

## DEMOCRATIZING THE NEW GLOBAL PUBLIC SPHERE

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Shorter revised version published as "Democratizing Globalism", in Daniel Drache (ed.) *The Market or the Public Domain : Global Governance and the Asymmetry of Power*. Routledge, July 2001, pp. 335-359

### GLOBAL GOVERNANCE AND THE NEW PUBLIC SPHERE

In the closing days of the old millennium, the world's leaders stumbled uncomprehendingly into a political crisis at the Seattle meeting of the WTO's Ministerial Council, as the determined protests in the streets contrasted sharply with the indecision and political deadlock in the conference rooms. The debacle at Seattle was entirely predictable, and had indeed been foreshadowed, most notably by the failure of the OECD negotiations for the proposed Multilateral Agreement on Investment (MAI) (Picciotto and Mayne 1999).

As with the MAI, the Seattle failure had two main, interacting components. First, the complexity of the issues involved in regulating the new global economy. Since the mid-1990s the mantra of 'more liberalization' lost its cogency, as the vast range and intricate interrelationship of policy issues created by globalization became increasingly apparent. This was manifested in the disagreements among WTO delegations, and especially in the strong stand taken by developing countries that the WTO should deal with its built-in post-Uruguay Round agenda before embarking on an ambitious new negotiation aiming to reduce economic 'barriers'. This in turn highlighted the second factor, the inadequacy of the political processes underpinning such negotiations, leading many to call for reforms of the WTO's decision-making procedures. Both these factors were starkly exposed, as the WTO was caught in the unaccustomed spotlight of the world's media by the well-organised protests orchestrated by a wide range of activists.

Political elites have been slow to respond to these new challenges. Much thinking remains stuck in the neo-liberal mindset which dominated the decade and a half between 1979 (abolition of UK exchange controls by the newly-elected Thatcher government), and 1994 (signature of the Marrakech agreement establishing the WTO and its acceptance by the US Congress, followed at the year's end by the Mexican financial crisis and the Chiapas rebellion). During that period, the relentless pursuit of 'open markets' created a deregulatory dynamic, undermining national political and social structures by dismantling the postwar institutional compromise of 'embedded liberalism' (Ruggie 1982). However, it also entailed a complementary process of re-regulation (Majone 1990, Picciotto 1996-7). In many ways the process misleadingly described as 'globalization' was not simply the product of economic forces, but was also a political construct. Indeed, national regulatory reforms have often facilitated the globalization of markets, and the process of re-regulation has in many cases entailed a complex interaction between national and international, public and private sector initiatives.

At the same time, critics of neo-liberalism have been slow to develop cogent alternative perspectives, and have found themselves defending outdated models of

classical liberal internationalism and national state autonomy. Too often they neglect the significant changes in the form and functions of the state, or the public sphere more generally, which have resulted from widespread experiences of state failure. This encompasses not only the collapse of state socialism, but also crises and radical reforms of developed capitalist states, including US regulated corporatism, European-style social-democratic welfare states, and the developmental states of Japan and the Asian 'tigers'. The reasons have been equally diverse, and have involved a mixture of political and economic factors. Nevertheless, these processes can be seen to have much in common, involving a transition to post-industrial capitalism, or has been called the Information Age (Castells 1998).

In fact, although there has been much political talk of 'rolling back the state', the process has largely consisted of remodelling the 'public' sphere of politics and its relationship to the 'private' sphere of economic activity. This is shown even by crude measures such as state expenditure as a proportion of GDP, which has scarcely fallen despite extensive 'privatization'. At the same time, major transformations have also been occurring in the forms of organization of so-called private enterprise, that is to say the business economy dominated by the giant corporation. Large-scale mass manufacturing has been reorganized, and the centralized bureaucratic firm has become the 'lean and mean' corporation, concentrating on its 'core competences', but operating within a web of strategic alliances, supplier chains, and financial and governmental networks (Harrison 1994).

These changes have in many ways been driven by social pressures from below. There have been widespread revolts against autocratic power in the family and the factory, the classroom and the boardroom. These generally entail a rejection of authoritarian domination and the power to control truth embodied in tradition, involving demands for increased personal freedom and dignity, equality (notably, between women and men), and the ending of coercion (Giddens 1999). Rather than the desire for economic liberalization bringing about political democratization, as suggested by triumphant liberalism, it has been the struggles against autocracy that have created an opening for economic liberalization. Nevertheless, while undermining patriarchy and hierarchy, these anti-authoritarian movements have also paved the way to post-industrial capitalism, with its emphasis on information-management, flexible working and a global outlook.

These changes have undoubtedly been very liberating for some, who in many ways constitute a new global elite, but the benefits have been limited, partial and exclusionary. Certainly, most people in Western Europe and North America enjoy higher living standards, and many in Asia and Latin America have felt some of the benefits of development. At the same time, there has been an increased polarization both within and between states: the gap between rich and poor states has continued to widen, while income inequality has increased even in developed countries; marginalization, poverty and social exclusion affect both the underclass in developed countries, and wide regions of underdevelopment, especially in Africa (Castells 1998, vol. III ch. 2). Also, many of those who have benefited materially have nevertheless experienced greater insecurity and alienation, and the disintegration of traditional social bonds has led to new assertions of identity, sometimes destructively based on ethnic or cultural exclusivity.

## CONSTITUTING THE NEW GLOBAL PUBLIC SPHERE

### *Global Governance Networks and Technocratic Legitimacy*

It is in this light that we must consider what is involved in the new emphasis on the role of the state, highlighted in the World Bank's 1997 *World Development Report: the State in a Changing World*, and the shift towards the 'post-Washington Consensus'. Two points are especially striking. Firstly, the emphasis is almost entirely on the failings of the national state, with very little attention being given to international or global structures. Secondly, the appropriate role and forms of public action are generally discussed as a technical matter, and in the terminology of the 'market-friendly' state, whose role is essentially to remedy 'market failures'.

The modified Washington Consensus focuses on what is generally referred to as 'governance' or 'regulation', both terms which imply a technicist view of social management. This makes it easier for international organizations and their officials to become involved with institutional matters without apparently intruding into the 'political' sovereignty of national states. These concepts are also often used to legitimize the increasingly important role of a variety of professionals operating in the increasingly large interface between the state, which has been substantially 'privatized', and the 'market', which is dominated by corporate networks.

