



**QUEEN'S
UNIVERSITY
BELFAST**

Global democratization and international regime complexity

Kuyper, J. W. (2014). Global democratization and international regime complexity. *European Journal of International Relations*, 20(3), 620-646. <https://doi.org/10.1177/1354066113497492>

Published in:
European Journal of International Relations

Document Version:
Peer reviewed version

Queen's University Belfast - Research Portal:
[Link to publication record in Queen's University Belfast Research Portal](#)

Publisher rights
Copyright 2014 SAGE. This work is made available online in accordance with the publisher's policies. Please refer to any applicable terms of use of the publisher.

General rights
Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy
The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact openaccess@qub.ac.uk.

Open Access
This research has been made openly available by Queen's academics and its Open Research team. We would love to hear how access to this research benefits you. – Share your feedback with us: <http://go.qub.ac.uk/oa-feedback>

Global Democratization and International Regime Complexity

How can democracy best be pursued and promoted in the existing global system? This question has come to occupy a central position in discussions on global governance (Zürn 2000; Moravcsik 2004). There is now widespread agreement amongst academics and practitioners that regional and global institutions suffer from a ‘democratic deficit’ (Erman forthcoming). This deficit exists for two predominant reasons. First, international institutions do not operate according to democratic standards. This is an issue of procedure. Second, international institutions are not sufficiently capable of regulating the gamut of processes which escape the traditional confines of the nation-state. This is an issue of scope.

Myriad proposals have been advocated to shore up global governance in the face of the pervasive democratic deficit. Jan Aart Scholte (2011; forthcoming) stylizes approaches as either statist or cosmopolitan. The former seeks to remedy the democratic deficit through “multilateral collaboration among democratic nation-states” (Scholte forthcoming: 4). Such a view understands democracy as a capability of the state, and holds that world politics can be made democratic by reinforcing links between domestic and international structures (Slaughter 2004; Keohane et al. 2009). In contrast, the cosmopolitan project emphasizes the importance of including all affected individuals in democratic processes beyond the state (Held 1995; Archibugi 2008). Scholte (forthcoming: 7) rightly notes that these proposals often elevate a Western, liberal conception of democracy to the world stage in the form of global parliaments (Falk and Strauss 2001), global political parties (Patomäki 2011), citizenship laws (Cabrera 2010a), and human rights (Gould 2004). An alternate perspective for global democracy comes in the form of deliberative democracy.ⁱ Advocates place democratizing potential in the Habermasian (1996; 2001) logic of argumentation and predominantly view global civil society as the appropriate vehicle of this strategy (Dryzek 2012).

In this paper I propose a novel strategy which builds upon, but goes beyond, previous proposals. I argue that democratization should occur at the level of international regime complexity. Given that many issue areas of world politics are accurately described as regime complexes (Alter and Meunier 2009) - and that this is a trend likely to continue (Keohane and Victor 2011: 19) - global

democrats should seek to make productive inroads into this situation. Within each regime complex, democratization should be pursued across two planes: a *horizontal* and a *vertical* dimension (Mitzen 2005; see also Lamy 2013). The horizontal dimension encapsulates the realm of interstate, multilateral negotiations. The vertical dimension describes the connections between citizens and sites of authority at the regional, transnational, and global level. In each sphere a set of democratic values can be pursued in an open-ended, provisional manner appropriate for this embryonic stage of global democracy (Goodin 2010). This approach allows global democrats to think about normative prescriptions which are issue-area specific, rather than one-size-fits-all for the international system.

In order to advance this argument, the paper is divided into four sections. First, I undertake a discussion of democracy beyond the state and outline a normative commitment to on-going democratization as a set of core values (Dryzek 2008; de Búrca 2008). Second, I highlight the importance of regime complexity to world politics. I delineate the utility of thinking in terms of horizontal and vertical realms. In order to gain traction on my argument, I apply my argument to the regime complex of intellectual property rights (IPRs). The third section entails a discussion of the build-up to the trade-related aspect of intellectual property rights (TRIPS), subsequent developments within the complex, and recent trends which highlight democratizing potential at the level of interstate negotiations. The final section identifies vertical links within regime complexity as fertile terrain for democratic experimentalism (Krisch 2010; Overdevest and Zeitlin 2012). In the conclusion I suggest that this strategy can be applied to alternate regime complexes in a productive manner for advancing global democracy writ large.

