Real, not nominal, global democracy: A reply to Robert Keohane

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1. Introduction

In a recent article for this journal, Robert Keohane argues against the possibility and promise of global democracy.[1] Drawing upon Krasner's notion of "organized hypocrisy," Keohane suggests that democracy in global governance is merely a norm without substantive practice. Efforts to develop global democracy without creating the necessary preconditions will lead to a hollow *nominal* global democracy.

Keohane is not actually hostile to the normative value of democracy in global governance. Indeed, his dismissal of global democracy in the short term is accompanied in his exposition by hope for the long term. However, this short term/long term distinction obscures the way arguments for global democracy are now in fact made (it is noteworthy that Keohane does not cite any actual contemporary proponent of global democracy, criticizing instead what he thinks their arguments ought to be). Keohane errs in his invocation of 'real' or 'genuine' democracy (as the opposite of nominal democracy) and in his belief that global democrats would have to be people who want to institutionalize a model of some sort in the near future.

Keohane's central claim is that genuine democracy "requires elections that hold elected leaders accountable to publics and other arrangements that hold non-elected

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[1] Robert O. Keohane, *Nominal Democracy? Prospects for Democratic Global Governance*, 13(2) Int'l J. Const. L. 343, 344 (2015).

leaders accountable to elected ones."[2] While some utopian global democrats see elections as necessary,[3] other global democrats take the impossibility of global elections as a key starting point. Notably, deliberative democrats offer a communication-centric (as opposed to vote-centric) view of democracy in which the essence of democracy is to be sought in inclusive and consequential deliberation on the part of those affected by the decision in question.[4] Deliberation can involve advocates and representatives, whose democratic legitimacy can be scrutinized even if they are not elected.[5] John Keane's magisterial history of democracy concludes not with electoral democracy, but rather with a post-parliamentary "monitory democracy" composed of multiple mechanisms through which power is held to account—most of which transfer rather easily to the transnational level.[6] We will show how conceiving of democracy in non-electoral terms makes an enormous difference to its global governance prospects.

For Keohane, democracy also requires the effective rule of law, vibrant civil society, and transparent leadership. Unfortunately, Keohane claims, realizing genuine democracy in global governance is not possible for at least five reasons. First, democracy would require sacrificing other goods that are equally, if not more, important. Second, there is no global equivalent of the nation-state to make us sacrifice short-term personal gains for long-term collective goods. Third, there is no shared global identity and associated emotion to underpin democracy. Fourth, the rule of law has a weak history in the international system. Finally, global governance lacks the civil society in which social capital can be constructed.

In this response, we unpack Keohane's arguments and show why they are defective. We make two broad claims in doing so. First, Keohane has neglected to engage systematically with literature on democratic global governance from international law and political theory that provide responses to his concerns. Second, we suggest that Keohane's view of "genuine democracy" as liberal electoral democracy is too narrow, and indeed based on a problematic view of how state-level democracy actually works. A deliberative view of democracy that puts inclusive and egalitarian reasoned communication at its core helps show how substantive democracy can be pursued in global governance.

Our response moves forward in four sections. In section two we contest the lessons Keohane draws from his two case studies. Section three elaborates deliberative democracy's solutions to Keohane's "three gaps in global governance". The fourth section reconceptualizes democratic global governance as a normative project of multiple democratization moves—as opposed to the acceptance and implementation of any well-specified model.

[2] *Id.* at 344.

[3] Most notably, those associated with the Campaign for a United Nations Parliamentary Assembly; see http://en.unpacampaign.org.

[4] For a survey of deliberative approaches to global democracy, *see* William Smith & James Brassett, *Deliberation and Global Governance: Liberal, Cosmopolitan, and Critical Perspectives*, 22(1) Ethics & Int'l Affairs 69 (2008).

[5] Jonathan W. Kuyper, *Systemic Representation: Democracy, Deliberation, and Non-Electoral Representatives*, 110(2) Am. Pol. Sci. Rev. 308 (2016).

[6] John Keane, The Life and Death of Democracy (2009).

2. Problems with Keohane's case lessons

2.1. Trade-offs with democracy? On *Kadi*

Keohane deploys two case studies to highlight the trade-offs between democracy and other values. The first is *Kadi & Al Barakaat International Foundation v. Council and Commission*.[7] The sanction regime constructed by the UN Security Council and implemented by the European Union was designed to stop money laundering for terrorist activities and enabled states to freeze assets of those suspected of aiding terrorism. In this well-known case, Kadi contested to have his name removed from the sanctions list. In 2008, the Court of Justice of the European Union (CJEU) ruled in favor of Kadi, striking down the EU regulation on the grounds that it infringed upon individual "fundamental rights."

For Keohane, the *Kadi* case (and subsequent CJEU appeal, also won by Kadi[8]) highlights the trade-off between democratic rule of law as upheld by the CJEU and UN Security Council efforts to hamper terrorism and money laundering: protecting rights required rolling back security. This analysis is misleading. The victory of Kadi did not mean that democracy and security stand inherently in tension. All it means is that the specific regime pushed by the United States through the UN Security Council required reworking to fit with EU law. The introduction of an ombudsman in UN Security Council Resolution 1904/2009 helps bring the UN regime into line with EU standards. What Keohane would need to show for his contention to hold is that the introduction of an ombudsman and/or a more democratic UN sanction regime is (or has) led to an increase in terrorist financing or support. As it stands, the ombudsman is supposed to provide a mechanism to check whether individuals really are security threats. In this way, the addition of democratic "checks and balances" to the UN decision-making may actually promote better (i.e., more security-centered) outcomes.

Seen in this light, it is possible to view the *Kadi* case as a significant boost for global democratic efforts, as Nico Krisch argues.[9] Krisch contends that the lack of hierarchy between the UN and the EU opened up a situation in which no one actor has final rule making authority. This generated flexibility such that individuals could deliberatively contest rules (even those created by superpowers). This, Krisch suggests, is key to establishing new forms of democratic global governance as individuals are able to challenge and ultimately shape the rules that govern their lives.

2.2. A second trade-off? On climate change

Keohane's second case study concerns climate change. We agree with Keohane that accelerating anthropogenic climate change is perhaps the most challenging issue of our time. Keohane paints a familiar picture of seventeen years of gridlock besetting the

[7] Joined Cases C-402 & 415/05P, Kadi & Al Barakaat Int'l Found. v. Council & Comm'n, 2008 E.C.R. I-6351 [hereinafter Kadi].

[8] Joined cases C-584/10 P, C-593/10 P, and C-595/10 P, Commission and Others v. Kadi, Judgment, July 18, 2013, ¶ 134.

[9] Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Postnational Law (2011).

UN Framework Convention on Climate Change (UNFCCC)[10] after the Kyoto Protocol[11] was agreed in 1997.[12]

While recognizing that the undersupply of public goods to solve climate change is a malign equilibrium, Keohane argues that "democracy does not seem to help" in overcoming the collective action problem. Two reasons undergird his claim. First, increased inclusion, transparency, and discussion in the UNFCCC did not produce agreement from 1998–2014. Second, even once Kyoto was agreed, rejection by democratic states such as the USA, and abandonment of commitments by Canada, Australia, and Japan, highlight the disjuncture between democracy and effective climate action.

Keohane's argument falls short on two fronts. First, Keohane claims that democratic decision-making undermines effective climate action. However, in order to substantiate this claim, he would need to show that some other form of authoritarian (or, at least, non-democratic) decision-making has been more successful at mitigating greenhouse gas emissions. Given the 2015 Paris Agreement not only involved, but also substantively relied upon, the commitments of 196 states and thousands of non-state actors, it is not immediately clear that a less inclusive or less transparent UNFCCC would have done better.[13]

Second, Keohane does not mention work that suggests democracy is beneficial for dealing with environmental issues and climate change. The extensive literature on deliberative democracy and the environment makes a number of claims, including the idea that deliberation brings common-interest arguments to the fore and so helps solve collective action problems, and also that deliberation is a particularly good way of integrating diverse perspectives on complex issues in the service of effective problem-solving.[14] Inclusive argumentation that exposes viewpoints to competing positions facilitates crafting effective collective decisions.[15]

Evidence from small-scale deliberative forums supports these theoretical claims.[16] While there is less evidence from macro level studies, we know that consensual democracies do better than adversarial ones when it comes to environmental performance.[17] We also have evidence that consensual democracies are more deliberative than adversarial ones.[18] Joining the dots suggests a positive association between

[10] May 9, 1992, S. Treaty Doc. No. 102–38, 1771 U.N.T.S. 107.

[11] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc. FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998).

[12] David G. Victor, Global Warming Gridlock (2011).

[13] UNFCCC, Adoption of the Paris Agreement. Draft decision FCCC/CP/2015/L.9/Rev.1, *available at* https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf.

[14] *See, e.g.*, Walter F. Baber & Robert V. Bartlett, Deliberative Environmental Politics: Democracy and Ecological Rationality (2005).

[15] Collective Wisdom: Principles and Mechanisms (Hélène Landemore & Jon Elster eds., 2012).