However, the process can also be seen as involving the emergence of new kinds of 'networks of power' in the international political economy (Strange 1994). The changing patterns of state-market coordination can also be seen as resulting from failures of government or political control, and the shifts in the character and relationships of private and public institutions as responses to the increased complexity of social issues (Kooiman 1993). The transformation of 'Fordist' large-scale industrial production and centralized planning systems (both state and corporate), involves the emergence of more flexible and interactive modes of production and distribution based on information technologies. Equally, the process of fragmentation of the public sphere offers the prospect of more decentralized and interactive political processes.

Thus, the question of democracy is at the heart of the debates about the nature of the systems of 'multi-layered governance' which increasingly characterise the global public sphere. Analysts have pointed to the functional fragmentation of the public sphere, involving the delegation of specific tasks and powers to specialised bodies, which perform a 'public' role, but have a mixed state-private structure or composition. Thus, considerable autonomy or independent authority is now given, for example to central banks in setting interest rates, financial market regulators and bank supervisors, competition authorities in validating business structures, patent offices in granting monopoly rights over new technologies, and technical or scientific specialist bodies in setting environmental or food safety standards. This process of fragmentation (Picciotto 1997) has facilitated and been accompanied by the growth of ad hoc international networks coordinating these regulatory activities. To characterise these as 'governmental networks' only partly captures the phenomenon, since it suggests a relatively orderly and natural growth of cooperation between various government agencies and officials, although certainly offering a very different picture from the traditional assumptions that international relations are conducted between unitary states (Slaughter 2000). The issue is very different if the transition from

`government' to `governance' is seen as entailing a change in the form of statehood more generally, and not only in modes of international coordination.

These questions have become a particular focus of debate in relation to the EU, which in many ways has been the catalyst and paradigm of the emergence of multi-level governance. Yet only very recently has the `normative' debate about the `democratic deficit' of the EU begun to be integrated with `functional' analyses of its decision-making structures (Kohler-Koch 1999, 16; Craig 1999). Even if it can be agreed that the EU's multi-level system entails a new form of `network governance', its characterization involves both functional and normative evaluation (Kohler-Koch 1999). This can be seen, for instance, in the divergence between the views of Majone, who advocates the further development of autonomous specialised agencies as an appropriate model for the European `regulatory state' (Majone 1993, 1996, 1998), and those of Joerges and Neyer, who claim that the complex networks of the EC's `comitology' system constitute a form of `deliberative supranationalism' (Joerges and Neyer 1997; Joerges 1999). Consideration of such alternatives entails a judgement about legitimacy as much as functional efficacy.

A central issue, undoubtedly, is the continued growth of technocracy and rule by experts, which can be seen as part of general changes in the nature of power, a shift to the politics of expertise (Radaelli 1999). This creates a tension with democracy, which might be reconciled in two broad ways. Advocates of pure technocracy suggest that it provides its own legitimation, since the professional judgement of experts is more able to discern what is in the best interests of society as a whole than can political conflicts among competing interests. Such elitism has been resorted to not infrequently, even in so-called mature democracies, but usually as a partial or temporary expedient rather than as a long-term solution to political failures. The more common perspective confines technocracy to the devising of the most efficient means of achieving ends which are decided by more explicitly political processes. This rests on a particular concept of rationality, which is essentially instrumentalist (accepting a radical separation of means and ends) and formalist (asserting the overriding general validity of conclusions which are based on abstract assumptions made for the purposes of a specialised epistemology). The evident inadequacies of this concept, both theoretical and empirical, have led some to a relativism which repudiates both rationality and democratic politics. More positively and optimistically, however, there has been a return to classical Aristotelian concepts of practical and discursive rationality, which can and indeed must be underpinned by new forms of democratic deliberation (Dryzek 1990). Far from being confined to the realms of theory, the development of new forms of democratic participation and public deliberation has resulted from the experience of the failures and public suspicion of technicist bureaucratic and managerialist decision-making (Shrader-Frechette 1991).

This provides a different perspective on the issue of the `democratic deficit' of international institutions. The frequent reluctance to accept that this is a problem, or scepticism about the possibility of any solution, is generally based on an acceptance of the moderate version of technocracy identified above, combined with adherence to a simple electoral representative model of democracy. The modified technocracy view supports claims that international regulatory networks do not create a problem of legitimacy, since they provide purely technical means of cooperation among officials and experts, subject to monitoring and approval by national governmental processes

which provide the legitimation (Slaughter 1997). Indeed, they can be said to facilitate intergovernmental relations, since these specialised 'epistemic communities' can facilitate the resolution of global policy issues by dealing with detailed and essentially technical aspects, thus 'narrowing the range within which political bargains could be struck' (Haas 1992, 378). To the extent that this relies on a value-neutral view of technocratic expertise, it may be challenged both theoretically and empirically. It may well be true that some difficult policy decisions become more tractable if salient aspects can be dealt with by specialists working within a common epistemology and insulated from national political or social concerns and pressures. However, this must inevitably raise questions about accountability, as can be seen from the difficulties experienced by governments in obtaining domestic acceptance of the results of this type of international decision-making.

The link between the modified technocratic view and standard models of representative democracy can readily be seen in the argument recently put forward by Robert A. Dahl, that international organizations (including the EU) are, and can only be, bureaucratic bargaining systems among élites. This clearly flows from his view that the problem of 'delegation', already great for national representative systems, becomes insuperable for international politics (Dahl 1999). Certainly, no-one seriously envisages the possibility of a global government based on the pattern of representative democracy, and the greater awareness of the importance of locality and diversity resulting from globalization renders it less believable or indeed desirable. However, this should not end the search for principles of democracy appropriate to the global public sphere.

Indeed, it can be said that new principles are also called for at the national level, resulting from the tensions of representative democracy as a form of government, and the ways in which it is being transformed. Bernard Manin has comprehensively and convincingly analysed the progressive breakdown of party-democracy, in which parliaments became a register of the relative force of clashing interests which governments aimed to resolve by compromises. He sees public disillusion with politics as resulting from the rise of a new form of 'audience representation', in a context of greater complexity and unpredictability, in which professional politicians offer to the electorate a choice among images which are 'highly simplified and schematic political representations' (Manin 1994, 163; Manin 1997). Opinions on specific issues are no longer pre-formed or defined by group political identities, and hence must be formulated and developed through debate in various public forums, although such debate is dominated by communications media that are perhaps less partisan, but more prone to drama and sensationalism. This again indicates the importance of ensuring that government takes place within a broader framework of debate and decision-making which is open to the active direct involvement of issue groups and concerned citizens.