Democracy Beyond the State

Authority, Politicization, and the Democratic Deficit

The post-World War II era has seen an exponential rise in regional, transnational, and global governance institutions (Tallberg et al. 2012). Although this process began mainly with formal intergovernmental organizations (IGOs), civil society groups, public-private partnerships, and even private actors now fulfill regulatory functions in global governance (Kingsbury et al. 2005;

Brassett et al. 2012). This institutional density has gone hand-in-glove with globalization (what Zürn (2000) calls societal denationalization). Resultantly, Scholte (forthcoming) argues that social and political relations have acquired a more global character. “People have become substantially more interlinked with one another on a planetary scale: through communications, consciousness, ecology, finance, health matters, military affairs, organizations, production chains, travel and more” (Scholte forthcoming: 2; see also Scholte 2005).

As the number and density of transnational actors has increased, so has their authoritative and regulatory capacity. International institutions have authority when the addressees of their policies recognize that these institutions can make competent judgments and/or binding decisions (Cooper 2008). Prominent international organizations (IOs) such as the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank exercise powerful authoritative capacity through regulative politics.ⁱⁱ Lesser known IOs such as Basel Committee on banking supervision or the Internet Corporation for Assigned Names and Numbers (ICANN) promulgate a variety of rules and regulations that are also increasingly authoritative in nature. Examples of IOs, IGOs, multinational corporations (MNCs), non-governmental organizations (NGOs), and private actors exercising transnational authority abound. Indeed, the literature documenting the empirical reality of increased governance beyond the state now cuts across disciplines from international law, political theory, international relations (IR), and European Union (EU) studies (Keohane 1984; Hix 1998; Raustiala and Victor 2004).

Michael Zürn and his co-authors have persuasively argued that the rise of political authority beyond the nation state leads to politicization and hence requires legitimation (Zürn et al. 2012; de Wilde and Zürn 2012). As IOs exercise authority they require ‘sufficient stocks of legitimacy’ to facilitate compliance with policy and day-to-day operations. To the extent that an IO cannot draw upon a reserve of legitimacy, and actors are increasingly aware of this authoritative relationship, then politicization will increase. Often politicization occasions productive engagement between IOs and addressees of authority, but it can also entail resistance. In order to depoliticize their authority, IOs will increasingly rely upon norms of justification to explain, and ultimately legitimate, their actions (Forst 2007).

The rise of regulation and politicization beyond the state thus generates many normative complications related to legitimacy standards. Most relevantly for this article are democratic concerns (Held and Koenig-Archibugi 2005; Macdonald 2008). Rule-makers in regulatory organizations and networks exercise authority over rule-takers without adhering to democratic norms or standards (Erman forthcoming). Moreover, the same bodies are not capable of curtailing global problems which are often left untreated due to cooperative gridlock between states and IGOs. In the same way that state-based (coercive) authority generates democratic demands, authority exercised in transnational fora trigger the same normative expectations of democracy (de Búrca 2008: 114). Certainly the democratic deficit is not the only problem with transnational governance: questions of distributive justice (Pogge 2002), sociological legitimacy (Buchanan and Keohane 2006), and optimal rational design (Koremenos et al. 2001) are all highly pertinent. However, the democratic deficit is an important issue which helps to explain legitimacy and policy shortcomings and thus deserves sustained, and separate, treatment.ⁱⁱⁱ

Although the identification of a global democratic deficit has become commonplace, there is wide-scale disagreement over the precise nature of the problem, and hence divergence on the prescription that should follow. In the introduction, I employed Scholte's (forthcoming) stylistic divide between statist and cosmopolitan approaches. Gráinne de Búrca (2008: 117) identifies three strands in the current literature to which she affixes the nomenclature a 'denial approach', a 'wishful thinking approach', and a 'compensatory approach'. Similarly, Archibugi, Koenig-Archibugi, and Marchetti (2012: 7) suggest a tripartite (ideal-typical) break in the literature between federalist, confederalist, and polycentric prescriptions for global democratization. Respectively these ideal types delineate world government approaches (Cabrera 2004; Marchetti 2008; Albert et al. 2012), state-based cosmopolitan democracy (Archibugi 2008; Carothers 2008), and stakeholder (Macdonald 2008) or deliberative (Dryzek 2006) models.