[16] Simon Niemeyer, *Deliberation in the Wilderness: Displacing Symbolic Politics*, 13(2) Env. Pol. 347 (2004); Mikko Rask, Richard Worthington, & Minna Lammi, Citizen Participation in Global Environmental Governance (2012).

[17] Lyle Scruggs, Sustaining Abundance: Environmental Performance in Industrial Democracies (2003).

[18] Jürg Steiner, André Bächtiger, Markus Spörndli, & Marco Steenbergen, Deliberative Politics in Action: Analysing Parliamentary Discourse (2004).

deliberative democracy and environmental performance. Finally, including actors in deliberation over policies facilitates compliance.[19] In this light, it is possible to evaluate global climate governance in terms of its deliberative and democratic qualities that are also crucial in determining effectiveness.[20] If those qualities are currently lacking, the challenge is to strengthen them—rather than give up and turn our backs.

3. Deliberative responses to Keohane's "gaps in global governance"

We now discuss Keohane's "three gaps in global governance" that underpin his objections to global democracy and show how deliberative democracy can respond.

3.1 The interest-public goods gap

Keohane suggests that nation-states—through a combination of nationalism and the demonization of "others"—have been able to mobilize individuals to place the collective above the individual, and so solve collective action problems. But even here, in his discussion of climate governance, Keohane points to the inability of the United States in particular to provide public goods in response to the challenge of climate change. Keohane implicitly shares the proclivities of an earlier generation of democracy scholars in comparative politics to treat the USA as the paradigm democratic state. It is not. He argues that democracy in the USA means inaction on the pressing issue of climate change. But the USA (along with Australia and, until recently, Canada) is actually an outlier among democratic states when it comes to its inability of its legislature to act on climate policy. The fact that well-funded special interests can effectively preclude action reflects the failure of democracy, not democracy in action. The moral we would draw is that the USA needs to be democratized in order to make its public policies more responsive to the reflective preferences of its citizens (not the same as unreflective preferences revealed by opinion polls). Exactly the same logic holds for the global system; in both cases, deliberative mechanisms can be sought in order to better supply public goods.

Keohane is right that democracy, when viewed purely in terms of the aggregation of preferences through voting, is likely to sacrifice long-term values for short-term material gains.[21] However, democracy seen as inclusive and egalitarian deliberation is much less likely to do this—we have evidence that deliberation induces a concern for the long term in both individuals and collectivities.[22]

[19] Simon Birnbaum, Örjan Bodin, & Annica Sandström, *Tracing the Sources of Legitimacy: The Impact of Deliberation in Participatory Natural Resource Management*, 48(4) Pol'y Sci. 433 (2015).

[20] Hayley Stevenson & John S. Dryzek, Democratizing Global Climate Governance (2014)

[21] *See also* Paul Pierson, Politics in Time (2004).

[22] Michael K. MacKenzie & Didier Caluwaerts, Deliberation and Long-Term Thinking on Climate Change Policy, Paper presented at Canadian Political Science Association Conference, University of Ottawa, June 2–4, 2015.

3.2. The emotional gap

Keohane argues that world politics does not contain the types of symbols and emotions necessary to sustain effective governance of the sort we find in nation-states. But here Keohane puts the cart before the horse. Historically, effective states have not depended on any pre-existing shared emotional attachments. Rather, states generally precede nations; one of the key tasks in state-building is the creation of a national identity to accompany the state. Further, as Arash Abizedeh has argued, a collective identity does not have to presuppose a global other, but can be generated internally through deliberation or recognition.[23] Likewise, Mathias Koenig-Archibugi has demonstrated that supposed necessary conditions of democracy—such as cultural homogeneity—are not impediments to democratizing global governance.[24] Democratic states such as India, the United Kingdom, Canada, and South Africa can it seems work in settings that are multi-national, multi-lingual, and/or multi-ethnic. Lessons can be drawn from these cases for global democracy.

If global governance is plagued by deep emotional identity divides, deliberative democracy can help. There is now a substantial literature that shows how deliberative democracy can be applied in deeply divided societies.[25]

3.3. The infrastructure gap

Keohane argues that global democracy requires infrastructure—legal, institutional, and civil society—that is missing. While the international system does not have the same coercive nature of domestic legal structures, debates in international law continue over two issues: first, whether international law is constitutionalizing, and second, whether this is beneficial for global democracy. Krisch among others argues that the lack of final (constitutional) structures beyond the state is actually beneficial for building global democracy.[26]

Surprisingly for an international relations scholar, Keohane sees the international system mainly in terms of what it lacks when compared to states, unbalanced by the opportunities it provides, especially when it comes to monitory and deliberative democracy. The absence of anything like sovereign authority at the international level means that more persuasion must occur. Of course, this persuasion might be coercive and so not deliberative or democratic. But argument can sometimes be decisive.[27] At any rate, the international system should be analyzed in its own terms—not as an anemic and incomplete version of the state.

Even if we stay with states as our reference point, Keohane draws some questionable lessons. In pointing to the absence of a long tradition of the rule of law in

[23] Arash Abizadeh, *Does Collective Identity Presuppose an Other? On the Alleged Incoherence of Global Solidarity*, 99(1) Am. Pol. Sci. Rev. 45 (2005).

[24] Mathias Koenig-Archibugi, *Is Global Democracy Possible?*, 17(3) Eur. J. I'ntl Relations 519 (2010).

[25] Democratic Deliberation in Deeply Divided Societies: From Conflict to Common Ground (Juan E. Ugarriza & Didier Caluwaerts eds., 2014).

[26] Krisch, *supra* note 9.

[27] Thomas Risse, *Let's Argue! Communicative Action in World Politics*, 54(1) Int'l Org. 1 (2000).

international politics, he is actually describing the situation in most democratic states. If he were writing about (say) Japan and Germany around 1950, Keohane would presumably have dismissed their democratic prospects on this basis. And if global politics lacks social capital and an active/supportive civil society, that should be taken as a challenge, not an absolute. Global civil society does exist as a resource for democratization—if in very different form from what we find in (some) democratic states (in other democratic states it is extremely weak).[28] We might, for example, think of global civil society in terms of a pattern of discursive representation.[29] The fact that there are no international choral societies or bowling leagues is not a decisive argument against global democratization.

4. Conclusion

Democracy is not an all-or-nothing affair. It is always a matter of degree. The project of global democratization should be conceptualized not in terms of adoption of an overarching and predefined model (as Keohane's "genuine democracy" would seem to be), but rather as multiple moves that can increase the degree of democracy in the system.[30] Such moves might, for example, entail:

- the strengthening of accountability mechanisms, which can be seen as components of, rather than alternatives to, global democracy;[31]
- the proliferation of monitory mechanisms;
- contemplation of ways to promote the deliberative aspects of international negotiations;
- attention to the deliberative qualities of transnational governance networks, and the exclusions those networks often feature;
- expansion of the range of discourses that are represented in decision-making processes. So, for example, if transnational social movements succeed in getting international economic institutions to address questions of social justice in their decisions, that is a democratizing move—in which light it matters little that activists or organizations are not themselves formally accountable to anyone;
- Sortition initiatives that create a voice for ordinary citizens in governance. While the most relevant global experiment (World Wide Views) currently falls short of face-to-face deliberation of citizens from different countries, transnational citizen assemblies look a lot more feasible than elected bodies.

[28] John S. Dryzek, *Global Civil Society: The Progress of Post-Westphalian Politics*, 15 Ann. Rev. Pol. Sci. 105 (2012).

[29] John S. Dryzek & Simon Niemeyer, *Discursive Representation*, 102(4) Am. Pol. Sci. Rev. 481 (2008).

[30] For an overview of this type of conceptualization, *see* Jonathan W. Kuyper, *Global Democratization and International Regime Complexity*, 20(3) Eur. J. Int'l Relations 620 (2014). *See also* Gráinne de Búrca, *Developing Democracy Beyond the State*, 46 Colum. J. Transnat'l L. 221, 227 (2008).

[31] Stevenson & Dryzek, *supra* note 20, at 154–156, criticizing Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99(1) Am. Pol. Sci. Rev. 29 (2005).

Of course we should be vigilant such that democratizing moves are not merely "nominal" or components of "organized hypocrisy" as Keohane would put it—though even here, we should not underestimate what Elster calls "the civilizing force of hypocrisy," under which pretense induces behavioral change.[32]

Ultimately, the democratization of global governance is a normative goal to be strived toward through multiple avenues, not least deliberation. Keohane concludes by invoking Weber's famous quote on the "slow boring of hard boards." Weber goes on to lament "a world too stupid or petty" but "in the face of that he [the political actor] must have the resolve to say 'and yet'. . . ." Global democratization is a transformative project that facing a recalcitrant world should continually say "and yet. . . ."[33]

[32] Jon Elster, *Introduction*, *in* Deliberative Democracy 12 (Jon Elster ed., 1998).

[33] Max Weber, *Politik als Beruf* [1919], Lecture delivered before the Freistudentischen Bund of the University of Munich, *in* Max Weber, *Gesammelte politische Schriften* (trans. S. H. Frowein), at 560.