Thus, democratization of global governance is not a matter of creating a global version of an already outdated national model of representative democracy, but part of a more general process of the development of new democratic principles responding

to changes in the character of the public sphere.<sup>1</sup> The meaning and content of globalization are as much political as economic questions: the construction of global governance has been under way for some time, but it has been dominated by international elites. The issue now is whether it is possible to provide democratic legitimacy through appropriate constitutional principles, in the broad sense of ensuring the allocation and exercise of public power in ways that can be responsive to the values and preferences of those affected by relevant decisions.

### *Constitutionalizing Global Governance through Human Rights*

Increasingly, proposals are being put forward to constitutionalize the global public sphere by the introduction of human rights principles. These aim to provide a counterweight to globalization based on the neo-liberal dynamic of the removal of barriers and the unleashing of the forces of economic self-interest, by introducing obligations of respect for human values. International human rights principles were developed in the second half of the 20<sup>th</sup> century as obligations on states; they have generally been kept separate from other state obligations, and in particular have not been considered relevant for international economic conventions or institutions. Now suggestions are being made for the application of human rights obligations to the activities both of private actors, particularly transnational corporations (TNCs), and international economic organizations and institutions.

The movement to apply human rights obligations to TNCs results from more general pressures to apply social responsibility standards to their operations (cite to Kell and Ruggie chapter in this volume - or if not, UNCTAD 1999, ch.XII). Fearful of damage to their reputation and brand image among customers and their own employees, many TNCs have declared their adherence to environmental and social responsibility and human rights norms, and have adopted codes to apply within the organization and often to sub-contractors (Picciotto and Mayne 1999; Addo 1999). On the initiative of UN Secretary-General Kofi Annan, the grandly-named UN Business and Human Rights Global Compact was declared, operating through a website.<sup>2</sup> The aim is to counteract criticisms of the negative effects of liberalization by encouraging globalization with a human face. However, many questions remain about the likely practical impact of these high ideals.

At the same time, it has been suggested that international economic organizations should also ensure that their operations both comply with human rights standards, and actively promote the achievement of these rights. This raises questions especially for the World Bank and the IMF, whose mandate is essentially economic, and indeed forbids interference in the internal politics of states. However, attacks on these

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<sup>1</sup> Anne-Marie Slaughter, who is generally sceptical of criticisms of the 'democracy deficit' of intergovernmental networks, rests much of her case on the shift in the nature of power to 'soft power', based on persuasion rather than coercion or inducements, and concedes that 'We may need to develop new metrics or even new conceptions of accountability geared towards the distinctive features of power in the Information Age' (Slaughter 2000, 195).

<sup>2</sup> <http://www.unglobalcompact.org/gc/UNWeb.nsf>

organizations for the negative welfare effects especially of the structural adjustment policies imposed on many countries has led them to give a broader scope to their developmental concerns; certainly the issue of 'good governance' can readily be said to include the promotion not only of economic, social and cultural rights, but also of civil and political rights (Bradlow 1996, Skogly 1999). Hence, they have begun, albeit with some caution, to articulate human rights criteria (World Bank 1998; Gianviti 1998). The increasing controversy surrounding the WTO, especially following the Seattle failure, led to proposals for its constitution also to include concern for human rights (Petersmann 2000).

Such proposals seek to establish a foundation of legitimacy for global economic liberalization by resorting to prescriptions for universal rights and principles of justice. This does not entail any extension of democratic participation into the international sphere: the aim rather is to ensure the adoption of the existing model of liberal democracy in national states, bound together within a strong framework of international law and institutions embodying individual human rights. The suggestion that these rights extend to a right to democracy, which means an obligation on states to be democratic, derived from international law (Franck 1992) is somewhat contradictory, given the deeply undemocratic character of international law itself (Crawford 1994).

For some advocates of this approach, 'equal rights of the citizens may offer the most effective strategy for compensating the "democratic deficit" of international organizations' (Petersmann 1998, 28). This would actualize Kant's vision of 'Perpetual Peace', based on a confederation or League of republican states which would renounce war and pursue reciprocal economic benefits through trade, under an umbrella of principles embodying individual cosmopolitan rights (Kant 1795/1966). This implies an ultra-liberal view, which assumes that the pursuit of individual self-interest, especially through economic exchange, is ultimately beneficial to all, so that the development of principles embodying individual rights, and the adjudication of conflicting rights-claims, would be sufficient to ensure universal consent and legitimacy. This would therefore justify even the entrenchment of internationally-agreed principles so as to override national parliamentary supremacy, to secure the 'effective judicial protection of the transnational exercise of individual rights' (Petersmann 1998, 26).

However, it is political processes that must decide who should have what rights. This was seen, for example, in the debates around the MAI, which was criticized on the grounds that it would grant strongly enforceable rights for corporations and investors without any concomitant responsibilities, while imposing 'disciplines' on states which would effectively diminish national regulatory capacity (Picciotto and Mayne 1999). Perhaps the WTO would be improved if it recognised, for example, rights for farmers and indigenous people, to counterbalance those of firms such as biotechnology companies, for patent protection in the TRIPS agreement. Certainly, campaigners have focused on the right to refuse patent protection on the grounds of '*ordre public* and morality', permitted by art.27 of the TRIPS agreement, to argue for ethical limits on the extent of patent protection (Drahos 1999; Beylefeld and Brownsword 1998). However, the evaluation of the complex issues surrounding biotechnology and its commercialization cannot adequately take place simply through adjudication of competing rights-claims. The introduction of broader human rights concerns into

international economic agreements and institutions could have some positive effect if it alerts those bodies to the need to evaluate their decisions and policies in terms of broader human values and social concerns, and not just a narrow view of economic efficiency.

Others have put forward somewhat modified, neo-Kantian models, which accept the need for a strengthening of the international institutional framework to provide an underpinning for 'cosmopolitan democratic public law'. However, it is not clear how this may differ from what I have described as the ultra-liberal model, somewhat reinforced by improving the representativeness of regional and international organizations.<sup>3</sup> There are clear contradictions and limits to the neo-Kantian models,<sup>4</sup> and a new approach should begin by more adequately taking into account the ways in which the new forms of global socio-economic integration, the changed nature of the state and the fragmentation of the public sphere entail new modes of accountability and hence new democratic forms at all levels. Without a democratization of the global public sphere, a radical liberal vision of cosmopolitan citizenship and universal individual rights would lack any substantial democratic content, and could even undermine existing national democratic structures.

### **DEMOCRATIC PARTICIPATION AND DELIBERATION**

New concepts and forms of democratic accountability are now called for, responding to the fragmentation of the public sphere, and the more dispersed, decentralized, and multi-layered forms of regulating the exercise of social power. Indeed, this process of fragmentation both results from the limits and contradictions of previous, state-centralized forms, and also stimulates new forms of legitimation. The very decentralization of decision-making itself entails and provides opportunities for accountability, since power is less concentrated. To that extent it is accurate to see a connection between liberalization and increased liberty and even accountability. The dispersal of decision-makers provides checks and balances, since a decision by one committee or regulator is rarely definitive. The much greater opportunities for strategic behaviour and regulatory arbitrage generates regulatory competition, which has the potential for ratcheting standards up as well as down. Although this tends to favour those with greater opportunities for mobility, and to destabilize and thus downgrade existing, socially-embedded regulatory arrangements and capacities, it also opens up prospects for strategic actions by new types of citizen groups and social organization (Braithwaite and Drahos 2000). This helps to explain the mushrooming

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<sup>3</sup> This appears to be the argument of David Held: see Held 1995, 1997, and its evaluation by Dryzek 1999.

<sup>4</sup> These are explored in Bohmann and Lutz-Bachmann 1997, although the various contributors are generally concerned for various reasons to rescue what can be salvaged rather than look for a new approach. As the Editors of the collection point out in their Introduction, 'Escaping the dilemmas of despotism and fragmentation remains the most difficult institutional challenge of a cosmopolitan order; showing how the public use of reason permits both unity and difference is a task that the Kantian conception of reason has yet to solve' *ibid.* p. 18.

growth of internationally-active issue-oriented social movements broadly described as Non-Governmental Organizations (NGOs).

However, the constitution of democracy requires the formulation of principles, adapted to the emerging forms of the new public sphere, but which explicitly aim to structure it to ensure the most effective forms of popular participation. The dangers of liberalization and globalization are that they unleash socially destructive behaviour based on the competitive pursuit of self-interest, as existing normative and institutional restraints are undermined or dismantled.

New democratic constitutional principles should foster active deliberation by citizens, based on the articulation and evaluation of values, in a variety of public forums and institutions. The most helpful and relevant approaches, in my view, emerge from the work of political theorists arguing for new forms of direct democracy based on deliberative principles, and aiming to contain or counterbalance instrumental rationality by fostering public debate and decision-making through communicative interaction and reasoning.<sup>5</sup> They attempt to respond to the challenge posed to both liberal and republican (or communitarian) democracy by social fragmentation, which generates a politics of identity, often based on the view that differences are unassimilable (Benhabib 1996).

In fact, new forms of active citizenship and political action have been developing, often around the local and national impact of regional or global policies. The recognition that the public sphere has become fragmented into multiple intersecting networks and overlapping jurisdictional spheres emphasises the importance of building democratic participation through new political principles, institutions and practices. These should recognise the diversity of political sites in which public policies are developed and implemented, also involving processes of reflexive interaction between these sites.

Such principles must attempt to transcend the two main traditional constitutional models, which are increasingly proving inadequate for the contemporary phase of globalization. On the one hand liberal conceptions, based on a view of society as composed of individuals pursuing their self-interest or pre-formed 'preferences', see the role of the polity as complementing the market, and as aiming to identify the optimal collective interest either by authoritarian means (Hobbes), or via majoritarian representative democracy (Locke). Post-industrial capitalism, with its integrated global production and marketing networks, raises a wide range of social, environmental and moral issues, which cannot adequately be resolved by aggregating individual preferences, using either authoritarian or democratic methods. The alternative model of civic republicanism rejects the narrow view of citizenship based

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<sup>5</sup> Dryzek 1990: although this approach owes much to Jürgen Habermas, I think it can avoid his unhelpful separation between the 'lifeworld' and that of technical and instrumental rationality, and the need to establish ideal, uncoerced communicative contexts. The social structures of power, including communication, should be seen in a more dialectical way, and the changes in the structure of the public sphere open up possibilities, many of which Habermas himself recognises, for reconstituting a more effective democracy, which in turn can counteract inequalities of power.

on weighing and balancing competing private interests. However, its stress on an ethical politics based on visions of the common good implies a communitarianism requiring shared values, which in today's culturally fractured world takes reactionary forms, and may generate conflict rather than consensus.

As Jürgen Habermas has suggested, whereas both these views tend to see the state as the centre, deliberative politics can be adapted to a decentered society.

'This concept of democracy no longer needs to operate with the notion of a social whole centered in the state and imagined as a goal-oriented subject writ large. Just as little does it represent the whole in a system of constitutional norms mechanically regulating the interplay of powers and interests in accordance with the market model'.<sup>6</sup>

Others also have stressed the attractiveness of a direct, deliberative form of participatory democracy for solving problems in ways unavailable to representative systems:

'collective decisions are made through public deliberation in arenas open to citizens who use public services, or who are otherwise regulated by public decisions. But in deciding, those citizens must examine their own choices in the light of the relevant deliberations and experiences of others facing similar problems in comparable jurisdictions or subdivisions of government.' (Cohen and Sabel 1997, 313-4).