A full survey of these positions is not possible due to space constraints. However, it is worth noting that I reject the 'statist' approach which attempts to mitigate the global democratic deficit by pointing to the ability of democratic states to control transnational authority. As Zürn (2000: 183) noted more than a decade ago, there is not a "zero-sum relationship between national sovereignty". Although Keohane et al. (2009) are correct to note that international institutions

can be ‘democracy-enhancing’, this potential is far from automatic (Squatrino 2012). However, it is also clear that not all transnational activity is controllable through state-based channels. Private governance structures (such as primary commodity roundtables) and international NGOs (INGOs) are positioned as alternate sites of governance. Moreover, David Lake et al. (2006) have highlighted the pervasiveness of ‘agency slack’ created by the delegation of state-based authority to transnational actors. In a very insightful piece, Tana Johnson (2013) has stressed that international bureaucrats, operating outside of state control and interests, have meaningfully impacted the design process of around two-thirds of all existing IGOs. These bureaucrats specifically maneuver beyond (national) democratic control. As such, I take it that global democracy cannot be shored-up solely by strengthening national democratic structures and chains.

Models of Democracy

Due to the complex nature of global democracy, the boundaries between each categorization are highly porous. It would not be particularly fruitful to demarcate yet another division in the literature. However, there is a common thread running through much of the work. Most proponents of global democracy have a tendency to think in terms of ‘models’ (Falk 1975; Bexell et al. 2010). David Held (2006) - in the third edition of the text *Models of Democracy* - has identified ten distinct models of democracy, one of which is a cosmopolitan variant. Several of the models identified by Held can be broken down into further sub-models. In general, models can be understood as theoretical constructions designed to express the normative qualities of a democratic system as well as its constitutive institutions. Models tend to fit together as whole pieces, and are thus pre-packaged solutions which can be superimposed on different governance structures. Models are supposed to provide a ‘terminal endpoint’ toward which theorists and practitioners can strive (Archibugi et al. 2012). Because all models of democracy have been developed within the container of the nation-state, proposals for global democracy tend to reflect this Western, liberal presupposition (Scholte forthcoming).

Bexell et al. (2010) identify the trichotomy of *representative*, *participatory*, and *deliberative* democracy as common distinctions in democratic theory and debates over global democracy. In

short, representative models emphasize the opportunity for citizens to select between competing elites, typically through electoral processes. This mechanism facilitates the accountability and responsiveness of elites to public opinion. Proponents have advocated for global parliaments and world governments in an attempt to transpose representative democracy beyond the state (Falk and Strauss 2001). Participatory democrats argue that citizens should be directly incorporated in decisive and consequential political decisions. This focus on inclusion tends to emphasize “transnational referenda, citizen initiatives, judicial access for individuals, and broad civil society participation” as essential to the democratic process (Bexell et al. 2010: 84). Finally deliberative democrats stress the importance of uncoerced and authentic reason-giving in public debates and political decisions (Dryzek 2000). Transnationally deliberative democrats also highlight the importance of civil society, stakeholder forums, and broad transnational public spheres. Cosmopolitans of all ilk draw upon these models in order to formulate and articulate a response to the global democratic deficit.

Values of Democratization

Dryzek (2008: 471) is correct to note that although “models help in thinking, they are also constraining.” As such, it is often more productive to think in terms of *processes of democratization*. In this vein we can think about democratization as the on-going and provisional endeavor to fulfill a set of normative values (Dewey 1996). This method has the advantage of taking what Gallie (1956) calls the essentially contested nature of democracy seriously by allowing for contestation over both institutions and the meaning of democracy itself. Given the early stage of global democracy it is perhaps sensible to keep options and paths open. This sentiment is echoed by Bexell et al. (2010) who argue, on methodological ground, that focusing on values of democratization (instead of models of democracy) enables more systematic and rigorous comparison of different prescriptions.

This is certainly the view adopted in this article. Instead of asking what kind of idealized model global democracy should aim toward, we can think about democratizing different regime complexes by fulfilling a set of values. This strategy has similarities to what de Búrca calls the ‘democratic striving approach’, which highlights the dynamic and inchoateness of democracy. It

also follows closely from Joseph Weiler who argued that efforts for democracy beyond the state requires rethinking the very building blocks of democracy to see how these values may or may not be employed in the international system. In order to make the search for values of democratization more tractable, I propose *equal participation*, *accountability*, and *institutional revisability* as central. I discuss and defend each in turn.

Democracy, at its roots, is concerned with rule by the people (Scholte forthcoming: 1). Any democratic system should work toward the *fullest possible participation and representation of those significantly affected individuals*.^{iv} Equal (opportunity for) participation lies at the heart of democratic theory in which affected individuals are able to take part in authoring the laws and regulations to which they are subject. In other words, this value stresses the ontological dimension of democracy in which individuals and collectives acts to create and abide by rules simultaneously. This is a central view which stretches from (at least) Kant and Rousseau right up to contemporary debates. Generally speaking, more inclusivity (of people, their representatives, and their viewpoints) enhances the democratic quality of a particular institution or system. A premise to enhance equal participation is central to many alternate models of democracy, and should thus find tacit approval. It also acknowledges that representation is not a second-best alternative to participation, but a complex standard integral to the democratic functioning of any system (Urbinati and Warren 2008: 407).

The migration of authority beyond the state and its normative (democratic) complications has given renewed attention to the boundary problem (Whelan 1983; Miller 2009). This involves two distinct, but related, sub-questions. First, how can we delineate the boundaries of a *demos* without lapsing onto the circularity that a *demos* already needs to be formed in order to democratically determine those boundaries? Second, in the absence of a well-defined *demos*, how can we even speak meaningfully about global *democracy*? Fortunately, understanding democracy as an on-going and provisional process helps to mitigate both problems.^v The strategy adopted here understands boundaries as being constantly formed and reformed as authoritative relationships change and the degree to which an individual is ‘significantly affected’ is altered through time. In this way, the democratization of institutions becomes both constitutive and generative of a corresponding *demos* (Zürn 2000: 212; Bohman 2007; Cohen and Sabel 2005).^{vi}

Accountability is also a core value of democratization. Etymologically speaking, accountability literally just means to give an account of one's actions. However, modern usage of the term in political (democratic) contexts is much richer than this. In an already influential definition, Keohane and Grant (2005: 29) state that the standard model of accountability implies that some actors have the right to hold other actors to a set of standards, to judge whether those standards have been met, and to impose sanctions if the standards are not reached. Accountability is generally considered democratic when the agent giving an account is the wielder of authority (rule makers) and the agent(s) setting standards and imposing sanctions are the relevant demos (rule takers).

Beyond the state, in the absence of a global parliament and a broader constitutional framework, this democratic understanding of accountability is often pared back.^{vii} Grant and Keohane suggest a range of seven accountability mechanism which help to limit the abuse of power and authority ranging from hierarchical, supervisory, fiscal, legal, market, peer, and reputational. The significantly affected parties are noticeably absent from direct inclusion in these mechanisms. In a slightly more democratic vein, Jennifer Rubenstein (2007) and Mathias Koenig-Archibugi and Kate Macdonald (forthcoming) discuss the potential for surrogate and proxy accountability respectively. Both conceptions are underpinned by the notion that the standard model of accountability requires more nuance to explain how third parties can legitimately enforce accountability measures on behalf of the rightful agent to whom accountability should be owed. Finally, in a direct attempt to reconceptualize the standard model in democratic terms, Michael Goodhart (2011) has argued that wielders of authority can be accountable to democratic norms, rather than agents. These norms, Goodhart argues, should be grounded in an evolving framework of human rights linked with the democratic principles of freedom and equality. For this article I understand accountability as encompassing a variety of shades. It is most desirable that rule-makers are directly accountable to the relevant demos of rule-takers. However, given the incremental approach of democratization to which I am committed, rule-makers can be held accountable to previously agreed laws and norms (de Búrca 2007).

Finally, again in accordance with the provisional and on-going search for democratization, *institutional revisability* is a core value. The institutions which constitute a democratic system must be revisable over time. This enables citizens to question and contest the rules and regulations which significantly affect their lives. Democracy, as rule by the people, requires institutions that reflect the changing and ‘general will’ of those people. Of course, it is not the case that institutions should always reflect that will; we would not want to say that the majority of people could co-opt a political system by gerrymandering the electoral boundaries and forcing their will over the minority. But a degree of revisability is needed. Institutional revisability thus has two components. First, democratic institutions (and the system itself) must be flexible and capable of being changed, reshaped, or recalibrated. Because an institution is always influenced by - and in turn influencing - its environment, the institution must be able to adapt in the face of contextual shifts and uphold the normative values which it is supposed to instantiate (equal participation, accountability, and so on). Second, at the level of the democratic system, revisability also means institutions should work symbiotically with other institutions. Given the wide-ranging nature of the global democratic deficit, multiple institutions and institutional schemes will be required. As such, democratization is about having flexible institutions which can be altered in light of democratic contestation.

I do not argue that responsiveness is the gold standard or ideal of democracy as John May (1978) and Robert Goodin (2003) have contended. Both equal participation and accountability should not be jettisoned even if an institution is systemically responsive to the will of the majority. But as Michael Saward (1998: 52) argues, it is important to separate the definition of democracy from “its justification, conditions and links with other values, and from the extent of its realisability in the complex modern world.” It seems justifiable that all democracies contain institutions which can be employed to exercise authority. Institutions must be able to adapt to accommodate changes in social norms and new information. Moreover, given the provisional nature of democratization outlined above, having revisable institutions is important.

International Regime Complexity

These three values can be applied to international regime complexes as a meaningful strategy for global democratization.^{viii} Although regime complexes are a reasonably recent concept (Raustiala and Victor 2004), the broader notion of international regimes has a rich pedigree in IR scholarship (Levy et al. 1995). Despite the many conceptual, methodological, and ontological differences between neo-realists, neo-liberals, and constructivists, the 1970s and 1980s saw a near-consensual definition of ‘regimes’ produced by these camps. Following Krasner (1982: 185), international regimes can be conceptualized as a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations. Despite this general agreement, different scholars have emphasized different aspects of this definition. Neo-realists suggest that hard power dominates the creation of regimes and structures inter-state relations in line with those power imbalances (Walt 1987). Neo-liberals tend to focus on the explicit and formalized rules of international institutions and their rational utility for cooperation (Keohane 1984). Constructivists typically highlight the intersubjective formulation of norms and principles as central to regime formation (Reus-Smit 1997).

Valbona Muzaka (2010: 759) notes that the term ‘convergence of expectations’ is quite amorphous. Although all regimes require some degree of shared understanding, it is not clear how much convergence of expectations is needed. Certainly no international regime has ever generated identical expectations amongst participants. Hegemons, middle powers, weaker states, and non-state actors all have different expectations about how a regime should distribute burdens and benefits, and thus varied expectations about how rules should be negotiated, drafted, and operationalized. As such, it is not productive to understand regimes as fixed arrangements held together by mechanisms of coercion or fleeting moments of converging interests. It is much more plausible to understand regimes as “evolving, dynamic and contested processes” (Muzaka 2010: 759; see also Gale 1998). Regimes compose both material and ideational qualities that define, order, and stabilize meanings, rules, and norms within a certain issue-area. Regimes therefore become the site of contests and tensions between participants *as well as* the outcome of this contestation.

Understanding regimes in this dynamic light also helps to make sense of the emergence of regime complexes, which tend to develop as regimes splinter through a process of on-going contestation. As Keohane and Victor (2011) elucidate, international regulatory institutions can be positioned along a spectrum. At one pole there are single, integrated legal instruments around which clear expectations are generated. At the other pole we see highly fragmented legal instruments which have little or no overlap and are not analytically or empirically comparable to other regimes. In between these two extremes we see nested regimes and regime complexes which describe loosely coupled sets of regimes.

Regimes within a complex are simultaneously held together and kept apart by a series of linkages (Leebron 2002; Johnson and Urpelainen 2012). Linkages can be understood as interlaced institutional rules and cognitive frames that define the boundaries between regimes and institutions within a complex. The linkages can be renegotiated and reconceptualized over time. Precisely because of the evolving nature of regime complexity, the boundaries of each issue-area must be considered malleable. Concomitantly, regime complexes tend to encompass a wide variety of ever-changing actors. Although scholars have maintained an “unhealthy concern with states as the key actors in international regimes” (Muzaka 2010: 760), it is clear that non-state actors (such as MNCs, academics, epistemic groups, NGOs, private citizens, etc.) can all play a decisive role in the shape and nature of linkages within a complex. It is this evolving nature of regime complexity, coupled with the inclusion of state and non-state actors, which opens a strategy for on-going democratization.

Regime Complexes and Democratization

Over the past decade positivist and legal work has described the institutional features of regime complexes (Raustiala and Victor 2004; Alter and Meunier 2009). The concept has been applied to refugee policy (Betts 2009), climate change (Keohane and Victor 2011; Abbott 2012), trade (Milner 2009), human rights (Hafner-Burton 2009), and, most relevantly for this article, intellectual property rights (Helfer 2004; