994, the new forms of governance necessary to make regulatory cooperation work cannot simply follow function. They must instead be managed within a principled framework designed not only to improve their effectiveness and the quality of their output, but also to "protect democratic processes."[20]

Third, the most concentrated site for multilevel governance, and particularly transgovernmental regulatory interactions, is the EU itself. In the wake of the completion of the single market in 1992, the EU has emerged as a "regulatory state," exercising power through rule-making rather than taxing and spending.[21] In response to the challenges of trying to harmonize or at least reconcile the regulations of its diverse and growing members, the EU has developed a system of "regulation by networks," located in the Council of Ministers and closely connected to the complex process of "comitology" that surrounds Council decision-making.[22] The

---

international financial institutions such as the BIS, the IMF, the OECD, and the World Bank; and committees of central bank experts. *See* International Monetary Fund, *A Guide to Committees, Groups, and Clubs: A Factsheet, at http://www.imf.org/external/np/exr/facts/groups.htm* (last modified Apr. 2003). For a discussion of additional networks created by the Basle Committee, IOSCO, and IAIS, such as the Joint Forum on Financial Conglomerates and the Year 2000 Network, see *Governing the Global Economy*, *supra* note 3, at 186–88.

17. *See* Zaring, *supra* note 15, at 305-07; *see also* PORTER, *supra* note 15, at 4–5.

18. *Networks in International Economic Integration*, *supra* note 3, at 1039.

19. Jacobs, *supra* note 3, at 20.

20. *Id.* at 20, 35–36.

21. Giandomenico Majone, *The European Community as a Regulatory State*, *in* 5 COLLECTED COURSES OF THE ACADEMY OF EUROPEAN LAW 321, 340 (Academy of European Law ed., 1994).

22. Renaud Dehousse, *Regulation by Networks in the European Community: The Role of European Agencies*, 4 J. EUR. PUB. POL'Y 246, 254 (1997).

question now confronting a growing number of legal scholars and political theorists is how decision-making by networks of national regulators fits with varying national models of European democracy.[23]

Fourth is the emergence of a system of "transatlantic governance" to help foster and manage the increasingly dense web of transatlantic economic cooperation.[24] Although transatlantic regulatory relations may seem only a subset of the larger multilayered regulatory system just discussed, they take place within the framework of a number of specific initiatives launched by heads of state. As described by Mark Pollack and Gregory Shaffer, transatlantic governance involves cooperation at the inter-governmental level, the transgovernmental level, and the transnational level.[25] The evolution of transatlantic relations over the course of the 1990s has thus spawned questions concerning the inter-relationship and relative importance of these three levels.[26]

Finally, transgovernmental networks play an important role in several recent and still actively debated theories of compliance with international rules. Abram and Antonia Chayes and Harold Koh have emphasized the importance of regular interaction, dialogue, and "jawboning" among networks of government officials at both the international and transnational levels.[27] Both theories penetrate the traditional black box of the state to focus on the activities of specific government institutions and officials.

II. A TYPOLOGY OF TRANSGOVERNMENTAL NETWORKS

Based on this earlier work and current empirical observation, it is possible to identify three different types of transnational regulatory

23. Previous work on this subject, often in the context of the European Union, includes Joshua Cohen & Charles Sabel, *Directly-Deliberative Polyarchy*, 3 EUR. L.J. 313 (1997); Christian Joerges & Jürgen Neyer, *From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology*, 3 EUR. L.J. 273 (1997) [hereinafter *The Constitutionalisation of Comitology*]; J.H.H. WEILER, THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION (1999). For an excellent range of arguments by many of the authors engaged in these debates through the 1990s, see the articles collected in EU COMMITTEES: SOCIAL REGULATION, LAW AND POLITICS (Christian Joerges & Ellen Vos eds., 1999) [hereinafter Joerges & Vos].

24. Mark A. Pollack & Gregory C. Shaffer, *Transatlantic Governance in Historical and Theoretical Perspective*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY 3, 3–5 (Mark A. Pollack & Gregory C. Shaffer eds., 2001).

25. *Id.* at 5.

26. *Id.* at 7.

27. *See* Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 203–04 (1996); ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS 278–82 (1995).

networks, based on the different contexts in which they arise and operate. First are those networks of national regulators that develop within the context of established international organizations. Second are networks of national regulators that develop under the umbrella of an overall agreement negotiated by heads of state. Third are the networks that have attracted the most attention over the past decade: networks of national regulators that develop outside any formal framework. These networks arise spontaneously from a need to work together to address common problems; in some cases members interact sufficiently autonomously to require the institutionalization of their activities in their own transgovernmental regulatory organizations.[28]

These three types are inter-linked in many ways. Some may seem such a standard part of the international furniture as to be beneath notice; others compete directly with actual or possible international organizations. But for present purposes, each raises different accountability problems. Hence it is valuable to develop this typology as a first step toward pinpointing precisely what "lack of accountability" means in this context and what specific steps might be taken to address it.

A. *Government Networks Within International Organizations*

What's new? National government officials have always networked within international organizations; once the heads of state have gone home, the task of actually getting on with the mission of a particular institution, however fragile and sketchy, falls to the national government officials in the issue area concerned. Indeed, depending on the issue area, they often play a role before the creation of the institution—U.S. Treasury Secretary Harry Dexter White was certainly present at Bretton Woods.[29] But certainly once an institution has been established, whether to regulate international labor issues, environmental protection, health issues, international criminal activity, or the sprawling and increasingly untidy global markets, it will fall to the national ministries or agencies charged with the particular issue area in question to work with the nascent international secretariat officially charged to represent the organization's interests.

Keohane and Nye describe networks of government ministers within international organizations as emblematic of the "club model" of

28. Zaring refers to these as "international financial regulatory organizations." Zaring, *supra* note 15, at 285.

29. RICHARD N. GARDNER, STERLING-DOLLAR DIPLOMACY: THE ORIGINS AND THE PROSPECTS OF OUR INTERNATIONAL ECONOMIC ORDER 305 (1969).

international institutions.[30] Within a particular inter-governmental institution established by treaty, "cabinet ministers or the equivalent, working in the same issue-area, initially from a relatively small number of relatively rich countries, got together to make rules. Trade ministers dominated GATT; finance ministers ran the IMF; defense and foreign ministers met at NATO; central bankers at the Bank for International Settlements (BIS)."[31] This mode of operation was very efficient for participating governments because the relatively small and like-minded number of ministers involved came to form a negotiating "club" in which they reached agreements and then reported them to national legislatures and publics.[32]

The OECD is perhaps the quintessential example of transgovernmental regulatory networking within an established international institution. Its primary function, at least in recent decades, has been to convene government officials in specific issue areas for the purpose of addressing a common problem and making recommendations or promulgating a model code for its solution.[33] As discussed above, the EU Council of Ministers operates the same way, although Council members exercise actual decision-making power. Finally, in some cases, the secretariat of an international institution deliberately encourages the formation of a network of officials from specific governments to act as a negotiating vanguard in developing new rules ultimately designed to apply to all members.[34]

---

30. Robert O. Keohane & Joseph S. Nye, Jr., The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy (paper prepared for the American Political Science Convention, Washington, D.C., Aug. 31–Sept. 3, 2000), *at* http://www.ksg.harvard.edu/prg/nye/clubmodel.pdf (last visited May 5, 2003) [hereinafter The Club Model].

31. *Id.*

32. *Id.*

33. For an excellent brief overview of the OECD's origins and current activities, see James Salzman, *Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development,* 21 MICH. J. INT'L L. 769, 776–83 (2000). The OECD website is also a rich source of information. *See, e.g.*, Organisation for Economic Co-operation and Development, *Overview of the OECD*, *at* http://www.oecd.org (on file with the Michigan Journal of International Law).

34. *See* Marney L. Cheek, *The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Rights Regime*, 33 GEO. WASH. INT'L L. REV. 277 (2001) (describing deliberate creation of a negotiating network of the intellectual property officials of selected countries); *see also Transgovernmental Relations*, *supra* note 9, at 54 (describing the ways in which international organizations "facilitate face-to-face meetings among officials in 'domestic' agencies of different governments"; suggesting that "[s]trategically-minded secretariats of international organizations could . . . plan meetings" with an eye to encouraging such contacts; and identifying several networks involving both transgovernmental and transnational contacts specifically created by international organizations).

B. *Government Networks Within the Framework of an Executive Agreement*

The second type of transgovernmental network is more striking as a form of governance, in that it emerges outside a formal international institution. Nevertheless, the members of these networks operate within a framework agreed on at least by the heads of their respective governments. A prime recent example is transatlantic transgovernmental interactions specifically authorized and encouraged by executive agreement. Pollack and Shaffer chronicle a series of executive agreements between the U.S. President and the President of the EU Commission to foster increased cooperation, including the Transatlantic Declaration of 1990, the New Transatlantic Agenda of 1995 (with a Joint US-EU Action Plan attached), and the Transatlantic Economic Partnership agreement of 1998.[35] Each of these agreements spurred "ad hoc meetings between lower-level officials, as well as among business enterprises and . . . environmental and consumer activist groups" regarding "issues of common concern."[36] Many of these networks of lower level officials were emerging anyway, for functional reasons, but they undoubtedly received a boost from agreements at the top.

Another example is the web of transgovernmental networks among financial officials that have emerged as the pragmatic answer to calls for a "new financial architecture for the twenty-first century" in the wake of the Russian and East Asian financial crises of 1997 and 1998.[37] Notwithstanding a wide range of proposals from academics and policymakers, including one for a global central bank,[38] what actually emerged was a set of financial reform proposals from the G-22 that were subsequently endorsed by the G-7 (now the G-8).[39] The United States pushed for the formation of the G-22 in 1997 to create a transgovernmental network of officials from both developed and developing countries, largely to counter the Eurocentric bias of the G-7, the Basle Committee, and the IMF's "interim committee," which is itself a group of finance ministers.[40]

---

35. Pollack & Shaffer, *supra* note 24, at 14–17.

36. *Id.* at 17.

37. William J. Clinton, Remarks to the Council on Foreign Relations, *in* 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON 1572, 1573 (1999). Clinton was echoing calls by British Prime Minister Tony Blair to build a "new Bretton Woods for the next millennium." *Global Finance. Don't Wait Up*, ECONOMIST (U.S.), Oct 3, 1998, at 83.

38. Jeffrey E. Garten, *Needed: A Fed for the World*, N.Y. TIMES, Sept. 23, 1998, at A29. Two economists, John Eatwell and Lance Taylor, also proposed a World Financial Authority. *Global Finance. Don't Wait Up*, *supra* note 37.

39. Robert Chote, *A World in the Woods*, FIN. TIMES (London), Nov. 2, 1998, at 20.

40. *Global Finance. Don't Wait Up*, *supra* note 37. President Clinton and other leaders of the Asia-Pacific Economic Forum (APEC) announced the creation of the Group of 22, on a

The East Asian countries most affected were happy to leave the details of financial reform to the G-22, in lieu of any grander vision.[41] In addition, a number of the more sweeping reform proposals advanced suggested the formation of still other networks—a G-16 or a G-15.[42]

The actual work done within these networks—policy recommendations, new sets of standards, model codes—is done by finance ministers, securities regulators, central bankers, and other officials responsible for different aspects of national economic policy. But they are again convened and approved by heads of state, often simply through informal agreement or joint communiqué. In fact, when the G-7 issued a statement on global economic reform in October 1998, the statement itself was issued by finance ministers and central bank governors, accompanied by a parallel statement from heads of government.[43]

C. *Spontaneous Government Networks—Agencies on the Loose?*

In 1974, Keohane and Nye wondered "whether the common interests of central bankers in a stable currency system have been implemented as fully by transgovernmental contacts as they might have been."[44] In 2001, the complaint is the opposite. The transgovernmental regulatory networks that have spurred the greatest concern are those that have emerged outside formal inter-governmental agreements, whether treaties or executive agreements. The Basle Committee is the leading suspect. The image of national regulators coming together of their own volition and regularizing their interactions either as a network or a networked organization raises the specter of agencies on the loose.

These spontaneous networks themselves divide into two further categories. First are the networks that institutionalize themselves as transgovernmental regulatory organizations. The founding and designated members of these organizations are domestic agencies, or even

---

temporary basis, at their meeting in Vancouver in November 1997. It was to be a group of "finance ministers and central bank governors to advance the reform of the architecture of the global financial system." The original members included finance ministers and central bank governors from the G-7 countries plus 15 emerging market countries (Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Malaysia, Mexico, Poland, Russia, Singapore, South Africa, Thailand, the United Kingdom, and the United States). It subsequently evolved into the G-33 and then the G-20. International Monetary Fund, *supra* note 16.

41. *APEC's Family Feud*, ECONOMIST (U.S.), Nov. 21, 1998, at 41.

42. Jeffrey Sachs proposed the creation of a G-16, composed of the G-8 plus "eight counterparts from the developing world." The group "would not seek to dictate to the world, but to establish the parameters for a renewed and honest dialogue." Jeffrey Sachs, *Making It Work*, ECONOMIST (U.S.), Sept. 12, 1998, at 23. Jeffrey Garten proposed a G-15 (the G-8 plus 7) to monitor the actions of a new global central bank. Garten, *supra* note 38.

43. Chote, *supra* note 39.

44. *Transgovernmental Relations*, *supra* note 9, at 51.

sub-national agencies such as provincial or state regulators. The organizations themselves tend to operate with a minimum of physical and legal infrastructure. Most lack a foundational treaty and operate under only a few agreed upon objectives or bylaws. Nothing they do purports to be legally binding on the members, and there are typically few or no mechanisms for formal enforcement or implementation. Rather, these functions are left to the members themselves.[45]

The second category comprises agreements between domestic regulatory agencies of two or more nations. The last few decades have witnessed the emergence of a vast network of such agreements effectively institutionalizing channels of regulatory cooperation between specific countries. These agreements embrace principles that can be implemented by the regulators themselves; they do not need further approval by national legislators. Widespread use of Memoranda of Understanding (MOUs) and of even less formal initiatives has sped the growth of transgovernmental interaction exponentially, in contrast to the lethargic pace at which traditional treaty negotiations proceed. Further, while these agreements are most commonly bilateral arrangements, they may also evolve into plurilateral arrangements, offering greater scope but less formality than traditional transgovernmental organizations.

III. PINPOINTING ACCOUNTABILITY CONCERNS

Transgovernmental interactions within each of these three categories raise distinct, if often inter-related, accountability concerns. Accountability itself is such a complex concept, with many different definitions in different contexts and according to different political theories, that it makes little sense to address it apart from specific factual situations.[46] It can stand for democracy, legitimacy, control, responsiveness, and many other attributes of an ideal government or governance structure.

Nevertheless, the umbrella of "accountability" captures a core central point. Keohane and Nye put it sharply: "Even in democratic societies, the borderline between legitimate transgovernmental behavior and treason may be unclear."[47] Can voters be sure that their government officials are in fact advancing their interests versus the interests of citizens of other polities? Or are their interests perhaps best advanced if the officials of their government charged with responsibility for a specific issue area make common cause with their counterparts abroad?

---

45. Zaring, *supra* note 15, at 287.

46. *See* Robert O. Keohane, *The Concept of Accountability in World Politics and the Use of Force*, 24 MICH. J. INT'L L. 1123 (2003).

47. *Transgovernmental Relations*, *supra* note 9, at 49.

This section will try to identify specific accountability concerns as precisely as possible within each category. It will focus on responses to these concerns primarily in the third category of transgovernmental networks outside the framework of a treaty or an executive agreement.

A. *The Accountability of Transgovernmental Interaction Within International Organizations*

The traditional working assumption about international organizations has been that if they are duly established by treaty, with the attendant national ratification procedures, then they exercise only delegated powers from the member states and do not raise any formal accountability concerns. That is not to say that they do not arouse suspicion, often intense suspicion, among certain domestic constituencies in member states. Within the United States, for instance, the UN has been accused of mounting a fleet of "black helicopters" to threaten loyal U.S. citizens.[48] But both the executive and the legislatures of participating states have had to approve the organization's activities and can at least theoretically withdraw this approval by restricting funding or even withdrawing from the treaty.

In practice, of course, as Keohane and Nye again pointed out in 1974, international organizations can be vital sites for different government officials, including heads of state, to form policy coalitions with their foreign counterparts to strengthen their hand in domestic bureaucratic struggles.[49] The impact of the international organization is to "transform potential or tacit coalitions into explicit ones," as well as to form alliances between an organization's secretariat and relevant national officials.[50] They argued that the existence of the international organization itself symbolized member governments' recognition of the need for cooperation and joint decision-making in a particular area and hence helped to legitimize transgovernmental activity.[51]

By 2000, public doubts and suspicion about the activities of at least certain international organizations had increased sharply, often due precisely to the perception of elite transgovernmental interactions taking place within them. The "club model" had broken down, due to a combination of factors including the increasing intensity and changing nature of interdependence, the expansion of clubs to include a wide range of developing countries, and the rise of non-state actors in global politics.[52]

---

48. *See* John M. Goshko, *U.N. Becomes Lightning Rod for Rightist Fears*, WASH. POST, Sept. 23, 1996, at A1.

49. *Transgovernmental Relations*, *supra* 9, at 50–55.

50. *Id.* at 52.

51. *Id.* at 50.

52. The Club Model, *supra* note 30, at 7–8.

In response, organizations from the WTO to the UN to the OECD have instituted a raft of "outreach efforts" to global civil society, enhancing transparency, hosting NGO meetings, and acknowledging and promoting "global policy networks."[53] Thus far, these efforts have not been enough—the organizations themselves may simply prove too tempting a target for their detractors. But, in these cases, the transgovernmental activity within these organizations and the activity of the organization itself seem indistinguishable; hence, the issue is much larger than can be addressed here.

B. *Transgovernmental Activity Within the Framework of Executive Agreements*

Transgovernmental networks within the framework of executive agreements are often less visible than transgovernmental networks within established institutions. Further, the very fact of their creation by executive agreement rather than treaty means that they have not been approved by the legislature, even prospectively. And the legitimacy provided by head of state approval may be negated if heads of state themselves are engaging in "transgovernmental collusion."

John Peterson finds evidence of exactly such collusion in his study of US-EU efforts to implement a New Transatlantic Agenda in the 1990s.[54] He argues that American and European COGs (chiefs of government) have colluded with one another to reward some domestic interest groups over others.[55] Further, "a central ambition of the New Transatlantic Agenda . . . is to manufacture the same sort of complicity between administrations and societies, as distinct from intergovernmental elites, through new transgovernmental and transnational exchanges."[56] Pollack and Shaffer agree, noting that the entire set of transatlantic initiatives can be understood as a joint effort between the U.S. administration and the EU Commission to "institutionalize their joint

53. These efforts are clearly evident with the advent of special NGO offerings on organization websites. *See, e.g.*, http://www.wto.org/english/forums_e/ngo_e/intro_e.htm (last visited July 28, 2003). Additionally, U.N. Secretary General Kofi Annan devoted a section of the Millennium Report to the emergence of global policy networks. *See* KOFI A. ANNAN, 'WE THE PEOPLES': THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY at 70, U.N. Doc. DPI/2103, U.N. Sales No. E.00.1.16 (2000).

54. *See* John Peterson, *Get Away from Me Closer, You're Near Me Too Far: Europe and America after the Uruguay Round*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY, *supra* note 24, at 45, 45–72.

55. *See id.* at 46.

56. *Id.*

preference" for more transatlantic and global trade liberalization, as well as to strengthen key domestic constituencies.[57]

Such accounts can legitimately raise fear and concern among disfavored domestic constituencies, in this case consumers, environmentalists, and labor. When the head of state throws his or her power behind some kinds of transgovernmental (and transnational) contacts but not others, without legislative input, it can seriously tilt the domestic political playing field. Observers could draw a similar conclusion from the practice, noted above, of accompanying a statement by finance ministers and central bankers with a parallel statement by heads of government. These interactions by heads of state and the transgovernmental relations resulting from them are analogous, at least for the US and the EU Commission, to the domestic innovation of "presidential administration," whereby the head of state controls the political agenda by executive degree rather than collaborative legislation.[58] The response to the resulting accountability concerns is likely to be legislative, prodded by the disaffection of outmaneuvered domestic constituencies.

C. *Spontaneous Transgovernmental Networks*

Transgovernmental networks that arise outside the framework of international organizations and executive agreements are most likely to spawn fears of runaway technocracy. That a regulatory agency would reach out on its own account to its foreign counterparts, even in an effort to solve common problems, raises the possibilities not only of policy collusion, whereby transgovernmental support can be marshaled against domestic bureaucratic opponents, but also of the removal of issues from the domestic political sphere through deliberate technocratic depoliticization.[59]

A wide range of possible measures can combat these perceptions and enhance public awareness of and even participation in spontaneous

57. Mark A. Pollack & Gregory C. Shaffer, *Who Governs?*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY, *supra* note 24, at 287, 295.

58. Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245 (2001).

59. *See Networks in International Economic Integration*, *supra* note 3, at 1037. On the other hand, it is also possible that spontaneous networks can be less threatening due to their very flexibility and ability to incorporate only like-minded members. Networks within the framework of treaty-based international organizations and executive agreements incorporate officials from all the governments party to the treaty or the agreement, regardless of whether their interests converge on any set of specific issues. Spontaneous networks, by contrast, should arise where the government officials involved, at least, immediately perceive a benefit in developing closer ties with foreign counterparts who share their views or face common problems. The question still remains, however, whether the officials in question are not simply seeking foreign reinforcements for domestic bureaucratic battles in ways that skew outcomes away from the preferences of the median domestic voter. That is a very hard empirical question to address; it remains unanswered.

networks. Creating well-serviced websites can make a network real by making it virtual.[60] The following two sections propose additional steps toward enhanced transparency and popular accountability: creating the global equivalent of EU "information agencies" and encouraging the formation of legislative networks, perhaps of representatives of key legislative committees, to share information and coordinate efforts to pass parallel domestic legislation.[61] Alternatively, as is already happening in many cases, transgovernmental networks can be folded into larger "mixed networks" of governmental and private actors.[62]

Another quite different response to accountability concerns regarding spontaneous networks is the claim that they do not exercise actual power; they are mere "talking shops." With a few exceptions such as the Basle Committee, participants in these networks cannot actually make rules or adopt policies. They can only disseminate information and bring back recommendations and even proposals for consideration through the normal domestic legislative or agency rule-making process.

This view of transgovernmental networks is short-sighted. It misses a key dimension of the exercise of power in the Information Age. The "talking shops" generate compilations of best practices, codes of conduct, and templates for everything from a Memorandum of Understanding to an environmental assessment review. As a senior official from the World Bank has recently noted, the dissemination of information has played a far greater role in triggering policy convergence in various issue areas than more deliberate and coercive attempts.[63]

This result is not surprising. In a world awash with information, credible and authoritative information is at a premium.[64] Even more valuable is a distillation and evaluation of information from many different sources. Recommended rules and practices compiled by a global body of securities regulators or environmental officials offer a focal point for convergence. Equally important, they offer a kind of safe

60. Anne-Marie Slaughter, *Virtual Visibility*, FOREIGN POL'Y, Nov./Dec. 2000, at 84, 85.

61. *See Governing the Global Economy*, *supra* note 3, at 197 (describing existing legislative networks). For a more general discussion of all these mechanisms aimed at enhancing accountability, see Anne-Marie Slaughter, *Agencies on the Loose? Holding Government Networks Accountable*, *in* TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS 521 (George A. Bermann et al. eds., 2000).

62. *See* Pollack & Shaffer, *Who Governs?*, *supra* note 57, at 301–05.

63. Andres Rigo, paper presented at the Conference on The Evolution of Legal Systems, Bijuralism and International Trade, University of Ottawa Law School, Oct. 20–21, 2000 (on file with author).

64. Robert O. Keohane & Joseph S. Nye, Jr., *Power and Interdependence in the Information Age*, FOREIGN AFF. Sept./Oct. 1998, at 81.

harbor for officials the world over looking for guidance and besieged with consultants.

Yet, should government officials be held accountable for either disseminating or using information? As new forms of global governance emerge wielding informational power, and probably engaging in new forms of informational politics, the very concept of accountability—even accepting its current complexity—must grow and change. These are questions not only for lawyers and public policy makers, but also for political theorists.

IV. GLOBAL INFORMATION AGENCIES

At this juncture, the EU offers a deceptively simple source of analogies and potential institutional solutions to the general problem of enhancing the accountability of government networks. Lawyers and political scientists studying the EU have spent much of the past decade grappling with the growing phenomenon of "comitology"—the extraordinarily complex web of committees that play advisory, management, and regulatory functions in between the European Commission and the Council of Ministers.[65] Although the leading scholars in these debates have different positive understandings and normative evaluations of comitology, they all agree that it is a critical and distinctive dimension of EU governance that must be addressed in any effort to promote constitutionalism and democracy within the EU as an institution and/or an emerging polity.

The next section explores some of the larger implications of debates over comitology for arguments over the accountability of global government networks. To understand the relevance of these debates, however, it is first necessary to delve a bit deeper into the distinctions between different types of EU institutions and government networks as defined here. The European Community (EC), one of the pillars of the EU, has a number of different types of committees: scientific committees, interest committees, and policy-making/implementation committees.[66] Many of these committees must be consulted as part of the Community legislative process. The policy-making/implementation committees are the most powerful of these committees; they are composed of representatives of the Member States from the different issue areas under

65. For an excellent overview of the complexities of comitology, see Ellen Vos, *EU Committees: The Evolution of Unforeseen Institutional Actors in European Product Regulation*, *in* Joerges & Vos, *supra* note 23, at 19.

66. *Id.* at 22.

consideration: agriculture, transport, health, etc.[67] In terms of membership and structure, these committees most resemble networks of national government officials charged with responsibility for a particular issue area. However, as the semantic distinction between "committee" and "network" suggests, the committees are more tightly structured and have a specific charge and function within a larger governance structure: specifically, mediating between a supranational entity, the Commission, and an inter-governmental one, the Council. They are theoretically responsible for ensuring that the views of the different EC Member States are fully and powerfully represented in the legislative process.[68]

The EC also has agencies and more informal networks of both public and private actors. Agencies are entities with legal personality and their own administrative structure.[69] Networks, as used in EC parlance, typically describe the looser and more informal interactions between national government officials that are increasingly necessary to implement EC policies.[70] According to two prominent EU scholars, Giandomenico Majone and Renaud Dehousse, the relationship between these two types of governance structures is the wave of the future in the EC. Together they are best poised to exploit the potential of "regulation by information." This conception of both the substance and form of governance within the EU parallels many of the perceptions and insights that animate the description of government networks as an emerging form of global governance. Indeed, closer examination of this line of scholarship yields a European proposal that can be transposed fairly easily to the global context: the creation of global information agencies.

Majone, who pioneered the concept of the EU as a "regulatory state,"[71] distinguishes regulation by information from direct regulation, which relies on a variety of "command and control techniques" such as orders and prohibitions.[72] Regulation by information operates instead by attempting "to change behaviour indirectly, either by changing the structure of incentives of the different policy actors, or by supplying the same actors with suitable information."[73] Simply having access to credible information can change the calculations and choices that different actors make.

---

67. *Id.*
68. *See id.*
69. *Id.* at 32 n.47.
70. *See* Renaud Dehousse, *Regulation by Networks in the European Community: The Role of European Agencies*, 4 J. EUR. PUB. POL'Y 246, 254 (1997).
71. Giandomenico Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*, 17 J. PUB. POL'Y 139 (1997).
72. Giandomenico Majone, *The New European Agencies: Regulation by Information*, 4 J. EUR. PUB. POL'Y 262, 265 (1997).
73. *Id.*

Dehousse links the concept of regulation by information to the EU phenomenon of "regulation by networks."[74] He sees regulation by networks as the response to a basic paradox in EU governance: "On the one hand, increased uniformity is certainly needed; on the other hand, greater centralization is politically inconceivable, and probably undesirable."[75] The effort to harmonize national laws within the European Community (EC) involves the passage of regulations at the Community level but depends on national authorities for their implementation.[76] This process is slow, cumbersome, and invariably spotty.[77] It also leaves enormous power and discretion in the hands of the national regulatory authorities. The resulting regulatory gaps must be addressed, but how?

The EU alternative is the "transnational option": the use of an organized network of national officials to ensure "that the actors in charge of the implementation of Community policies behave in a similar manner."[78] Such spontaneous convergence requires that they agree on the definition of a common problem and the range of possible responses, which in turn depends on their access to comparable data and expert opinions.[79] In short, they need to proceed on a base of mutual information.

These same officials meet together within the framework of comitology. Yet Dehousse has a larger phenomenon in mind: the functional need for mid-level officials from national ministries in different issue areas to exchange information with one another and with both Commission officials and private actors. Dehousse describes these networks in far more benign terms than do many of his fellow EU observers. Even for him, however,

> *ad hoc* meetings of national officials, no matter how frequent, are not enough to bring about a true 'community of views,' let alone a 'community of action.' Partnership must be structured by common rules, which lay down the rights and duties of all members. Equally important, the network itself must be given some stability, which generally implies the setting-up of a structure which will manage the interaction among network members.[80]

European regulatory agencies fulfill this function. Eight new agencies were created at European level between 1990 and 1997 as a way of

74. Dehousse, *supra* note 70, at 254-55.
75. *Id.* at 259.
76. *Id.* at 248.
77. *Id.* at 249–51.
78. *Id.* at 254.
79. *Id.*
80. *Id.*

facilitating further harmonization. Four of these—the European Environmental Agency, the Lisbon Drug Monitoring Centre, the European Agency for Health and Safety at Work, and the European Agency for the Evaluation of Medicinal Products—are best described as "information agencies."[81] Their job is to collect, coordinate, and disseminate information needed by policymakers. They lack decision-making authority, much less coercive enforcement power.

Both Majone and Dehousse describe these agencies as easy to underestimate but actually likely to play an important and powerful role. Majone sees them as the quintessential example of regulation by information. Their power will lie not in their coercive apparatus but in their ability to exercise influence through "knowledge and persuasion."[82] He notes a general disenchantment with the "efficacy of [command-and-control] policy instruments," undermined by factors from increasingly porous national borders to the growing complexity of public policy.[83] "Modes of regulation based on information and persuasion" are perceived to be more flexible, responsive, and effective.[84] To be successful in this environment, an information agency needs to establish its credibility and professional reputation.[85]

Dehousse also sees the European information agencies as network creators and coordinators.[86] He explains: "Their primary aim is to run networks of national administrations which come into play in the implementation of Community policies."[87] They accomplish this function by setting up a "permanent technical and administrative secretariat," which tries not only to collect and disseminate necessary information but

---

81. Majone, *supra* note 71, at 262–63; Dehousse, *supra* note 70, at 256–57. Article 1 paragraph 4 of the regulation establishing the Lisbon Drug Monitoring Centre specifies: "The Centre may not take any measure which in any way goes beyond the sphere of information and the processing thereof." Council Regulation 302/93, art. 1(4), 1993 O.J. (L 36) 1, *quoted in* Dehousse, *supra* note 70, at 256–57. Similarly, the task of the European Environmental Agency is set forth as follows:

> [T]o provide the member states and the Community with information; to collect, record and assess data on the state of the environment; to encourage harmonization of the methods of measurement; to promote the incorporation of European environmental information into international monitoring programmes; to ensure data dissemination; to co-operate with other Community bodies and international institutions.

Majone, *supra* note 71, at 263, *adapted from* Council Regulation 1210/90, art. 2, 1990 O.J. (L 120) 1.

82. Majone, *supra* note 71, at 264.
83. *Id.* at 267–68.
84. *Id.* at 269.
85. *Id.* at 269–71.
86. Dehousse, *supra* note 70, at 260.
87. *Id.*

also to encourage "horizontal cross-fertilization" among counterpart national officials.[88] From a more dynamic perspective, it appears that the emergence of transgovernmental networks through the process of comitology has given rise to the need for a central node, which in turn helps spur more coordinated and effective transgovernmental action.

Another important virtue of these regulatory agencies, understood as conveners and coordinators, derives from their projected impact on the democratic legitimacy of EU regulatory processes. First, they enhance transparency: "Several agencies are explicitly required to make accessible to the public the data they collect. Moreover, the provision of information has generally been broadly construed; it often encompasses policy analysis and the preparation of measures and legislation in their field of activity . . . ."[89] Second, and equally important, they are often able to expand the transgovernmental network to include private actors in a particular policy area.[90] This activity need not be merely inviting comment from NGOs of various types as well as regulated entities, but can also include bringing together all relevant actors and inviting them to pool information.

The Commission on Environmental Co-operation (CEC), established under the North American Agreement on Environmental Cooperation (NAAEC), takes regulation by information one step farther.[91] The CEC is specifically charged with mobilizing public participation in environmental policymaking by disseminating information. The NAAEC is a side agreement to the North American Free Trade Agreement.[92] Under its terms, Canada, the United States, and Mexico granted private parties, including NGOs, the power to bring a complaint before the CEC against one of the three states for failure to enforce its environmental laws.[93] The Secretariat of the CEC decides whether the complaint is sufficiently credible to warrant the preparation of a "factual record"; if it decides in the affirmative, the Council of the CEC, composed of the environmental ministers of all three states, must vote whether to go forward.[94]

In the event that the Council votes to authorize preparation of a factual record, the Secretariat has considerable latitude not only to solicit information from both the plaintiff and the State party defendant concerning the charges, but also to develop information from outside

88. *Id.*
89. *Id.*
90. *Id.* at 256.
91. North American Agreements on Environmental Cooperation, Sept. 14, 1993, Can.-Mex.-U.S., 32 I.L.M. 1480 [hereinafter NAAEC].
92. North American Free Trade Agreement, Dec. 8, 1992, Can.-Mex.-U.S., 32 I.L.M. 296.
93. NAAEC, *supra* note 91, arts. 14, 15.
94. *Id.* arts. 15(1), 15(2).

experts that is relevant to understanding the strength and nature of the allegations.[95] Neither the Secretariat nor the Council of the CEC can actually reach a legal conclusion as to whether the State party in question is failing to enforce its environmental laws; however, the Council of the CEC must vote whether to accept the factual record and make it public.[96] Making it public invites increased public participation in the enforcement process; the factual record and supporting documents become strong weapons for NGOs to use in mobilizing domestic public opinion in favor of stronger domestic enforcement measures.[97]

Why not create global information agencies? In many ways, the secretariats or technical committees of existing transgovernmental regulatory organizations such as the Basle Committee or International Organization of Securities Commissions (IOSCO) perform some of the same functions. But, these are essentially ad hoc, organic entities, created and empowered by networks of national officials to serve various needs as they arise. Suppose national governments were to come together to create a global securities agency, or a global environmental agency, but with the express charge not of arrogating power from national officials, but rather of providing information to such officials and helping to coordinate relations among them. Further, these agencies would service not only transgovernmental networks, but also transnational networks within their issue areas, working to bring together both private and public actors in a particular policy sector.

Equating a "global agency," of any kind, with enhancing the democratic legitimacy of global regulatory processes may seem oxymoronic. "Agency" conjures automatic images of bureaucratic technocrats and technocratic bureaucrats. Beyond the stereotypes, however, the proposal has a number of potential advantages.

First, convening heads of state to establish an international institution, even one with only informational powers, would highlight the existence and importance of current transgovernmental networks, helping to legitimate them by acknowledging them as key elements of a system of global governance. The purpose of the agency would be to facilitate the functioning of these networks and to expand them both to other governments and to private actors as necessary. Notice and approval by heads of state would also help allay charges of transgovernmental policy collusion to strengthen the hands of particular national officials in domestic bureaucratic infighting.

---

95. *Id.* art. 15(4).

96. *Id.* art. 15(7).

97. David L. Markell, *The Commission for Environmental Cooperation's Citizen Submission Process*, 12 GEO. INT'L ENVTL. L. REV. 545, 571 (2000).

Second, and perhaps paradoxically, the creation of a *global* entity would emphasize the *national* identity of network participants. The existence of even a small group of international bureaucrats to meet the needs of national officials can only emphasize the location of actual decision-making power in national hands. Even if those national officials are networking with one another to plug growing gaps in national jurisdiction and to solve common problems, they remain national officials answerable only to national legislatures and chief executives. In this regard, it is interesting to note that the European information agencies have actually resisted an increase in their power over national officials, perhaps because "instilling a degree of (vertical) hierarchical control in structures created to promote (horizontal) co-operation among peers may result in the undermining of the basis of consensus, which is indispensable for the smooth and efficient operation of the network."[98]

Third, the appellation "information agency" would focus attention on whether the collection and cross-fertilization of information is in fact problematic. How could it be wrong or even worrisome to know more about what other countries are doing? For many, however, even to pose the question this way betrays an academic or even technocratic bias. If, as many critical scholars maintain, "technical" decisions are but a convenient way of de-politicizing political decisions with distributional implications, then models and ideas borrowed helter-skelter from different political contexts are likely to prove at best useless and at worst dangerous.[99] On the other side of the political spectrum, as Justice Scalia has argued vehemently with regard to the question of whether the U.S. Supreme Court should take account of ideas and decisions from foreign courts, foreign transplants contravene basic notions of local democracy.[100]

In the increasingly borderless Information Age, where citizens of many countries have access to a literal world wide web of information, this debate seems archaic and almost preposterous. However, it should be had—openly and directly. If the objections are real and resonate with a wider public, then existing government networks are on much weaker ground than previously imagined. Nevertheless, even well short of such a scenario of willful ignorance, questions of how the information collected from foreign counterparts is used and disseminated are not only

98. Dehousse, *supra* note 70, at 255.

99. *Networks in International Economic Integration*, *supra* note 3, at 1037.

100. Justice Scalia has engaged in an open debate with some of his fellow justices concerning the propriety of looking to foreign decisions, even on an entirely persuasive basis. For an account of this debate, see Slaughter, *Judicial Globalization*, *supra* note 2, at 1118.

legitimate but also necessary. As Michael Dorf and Charles Sabel point out, regulation by information comes in many different models.[101]

Fourth, as in the European context, the existence of an information agency charged with convening and supporting networks of national officials immediately invites expansion of the network to a host of private actors. U.N. Secretary General Kofi Annan has recognized the importance of this function by positioning the U.N. as the convener of "global policy networks," designed precisely to bring together all public and private actors on issues critical to the global public interest.[102] Transgovernmental and transnational networks currently parallel each other in many cases and intersect in all sorts of ways, such as the NGO conferences held together with major inter-governmental conferences on issues ranging from the environment to women's rights. Nevertheless, the process is haphazard and in some cases chaotic. Information agencies could provide focus and a minimum degree of organization.

Beyond these functions, it is imaginable that information agencies could become the focal points for dispute resolution processes designed to disseminate information and mobilize public participation to check and correct government performance, as with the CEC. If the basic paradigm for global regulatory processes is the promulgation of performance standards, codes of best practices, and other aspirational models based on compiled comparative information, together with national legislation taking account of global practice but tailored to individual national circumstance, then why should citizens not have some means of shaming their governments into complying with their own rules? The entity charged with hearing the dispute would have the power only to issue some kind of informational record, backed by its legitimacy and credibility. It would be up to national and transnational citizen groups to do the rest.

These may seem fanciful visions. However, the European Union has in fact pioneered the paradigm of transgovernmental networks as governance structures within a community of states that have come together for a set of specific purposes. It has also run aground on the questions of the democratic legitimacy of these structures. To the extent that European information agencies offer at least a partial solution to these problems, they merit examination on a global scale.

---

101. Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 286–87 (1998).

102. ANNAN, *supra* note 53, at 70.

V. DISAGGREGATED DEMOCRACY

Adding another type and even layer of institutions to the existing patchwork of inter-governmental, transgovernmental, and transnational global governance structures still seems a rather ad hoc approach to addressing a fundamental democracy deficit above the level of the nation-state. As Keohane and Nye observe, it cannot address the more fundamental democratic problem, which they identify as a lack of intermediating politicians directly responsive to the electorate.[103] It is possible to do better, but only in the context of a rethinking of the elements of democratic legitimacy. Here, it is helpful to return to the broader frameworks for democratic governance set forth by scholars pondering the conundrum of the EU democratic deficit.

These scholars include Giandomenico Majone, Karl-Heinz Ladeur, Christian Joerges, Jürgen Neyer, Charles Sabel, Joshua Cohen, Oliver Gerstenberg, Fritz Scharpf, Renaud Dehousse, Gunther Teubner, Joseph Weiler and many of their co-contributors and critics in various collective research projects designed to identify and reimagine the structures of EU governance over the past decade. The debates to date have proceeded more or less dialectically, with different individuals or teams of scholars attacking each other and proffering an alternative vision as the only or at least the best account of democratic legitimation. For the purposes of this essay, it is particularly important to understand that some of the strongest claims of a democratic deficit in the EU focus precisely on the phenomenon of comitology.

Joseph Weiler points out that although the self-appointed guardians of European democracy have long focused on the supranational features of the EU, chiefly the Commission and the Court, it is now "time to worry about infranationalism—a complex network of middle-level national administrators, Community administrators, and an array of private bodies with unequal and unfair access to a process with huge social and economic consequences to everyday life."[104] To dramatize the point, he adds: "Consider that it is even impossible to get from any of the Community institutions an authoritative and mutually agreed statement of the mere number of committees which inhabit that world of comitology."[105] Along similar lines, Beate Kohler-Koch reacted with incredulity to a claim by Christian Joerges and Jürgen Neyer that the deliberative processes of comitology in fact enhance democracy within the Community. She retorted: "None other than comitology, that

103. The Club Model, *supra* note 30, at 13.

104. J.H.H. Weiler, *To Be a European Citizen—Eros and Civilization*, 4 EUR. J. PUB. POL'Y 495, 512 (1997).

105. *Id.*

notorious system of inter-bureaucratic negotiation-diplomacy that even parliamentarians wish to abolish in the interest of democracy, is supposed to bring an element of democratically-legitimated politics into the Community?"[106]

The networks that comprise comitology differ from the global government networks described here in many ways, not least that they operate within a self-consciously integrating community of nations that has delegated a substantial degree of sovereignty to a set of intergovernmental and supranational institutions. Nevertheless, it is also possible to identify many similarities, beginning with the desire to achieve cooperative outcomes at the international level without committing either power or personnel to an autonomous international institution.[107] Most important, the debate about comitology as either a source of or a solution to the democracy deficit in the EU not only prompts proposals for specific measures that could be taken on a European or global scale, it also creates a catalyst for rethinking more fundamental ideas of democracy in the face of problems and institutions whose scope and scale seem to defy popular participation or control.

This section offers a brief and sharply simplified overview of some of the most important positions staked out in the European debate.[108] A longer-term effort to develop a framework within which to understand and justify the distinctive contribution of global transgovernmental networks to global governance is likely to be most successful if it can synthesize a number of different arguments about the relationship between government networks and democratic values. As a first step, it is possible to isolate some of the most important legitimating arguments about transgovernmentalism (or infranationalism, in Weiler's parlance) in the EU, including arguments about delegation to independent agencies, the possibilities of deliberative supranationalism, a reimagination of the essential possibilities of individual self-governance in a heterarchical society, and democratic experimentalism.

At a very deep level, these different arguments proceed from different conceptions of democracy. Arguments about delegation to

106. Beate Kohler-Koch, *Die Europaeisierung nationaler Demokratien: Verschleiβ eines europaeischen Kulturerbes?* [*The Europeanization of National Democracies: Deterioration of an European Cultural Heritage?*], *in* DEMOKRATIE, EINE KULTUR DES WESTENS? 277 (M. Th. Greven ed., 1998).

107. John A.E. Vervaele, *Shared Governance and Enforcement of European Law: From Comitology to a Multi-level Agency Structure?*, *in* Joerges & Vos, *supra* note 23, at 137.

108. For a somewhat different typology that nevertheless draws the same basic distinctions between non-majoritarian views, deliberative supranationalism, and post-modern market regulation, see Michelle Everson's account of three "constitutional" models of the internal model polity. Michelle Everson, *The Constitutionalisation of European Administrative Law: Legal Oversight of a Stateless Internal Market*, *in* Joerges & Vos, *supra* note 23, at 298–305.

non-majoritarian institutions and deliberative supranationalism, although often at loggerheads with one another, nevertheless all proceed from a fairly traditional conception of vertical representative government, in which the principal question is how to design state institutions "above" the citizens they represent to represent them as well as possible. "Post-modern" arguments about individuals with multiple selves operating in multiple parallel fora to advance their interests and develop their identities rest on a more horizontal conception of democracy, a challenging yet empirically grounded vision of the ways in which self-government can take place in settings that are neither public nor private and that exist in a space between hierarchy and anarchy.

In a world in which the basic unit of operation is not a unitary state but a disaggregated state, meaning that the elements of both government within the state and governance between and above states are different government institutions, both conceptions are important. No amount of post-modern theorizing and prostration before the gods of technology is likely to displace the very basic concept of electoral accountability on as small a scale as possible consistent with a minimum level of government effectiveness. On the other hand, the impossibility of fully "reaggregating" the state in a tidy democratic package will ultimately require a much more sophisticated understanding of networks and the interaction of nodes in a network with each other, whether individual or institutional. A successful synthesis of these two approaches—at least for the purposes of reconciling many of the functional and ideational needs of global governance—will be a vision of disaggregated democracy.

A. *Vertical Democracy*

A first and familiar effort to legitimate transgovernmental networks is through an appeal to the desirability of de-politicization. In this view, politics means rent-seeking and deal-making, messy processes that prevent adoption of the "optimal" policy. Insulating specific policy areas by delegation to independent technical experts will produce much better outcomes for the society as a whole, reflecting the supposed choices of a hypothetical median voter.[109] In addition to this democratic justification,

109. Majone's mode of argument assumes a "right answer" that the public trusts experts to adopt. Andrew Moravcsik offers an alternative argument from equality, claiming not that independent agencies will produce correct policies, but rather policies that are closer to the desires of the median voter or a broad social consensus in favor of equity. Andrew Moravcsik, *Federalism in the European Union: Rhetoric and Reality*, *in* THE FEDERAL VISION: LEGITIMACY AND LEVELS OF GOVERNANCE IN THE UNITED STATES AND THE EUROPEAN UNION 161, 181–82 (Kalypso Nicolaïdis & Robert Howse eds., 2001); Andrew Moravcsik, *Europe's Integration at Century's End*, *in* CENTRALIZATION OR FRAGMENTATION? EUROPE FACING THE

Majone also advances an argument from effectiveness, suggesting, "today the main reason for delegating powers is the need to make credible policy commitments."[110]

A second alternative is an updated model of deliberative democracy, in Habermasian more than Madisonian terms. Christian Joerges and Jürgen Neyer originally advanced the concept of "deliberative supranationalism" as both a normative and a positive paradigm of EU governance, based on extensive research into the formation of European foodstuffs policy.[111] Empirically, they found that government representatives on the various foodstuffs committees do not bargain based on national positions. Rather, they

> not only learn to reduce differences between national legal provisions but also to develop converging definitions of problems and philosophies for their solution. They slowly proceed from being representatives of national interests to being representatives of a Europeanized inter-administrative discourse characterized by mutual learning and an understanding of each other's difficulties in the implementation of specific solutions.[112]

Normatively, Joerges and Neyer argued that the EU committee system "must be based upon, and controlled by, constitutional provisions favouring a 'deliberative' style of problem solving."[113] The result will be a "vision of a law of transnational governance, which would avoid both the pitfalls of intergovernmentalism and of building up a centralised technocratic governance structure."[114]

Two years later, after responding to many attacks along the lines of those quoted from Weiler and Kohler-Koch above, Joerges tempered his original optimism but nevertheless continued to insist on at least the

---

CHALLENGES OF DEEPENING, DIVERSITY, AND DEMOCRACY 1, 51 (Andrew Moravcsik ed., 1998).

110. Majone, *supra* note 71, at 270.

111. *The Constitutionalisation of Comitology*, *supra* note 23, at 292–98; Christian Joerges & Jürgen Neyer, *Transforming Strategic Interaction into Deliberative Problem-solving: European Comitology in the Foodstuffs Sector*, 4 J. EUR. PUB. POL'Y 609, 610 (1997) [hereinafter *European Comitology in the Foodstuffs Sector*].

112. *European Comitology in the Foodstuffs Sector*, *supra* note 111, at 620. In a later article, Joerges described the research questions he and Neyer posed to determine the deliberative quality of comitology decision-making as follows: "[d]o those involved start from fixed positions which they then try as far as possible to push through in the committee meetings, or are they ready to take critical objections to their views seriously and be persuaded by argument?"; and "[d]o the discussants recognise standards of argument able to promote the reaching of a basic consensus, shared by all, on the 'common weal'?" Christian Joerges, *"Good Governance" Through Comitology?*, *in* Joerges & Vos, *supra* note 23, at 319.

113. *The Constitutionalisation of Comitology*, *supra* note 23, at 282.

114. *Id.* at 287.

possibility of "good governance through comitology."[115] Here he offers deliberative supranationalism as a "normative yardstick" by which to evaluate the legitimacy of the EU as a multi-level governance system.[116] Although he recognizes many problems with the existing comitology system, he nevertheless insists on the possibility of designing rules and procedures to establish deliberative politics within transgovernmental networks. The architects of such a system should seek to structure "*national* decision-making processes by the imposition of supranational standards," particularly designed to check "parochial interests" and ensure that "foreign concerns" be given equal consideration.[117] They should also seek to establish "transnational 'regimes'" that would be structured to encourage "deliberative problem-solving procedures" instead of intergovernmental bargaining.[118]

Joseph Weiler, among others, remains unconvinced. He recognizes the force of Joerges and Neyer's data as supporting a major paradigm shift, forcing students of the EU decision-making to wrestle with infranationalism as well as supranationalism and intergovernmentalism.[119] He accepts that infranational decision-making has its own particular characteristics, including a remarkable degree of autonomy, polycentricity, administrative and managerial orientation rather than constitutional and diplomatic, and "a *modus operandi* which is less by negotiation and more by deliberation."[120] But, in his view, it is definitely not democratic. It "is a microcosm of the problems of democracy, not a microcosm of the solution."[121] It is fatally flawed by the inevitably elitist identity of the participants in these networks, their corresponding biases in making vitally important public decisions and their unawareness of these biases, and the impossibility of creating equal access to these networks without destroying the very conditions that make them work as deliberative bodies.[122]

Note that Joerges never claims that transgovernmental deliberation is "apolitical" in any way. On the contrary, he rejects the idea of delegation to "technical" experts on both empirical and theoretical grounds, noting

115. Joerges, *"Good Governance" Through Comitology?*, *supra* note 112, at 311.
116. *Id.* at 313.
117. *Id.* at 315.
118. *Id.*
119. J.H.H. Weiler, *Epilogue: "Comitology" as Revolution—Infranationalism, Constitutionalism and Democracy*, *in* Joerges & Vos, *supra* note 23, at 339. Weiler describes this "third paradigm" as addressing "a meso-level reality which operates below the public macro and above the individual micro [and] is not a reflection of the State-Community paradigm." *Id.* at 342.
120. *Id.* at 342–43.
121. *Id.* at 349.
122. *Id.* at 348–49.

"no national constitutional state has ever given *carte blanche* to expert committees" and denying the possibility of a "dichotomy between a-political social regulation and political distributive politics."[123] Unlike Majone, he does not champion comitology networks as insulated from redistributors or rent-seekers, but rather as places where genuine persuasion is possible on the basis of a wider consideration of interests than purely national ones—a critical element, he argues, for democracy in a multinational space.

Further, Joerges insists that comitology is not separate from supranationalism, but rather an unavoidable part of it. It flows ineluctably from the dependency of the hierarchical elements of the EU system on de-centralized implementation systems. The participants in these systems must come together in networks to coordinate, cooperate, and solve common problems. Without a "supranational central implementation machinery headed by the Commission," national governments in the EU are forced into a "co-operative venture."[124] Thus, deliberation within transgovernmental networks is the flipside of a decision not to displace national officials with a layer of bureaucracy one step further away from the individuals they regulate.

This last point makes it easier to see how, notwithstanding their differences, both Joerges and Majone, as well as Dehousse and others in a more intermediate position, all assume a basic vertical relationship between the governors and the governed, the regulators and the regulated entities. The European level of governance still exists "above" the national level in some conceptual space; the national level in turn exists "above" individuals and groups in domestic and transnational society. The result is a two-tiered representative system in which the fundamental mechanism of self-government is the election or selection of officials who formulate and adopt rules that are then transposed back down a level in their application to the "people."[125]

B. *Horizontal Democracy*

A sharply contrasting and much more radical vision is an emerging horizontal conception of democracy, which imagines self-government as the product of a much richer set of interactions among individuals and

123. Christian Joerges, *Bureaucratic Nightmare, Technocratic Regime and the Dream of Good Transnational Governance*, *in* Joerges & Vos, *supra* note 23, at 6.

124. *The Constitutionalisation of Comitology*, *supra* note 23, at 276.

125. Joerges emphasizes the impossibility of establishing a genuine governmental hierarchy in the EU, but nevertheless identifies "'hierarchical' elements of the Europeanisation process" in conjunction with a necessary reliance on de-centralized and horizontal institutions and structures for problem-solving and implementation of EU regulations. Joerges, *"Good Governance" through Comitology?*, *supra* note 112, at 313.

groups in both private and public fora. It begins from the empirical fact of mushrooming "private governance regimes" in which individuals, groups, and corporate entities in domestic and transnational society generate the rules, norms, and principles they are prepared to live by.[126] It also takes account of important innovations in national and international administrative regulation, in which the elaboration of formal rules is increasingly giving way to "rolling best practice rulemaking."[127] The challenge is to integrate these regimes into a revised understanding of public governance. Many different scholars are elaborating this vision in different ways and are engaged in a lively debate with one another. At this juncture, however, it is possible to identify three more or less distinct elements of this type of analysis.

First is a different conception of individual identity, premised not on a single self but on plural selves. This is a post-modern concept of the self, in which individuals define different parts of themselves by differentiating themselves from others in multiple contexts.

The second essential element is a conception of how in fact individuals organize themselves to flourish and solve problems both as autonomous beings and as members of society. The labels here proliferate—heterarchy, polyarchy, polycontexturality—but the fundamental idea is the same. Individuals are able to organize themselves in multiple networks or even communities that are "disembedded" from traditional state structures but that are nevertheless "communicatively interdependent" in the sense of being able to compile and cumulate knowledge, problem-solving capacity, and normative frameworks. They are self-organizing, self-transforming, and de-territorialized. A fundamental dimension of this vision is the perception that the traditional separation between the formulation and application of rules is being dissolved by technology, a development that is in turn undermining "a shared common knowledge basis of practical experience."[128] Instead, public and private actors are coming together to develop new ways of "decision-making under conditions of complexity."[129]

The third element is a revised conception of the state. Participants in these multiple, parallel networks, both domestic and transnational, face a continuous stream of problems and require a continuous stream of knowledge both about each another and about their counterparts in other networks. The state's function is not to regulate directly, but rather to

126. Gunther Teubner, *Breaking Frames: The Global Interplay of Legal and Social Systems*, 45 AM. J. COMP. L. 149 (1997).

127. Dorf & Sabel, *supra* note 101, at 352.

128. Karl-Heinz Ladeur, *Towards a Legal Concept of the Network in European Standard-Setting*, *in* Joerges & Vos, *supra* note 23, at 156.

129. *Id.* at 161.

manage these processes by facilitating problem solving and information pooling.[130] It must also devise norms and enforcement mechanisms for assuring the widest possible participation within each network, consistent with its effectiveness.[131] To complicate matters even further, states themselves should be viewed "as co-operative networks of networks and not as sovereign units."[132]

These ideas, even as compressed and over-simplified as they are here, are all valuable in helping to explain, justify, and amplify the functions of global transgovernmental regulatory networks. They also provide a much richer context for introducing the idea of global information agencies. The ultimate task is to integrate ideas of delegation, transgovernmental deliberation, and horizontal democracy in ways that recognize the continuing existence of the territorial state and designated "public" officials but that take full and central account of the possibilities and actuality of "private" self-organization.

C. *Legislative Networks*

Even assuming a completely integrated concept of post-modern democracy, however, a key element would be missing. Elected representatives are surely not obsolete. Popular perceptions of democracy are likely to remain relatively impervious to theoretical redefinition. Dahl's very simple concept of democracy—the control of the elite by the mass—will still resonate. Government by elected representatives will still approximate this ideal in important ways.

It is thus vital to add legislative networks to the existing networks of regulators and judges currently operating as an informal global governance system. Many worthy organizations exist designed to bring together the world's parliamentarians. A number of inter-governmental institutions, from the OSCE to NATO, have parliamentary assemblies composed of national legislators, many of which play a more important role than is often realized. Nevertheless, with all the summits of heads of government, central bankers, finance ministers, justice ministers, environmental ministers, and even judges, the absence of meetings among powerful national legislators is striking.

Former senator Jesse Helms, then-chair of the U.S. Foreign Relations Committee, finally went to the U.N. to meet the assembled ambassadors. He did not go, however, to meet his counterparts in control

130. This combination of direct participation in problem solving combined with constant, structured information pooling and benchmarking lies at the heart of Dorf and Sabel's vision of democratic experimentalism. Dorf & Sabel, *supra* note 101, at 286–89.

131. *See* Cohen & Sabel, *supra* note 23, at 332–33.

132. Ladeur, *supra* note 128, at 166.

of foreign relations committees in legislatures around the world. With the advent of President Vicente Fox in Mexico, however, Senator Helms agreed to a meeting between his committee members and their counterparts in the Mexican legislature.[133] Groups of legislators from around the world have also met to share ideas and initiatives on legislation in specific issue areas, such as human rights and the environment. But before entertaining any more ideas for a global parliament,[134] national policymakers should focus on creating global or at least regional legislative networks.[135]

VI. CONCLUSION

Global governance is taking place through global networks of national government officials. These networks can exist within international institutions, within the framework of inter-governmental agreements of various kinds, and on their own as spontaneous responses to the need to interact to coordinate policy and address common problems. This typology is hardly the only way to identify and categorize different types of transgovernmental networks; it would be equally possible and probably useful to distinguish them in terms of the different functions they perform, such as rule-making versus enforcement, or in terms of the different degrees and even types of power they can exercise.[136]

This particular typology, however, helps illuminate different types of accountability concerns. It appears to reflect varying degrees of democratic input and control, depending on the extent to which the elected representatives of the people were ever consulted as to the desirability of establishing such networks, much less their actual operation. It also allows us to see international institutions as just another framework for the operation of transgovernmental networks, at least in many cases. Genuine supranational bureaucracies certainly exist, but they are far smaller than might be supposed.

Here also is the parallel to the EU. The networks of national government officials who comprise the comitology system exhibit many of the same characteristics of transgovernmental networks more generally,

133. William Safire, Essay, *Fox, Bush and Helms*, N.Y. TIMES, Apr. 2, 2001, at A15.

134. *See* Richard Falk & Andrew Strauss, *Toward Global Parliament*, 80 FOREIGN AFF. 212 (2001).

135. *See* Shirley Williams, *Sovereignty and Accountability in the European Community*, *in* THE NEW EUROPEAN COMMUNITY: DECISIONMAKING AND INSTITUTIONAL CHANGE 155 (Robert O. Keohane & Stanley Hoffman eds., 1991).

136. Vervaele, for instance, distinguishes enforcement networks from other types of networks. Vervaele, *supra* note 107, at 135.

including perceptions of their lack of legitimacy. It is thus possible to borrow specific solutions from the EU context, such as the creation of global information agencies.

In the final analysis, however, disaggregated decision-making by national government officials who have a loyalty both to their national constituents and to the need to solve a larger problem in the interests of people beyond national borders requires a more sophisticated concept of disaggregated democracy. Developing such a concept is likely to require a synthesis of anti-majoritarian rationales, deliberative politics, and self-actualization through networks of every kind. The task ahead is to develop such a synthesis in such a way that it can be both operationalized and actually communicated to the people it is supposed to serve.