In this perspective, decision-making, especially by public bodies, should result as far as possible from active democratic participation based on discursive or deliberative rather than instrumental reasoning. Instead of the pursuit of individual interests based on the assumption of fixed preferences, the aim is to go beyond an objectivist rationality (in which choices are considered to be made by reference to absolute and objective standards), without falling into the trap of relativism (Dryzek 1990). Thus, while accepting that there is no single objective standard of truth, since perspectives are always subjective (and hence epistemology is to that extent relativist), truth can be

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<sup>6</sup> Habermas 1996, p. 27. Habermas nevertheless argues that his own concept of a 'politically socialising communicative context' can be translated from the nation-state to the European sphere, which entails building 'a European-wide, integrated public sphere ... in the ambit of a common political culture' Habermas 1995, p. 306. Others have put forward neo-republican models for a 'multi-level' European citizenship (usefully summarised in Bellamy and Warleigh 1998), which imply that the republican version of participatory democracy can be translated to the European level (although this is contested by Habermas). However, it seems to me important to accept that even Europe, which has a strong institutional base and some elements of a common political culture, does not form an integrated political unit, and hence that democratic forms need significant adaptation. It is clear, for example, that the European Parliament must play a different role from that of national parliaments, and hence it must be differently organized, just as national parliaments must adapt to deal with the Europeanization of the legislative process. This is perhaps the practical political response to the debate about the 'European demos'.

said to be an emergent property of the deliberative interaction between perspectives (and hence its ontology is objective). In other words, there is an objective truth, even if we can only know it through subjective interactions; this is the most basic justification for democracy.

Deliberative democracy accepts the existence of a diversity of perspectives, and aims to facilitate interactive deliberation about values through which preferences may change, or may be accommodated to each other. An emphasis on process may help to overcome the weaknesses of this model if conceived as a political ideal, or as relying on the generation of consensus purely through the public use of reason. Crucially, account must also be taken of inequalities of power, which generate conflicting interests as well as imbalances in capacities to participate in a politics based on reasoning.

Thus, a key element is the fostering of broad participation in deliberative decision-making, rather than merely elite or expert deliberation. There is a certain tension between the two, since the deliberative evaluation of specialised knowledge or data entails a degree of insulation or autonomy from private interests and other pressures.<sup>7</sup> However, this may result in an unjustified authority being claimed by or given to the judgments of specialists or experts. Thus a key element in democratic deliberation is to ensure a fruitful interaction between various sites of deliberation, and an awareness by specialists of the conditional or contingent nature of their expert knowledge and judgements (Wynne 1992). Thus, experts should be more explicit about the assumptions behind the abstract models underpinning their evaluations, and can benefit from some input into their deliberations based on alternative perspectives and social values.

Constitutional principles should aim as far as possible to protect the public sphere from the instrumental pursuit of private interests. Clearly, subjectivity resulting from each person's experiences, background and aspirations, is inevitable, but this should be reflexively acknowledged so that individuals and groups maintain openness to the arguments of others. Above all, public arenas should be insulated from undue influence from private interests, and debate should be conducted in terms of explicitly

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<sup>7</sup> Thus, the work of Joerges and Neyer on the role of expert and scientific committees in regulatory decision-making in the EU (Joerges and Neyer 1997; Joerges 1999) characterises them as 'deliberative', in the sense that the participants approach issues open-mindedly rather than from pre-formed positions (in particular in favour of national interests), seeking to reach consensus through evaluation of valid knowledge (Joerges 1999, 320). However, they have reservations, especially about the management of the interaction between various types of committee, so that it is still questionable whether the EC committee system 'gives proper expression to the plurality of practical and ethical views which should be included within risk assessment procedures'. The conclusion seems to be that the system is certainly not a closed or homogeneous epistemic complex, but its openness is limited or haphazard, if not selective (*ibid.*, 321). Others are more explicitly critical of the ways in which the European Commission's restriction of public consultation and involvement, through its management of the committee system, has undermined the legitimacy of some decision-making in the EU regulatory networks (Landfried 1999; Vos 1999).

articulated values and aims . This objective is fundamental to the four general principles which I would put forward as constitutive of a direct-democratic, deliberative public sphere: Transparency, Accountability, Responsibility, and Empowerment. I will discuss each of these in turn, although in practice they are interdependent.

## **PRINCIPLES OF DIRECT DEMOCRATIC DELIBERATION**

### *Transparency*

Economic liberalization and globalization have led to the increasing articulation of the requirement of transparency, but it has until recently generally been directed at national governments, aiming to reduce bureaucratic obstacles to market transactions. Thus, many provisions in the WTO agreements require transparency of national regulatory and administrative procedures. This is because it is considered that regulatory measures, policies and proposals adopted by one state may, in the context of increased global economic integration, act as obstacles to market access by firms in other states. Thus, the WTO agreements include obligations not only for accessible publication of national regulations, but also for the establishment of national contact points to provide information (including translations of relevant texts), and even for prior notification of proposals for non-standard regulations with an opportunity to make comments.<sup>8</sup> Even more extensive obligations are put on states in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, negotiated through the UN Economic Commission for Europe and signed in 1998. This establishes as international obligations principles of participation, in line with Principle 10 of the Rio Declaration on Environment and Development, which have been perhaps furthest developed for environmental decision-making, due to widespread expressions of public concern and activism. This again imposes obligations on national public bodies, but the proposal that it should be ratified by the European Community<sup>9</sup> raises the question of the application of its requirements to the EU's decision-making system.

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<sup>8</sup> Notably, article 7 and Annex B of the Agreement on Sanitary and Phytosanitary Measures (SPS) requires states to notify in advance any proposals for regulations which are not based on an international standard, to 'allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account'; developed countries must provide translations of documents in English, French or Spanish. The agreement on Technical Barriers to Trade (TBT), which requires states to base their technical regulations on international standards where they exist except where they would be 'an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued', focuses on transparency of conformity assessment procedures (article 10), including the requirement for inquiry points which can provide documents at reasonable cost (and for developed countries, in English, French or Spanish). The TRIPS agreement (article 63) also includes obligations to publish and notify laws, regulations final judicial rulings and administrative rulings of general application.

<sup>9</sup> Commission proposal COM(98) 344 final.

However, there are virtually no formal provisions regarding transparency of international bodies and arenas. Indeed, intergovernmental negotiations and activities are especially opaque, and both politicians and officials generally stress the importance of confidentiality in this realm, which is often excluded from national freedom of information requirements. In the EU, it was only as a result of the legitimacy crisis which began to be recognized in the negotiation of the Maastricht treaty that principles of transparency have begun to be adopted for EU institutions.<sup>10</sup> This was finally formally recognized in the Treaty of Amsterdam signed in June 1997, and article 255 of the consolidated Treaty establishing the European Community now gives any EU citizen or resident a right of access to documents of the Council, Commission and Parliament, subject to 'general principles and limits on grounds of public or private interest', to be drawn up by the Council.

This is an exceptional, perhaps even unique, provision in an international treaty, but should be regarded as a constitutive principle for all international bodies, and indeed any serious international regulatory activity. Nevertheless, such a principle will inevitably remain ineffective if subject to broad exceptions, and if both the general rules and individual decisions on what can be revealed are left to each body to decide for itself.<sup>11</sup> Effectiveness could perhaps be improved by the establishment of

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<sup>10</sup> The Final Act of the Treaty on European Union signed at Maastricht on 7 February 1992 included Declaration No. 17, stating that 'transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration', and recommending that the Commission submit a report to the Council by 1993 on measures to improve public access to information. This resulted in the approval by the Council and Commission on 6 December 1993 of a Code of Conduct, which stated the general principle that 'the public will have the widest possible access to documents held by the Commission and the Council', but which also required the institutions to refuse access to any document whose disclosure would undermine 'the protection of the public interest (public security, international relations, monetary stability, court proceedings and investigations)', and permitted them to refuse access 'in order to protect the institution's interest in the confidentiality of its proceedings'. Journalists, MEPs and activists have waged several battles to try to ensure these exclusions are interpreted strictly, with some support from the ECJ: see *Bunyan* 1999, and *Heidi Hautala v. Council of the EU*, Case T-14/98, Judgment of Court of First Instance, 19 July 1999. Typically, this case concerned foreign policy: the Council's refusal to supply a report on the criteria for arms exports, on the grounds that disclosure could be harmful for the EU's relations with third countries, and although the Court annulled the decision it did so only because the Council had not considered whether the report could be published with sensitive parts removed. Weiler 1997 and Curtin 1999 discuss the importance of increased transparency in improving democratic deliberation in the EU, and provide more detailed concrete proposals.

<sup>11</sup> Thus, the initial proposals emerging from discussions of officials of EU institutions for implementation of article 255 (Discussion paper on public access to Commission documents, 23 April 1999, SG.C2/VJ/CDD(99)83) apparently suggested that only documents concerning legislative measures would be regarded as 'accessible', while internal 'working documents' would be 'non-accessible', and even the former might

Ombudsmen, as has also been done in the EU,<sup>12</sup> to monitor the transparency of international bodies, and to investigate or adjudicate claims of confidentiality. The principle of transparency is just as important for apparently technical bodies, as has been pointed out by Willem Buiter in a trenchant critique of the traditionalist approach adopted by the European Central Bank, which he describes as 'typical of a central banking tradition that was, until recently, dominant across the world, which views central banking as a sacred, quasi-mystical vocation, a cult whose priests perform the holy sacraments far from the prying eyes of the non-initiates' (Buiter 1999, 198). Certainly, a degree of insulation may be necessary to ensure that deliberation is protected from lobbying by private interests and ill-informed populist pressures (Bessette 1994, 221-8). However, this can be ensured through procedural requirements such as prior publication of agendas, and rapid dissemination of decisions with a full record of the reasons. It is generally preferable to strengthen accountability and responsibility mechanisms (discussed below), rather than sacrifice transparency.

Transparency has now been greatly facilitated by the opportunities opened up by the Internet. Indeed, some international bodies have begun to make extensive use of this medium to make their documentation available. It is obviously very advantageous for an organisation such as the WTO to be able to give such instant online access to its large and growing documents archive to all those in its 132 member countries who require it. The internet also offers possibilities for much more interactive consultation of relevant communities and the public, and some organizations are beginning to make use of this. In practice, however, there are very great inequalities in the capacity to access the Internet; so that to realise the opportunities it offers also requires active programmes to broaden effective participation by all affected and concerned citizens.

Finally, perhaps the key requirement is to develop and sustain information media which can help to provide the kind of forum that active public participation in deliberative debate requires. That everywhere the public's distrust of politicians is equalled only by its cynicism about journalists is a serious indictment of our political systems. There are certainly some media organizations in some countries, as well as many able and committed individuals, dedicated to providing a rich context of information and to facilitating debate. However, the media overall, in some countries more than others, are subservient to government agendas and commercial imperatives, and hence tend to reflect received or élite opinion. Thus, a key requirement for transparency in the public sphere is to ensure guarantees of media independence from both government and private dominance. News media, in particular, should be owned neither by governments nor tycoons, but by journalist collectives or trustees.

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be embargoed until after the formal adoption of the decision: see *Statewatch* vol. 9 no. 2, March-April 1999. Such a proposal is hardly likely to gain approval, but that it was made at all is revealing of the official perspective.

<sup>12</sup> C. Grønbeck-Jensen (1998) provides an interesting evaluation from a Scandinavian perspective, particularly apposite since these countries have been influential in the moves towards transparency in the EU; but he points out that the EU Ombudsman has no real teeth, having no better access to documents than the citizen.

## *Accountability*

The past few years have seen increasing concern and debate about the accountability of all kinds of participants in public policy debates. Even in countries with apparently well-established systems of representative democracy, politicians have been subjected to new scrutiny over their acceptance of bribes, political donations or campaign financing, as well as debates about the relationship of their personal lives and morality to their public functions. That such issues have been very widespread, not confined to countries undergoing identifiable political transitions (such as Italy, with its 'tangentopoli' scandals linked to the collapse of the Christian Democracy-Communist duopoly), shows that they are symptomatic of generalized changes in the role of elected politicians, indicated in Bernard Manin's analysis of the changing nature of representative democracy discussed above. The increased diversity and complexity of policy issues, and the decline of mass-party politics, places new responsibilities on politicians to develop specialist expertise and resources, and to manage their information sources scrupulously. They themselves are also increasingly concerned with their responsiveness to public opinion, whether expressed in their postbags (and e-mails), opinion polls, or focus groups. However, the increased importance of personal charisma or 'name recognition' for the standing of politicians, as opposed to policy or principles, has undermined their legitimacy as political representatives.

For a variety of reasons it has become increasingly plain that democratic accountability of public bodies cannot rest only on their accountability via parliaments and elected politicians. Indeed, some kinds of decisions (such as control over interest rates) have been transferred out of the political domain to protect them from 'short-run' electoral considerations. An increasingly wide range of matters have been delegated to specialist bodies operating under defined mandates, with powers either of recommendation or of actual decision. Where there is a governmental input, it is generally made by non-elected officials, who are subject to only superficial supervision by a succession of partially-briefed elected politicians. Often, issues are not resolved by a decision from one particular body, but subject to interacting decision-making powers of various bodies, even at national level, and even more so globally. Thus, for example, the development and use of biotechnology depends on decisions by patent offices, scientific and ethical committees, food and drug regulators, national governments, and perhaps ultimately WTO dispute-settlement procedures. It is important not only that all such public bodies operate under explicit and specific accountability mandates, but also that their decisions are taken in a context of well-informed debate involving as broad a range of the public as possible. The channels of accountability are now less vertical, leading into central government, and more horizontal, entailing interaction between various local, national, regional, and international public arenas.

Thus, while elected politicians certainly should play an important and perhaps determinant part, ensuring accountability within the public sphere entails the involvement of a wide range of entities and groups, all of which have their own constituencies and accountability mechanisms. This is perhaps the reason for the increased use in recent years of the somewhat amorphous term 'civil society'. The point here is that there is no single accountability mechanism to the broad public. Participants in public debate can make different contributions, but it is incumbent on each of them to clarify to whom and how they are accountable. Indeed, there have

been increasing pressures for all kinds of organizations to improve their accountability, not only to their direct members but to a wider constituency of stakeholders.

Corporations have come under pressure to be responsive to the needs and demands of their customers, suppliers, workers, and contractors, as well as local communities and the wider society in respect of some of their activities. Their traditional focus on the 'bottom line' of direct costs and revenues to generate shareholder value has now been overtaken by the need for a more continuous two-way dialogue with this wider constituency, and concern for the 'triple bottom line' and long-term values such as reputation. No doubt many business managers need to be convinced that this entails more than just improved communication of decisions made in their boardrooms; but it is no coincidence that the lead is being taken by companies that have been hit by unexpected public reactions to policies which they believed had the legitimacy of approval by all relevant regulatory bodies. This has been shown, for example, by Shell's experiences over the Brent Spar oil platform disposal and the impact of its oilfields on local communities in eastern Nigeria, and those of biotechnology companies in relation to genetically modified organisms. The damage to investor confidence in the biotechnology sector should bring home to all concerned the importance of improving public confidence in regulatory decisions.

In reply, many have challenged the various campaigning organizations or NGOs to justify their claims to represent public opinion. Such organizations cover a wide gamut, and clearly do have a responsibility to clarify for whom they speak, as well as to maintain an active dialogue with their members and stakeholders. They also are vulnerable to 'bottom-line' pressures from their sources of funding, which may lead them to adopt high-profile campaigns or maintain positions primarily for their suitability as vehicles for attracting public attention through the media. There may be differences of perspective between different elements of their constituencies, for example development organizations may find a tension between the concerns of their funding sources in developed countries and the stakeholders in less developed countries who are the intended beneficiaries of their activities. An agreed code of principles covering issues such as disclosure of funding sources, and adoption of procedures for consultation with stakeholders, might help to improve the accountability (and hence legitimacy) of NGOs. Compliance with such principles could be one criterion for the granting of participation rights for NGOs in international meetings and organizations.

Interest-group institutions, such as business and trade associations and trade union organizations fall into a slightly different category from public-interest or issue-oriented NGOs. In principle they represent their members, and can claim accountability ultimately via election; but, certainly at the international level, this may be a distant link. There is much they could do to improve the active involvement of their memberships, and ensure that the positions they take reflect a considered view by that membership. Once again, compliance with agreed accountability procedures or standards could be a condition of their accreditation with international bodies.

Finally, international organizations themselves should develop mechanisms of direct accountability to people affected by their activities. A welcome first step in this direction, although a hesitant one, was the establishment in 1993 of the World Bank Inspection Panel, with the mandate to receive complaints by groups of individuals

whose rights or interests are directly and adversely affected by the Bank's failure to comply with its policies and procedures during the cycle of a Bank-financed project. It has received some 14 formal requests and issued a dozen reports since 1993, and despite some limitations, it remains a unique example of a direct accountability mechanism for an international organization (Skogly 1999, 235-42; Schlemmer-Schulte 1999).

In summary, the roles of various kinds of participants should be defined according to the contribution they can make to public debate based on generally applicable values. Procedures for consultation and involvement in decision-making should reflect their particular roles, as well as accommodating and safeguarding against possible distortions resulting from advancement of private interests.

### *Responsibility*

Participants in public deliberation may also be said to have obligations of responsibility, which are distinct from their accountability to their particular constituencies. Responsibility refers to principles governing all aspects of how deliberation and debate should be conducted to achieve democratic outcomes: the deontology of deliberation.

These include principles for maintaining a separation between involvement with private interests and the conduct of public duties and activities, as well as norms and practices of responsible behaviour developed by and for particular groups and professions. The acceptability and effectiveness of public policy decisions increasingly depend on the reasoning supporting them, which in turn requires all those involved in debates to uphold high standards of probity. This is evidenced by the increased attention being given to ethical standards by and for a wide range of groups and professions, many of which have been formally articulated in codes or even in law. This now extends far beyond protections against corruption, to a wide range of issues about professional conduct. These matters are not uncontroversial, as can be seen for example in the debates about the criteria applied in peer-review for publication of studies on controversial technologies such as genetically-modified organisms; or whether there should be an obligation to publish results from all pharmaceutical drug evaluations.

An important aspect of this is to define and police the line between professional or public responsibilities and obligations to a commercial client or employer. Thus, banks and financial intermediaries are now obliged to report suspicious transactions under money-laundering legislation, enacted nationally but stimulated and monitored by the international regulatory network centred on the Financial Action Task Force.<sup>13</sup> External auditors may have specific responsibilities to report to regulatory authorities, for example to banking supervisors, if they uncover breaches of regulatory requirements. Officials or civil servants may be protected from disciplinary or even legal proceedings for breaches of confidence if they can show that they acted in the public interest. However, too often the formal rules on these matters are not designed

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<sup>13</sup> A typical informal global regulatory body, set up by a decision of the Group of 7, but located at the OECD in Paris: see <http://www.fatf.org>.

to encourage or protect disclosures in the public interest, but rather to protect public or private bureaucracies from undesirable obligations or revelations. Their strengthening should be regarded as a significant contribution towards the democratization of global governance.

More broadly, all those involved as information gatekeepers or knowledge producers, now more than ever, need to operate reflexively, and with an awareness of how their professional or scientific practices and contributions impact on the quality of public debate. This is especially the case since so many decisions now entail inputs, often from several specialist or expert fields, as well as an evaluation from the general public perspective. As indicated earlier, in the discussion of expertise, technocratic rationality can operate in an anti-democratic way, if it seeks to claim a spurious authority. This can be counter-productive, as has been seen in the frequent episodes when it has resulted in a spiral of public mistrust of science, and scientists' despair at public ignorance. Scientists and other experts need to acknowledge the ways in which their techniques rest on formalist models based on assumptions which allow them to abstract the specific aspects or data with which they are concerned from the real world. Thus, the conclusions they reach are of only partial or conditional validity, and cannot be directly applied to determine real-world policies or decisions. Their responsibility should therefore include cognitive 'openness' and reflexivity: the explicit identification of the assumptions they have made and their implications for the more general validity of their conclusions, and a willingness to test the robustness of their models against those of others based on different assumptions.

### *Participation and Empowerment*

My final principle should be regarded as an overriding one, for without it the other proposals for strengthening the public sphere as a deliberative arena would do little more than provide an alibi for the maintenance and extension of the system of élite decision-making. It is all too easy for those with decision-making power to pay lip-service to the need for public consultation or participation, although one can still be surprised at the frequency with which they neglect even this bare minimum. It is often only as a result of a policy setback, such as the breakdown of the MAI negotiations, that those in power resort to a 'charm offensive' to try to win support from potential critics. Frequently, also, they prefer to distinguish carefully between procedures for consultation with public interest or activist groups, and their discussions with business or corporate interests. This inevitably raises suspicions that decision-makers are more open to influence from private interest groups, and that they regard consultation with public interest-groups and concerned citizens (or even legislators) as an irritating time-waster, perhaps necessary to forestall subsequent criticism. It is all too rare to find an acknowledgment that the quality of public decisions can be improved if they take place in a context of full participation by all concerned and affected groups.

The challenge, therefore, is to find ways to ensure effective participation in debate and decision-making especially of disadvantaged citizens and groups. Much of the political opposition to and disaffection with globalization and liberalization results from the unleashing of forces which exacerbate inequalities within and between states. This is often portrayed as a battle between the global market and the national state, a view which tends to neglect the ways in which the transformation of the world market is being brought about by complex processes of international re-regulation. To take a key example, the restructuring of global telecommunications, in which giant

firms battle for market shares, entails struggles over technical standards, sectoral regulation (notably governing interconnection rights and charges) and competition rules, through interactions between a variety of national and international bodies. A key issue, which has for several years been preoccupying the International Telecommunications Union (ITU), is the system of settlements in respect of international calls, which entails revenue-sharing resulting in transfers mainly from developed to developing countries estimated at \$7-10 billion per year.<sup>14</sup> There is considerable pressure to reform this system, to end discrimination in charges between international and national calls, in line with the liberalization of telecommunications services negotiated bilaterally, regionally (especially in the EU) and through the WTO. Yet it is also widely recognized that a truly global telecommunications system is unattainable unless equivalent (or better) means are found to finance the expansion and upgrading of telecommunications networks in developing countries (Tyler 1998).

This clearly shows that global battles over regulation also concern revenue distribution and redistribution, not just 'neutral' rules allowing markets to operate 'freely'. Many other debates and battles over international regulatory arrangements also have (re)distributional consequences or implications, running often to many millions or billions of dollars, such as competition laws and policies, environmental protection schemes, intellectual property rights, food safety and labelling requirements, agricultural support and rural development measures, prudential rules for financial institutions, and international tax arrangements. Too often the talk of 'market friendly' regulation implies rules that favour the economically powerful, whereas balanced and sustainable long-term economic growth may require measures to protect, encourage and stimulate less developed or disadvantaged groups, regions and countries. For example, the international patent system ensures that billions of dollars are channelled into R&D for new pharmaceutical drugs, but inevitably the vast bulk of this is aimed at combating health problems of the affluent.<sup>15</sup> It has proved extremely difficult for the WHO to negotiate collaborative arrangements for the development of new drugs to combat tropical diseases such as malaria, which would be of immense benefit globally;<sup>16</sup> yet drugs companies would fiercely resist the proposal made by Médecins sans Frontières to fund such initiatives through a tax on drug sales.

An important function of direct democracy is to open up the received wisdom of closed bureaucratic or technocratic decision-makers to critical and destabilizing ideas. This perhaps cannot be institutionalized without blunting the critical edge of political

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<sup>14</sup> Dr. Henry Chasia, ITU Deputy Secretary-General, Opening Remarks to the Annual Council of the Commonwealth Telecommunication Organization, Trinidad & Tobago, September 29th 1998; this and much other documentation on the issue is available in the special area of the ITU website, [www.itu.int](http://www.itu.int).

<sup>15</sup> Research done for Médecins sans Frontières shows that of 1,233 drugs licensed worldwide between 1975-97 only 13 were for tropical diseases, of which two were slight modifications of existing drugs, two developed for the US military, and five were the outcome of veterinary research: Pécoul et al 1999; Pilling 1999.

<sup>16</sup> See the Multilateral Initiative on Malaria, <http://www.malaria.org/mim.html>

protest, although sometimes well-considered and substantiated arguments take second place to spectacular actions designed to attract media attention. Responsive and confident political systems can find ways to make themselves more open to external critical input.

In fact, a wide range of techniques are now increasingly used by many public bodies, as well as corporations, to consult either the general public, or specific sections affected by a proposed policy. This can include, for example, public forums or commissions with powers to conduct inquiries into policies or issues; citizens' panels, which can help to evaluate and prioritize policy choices; citizen juries to which specific decisions can be delegated, based on systematic presentation and examination of evidence; as well as old and new consultation techniques such as surveys and focus groups.

These methods have various advantages, and are each appropriate for different decision-making contexts. However, all can be used by any policy- or decision-making body, especially those with public responsibilities or tasks. They can certainly be applied, with suitable adaptation, to arenas in the global public sphere to enhance their responsiveness to public concerns.

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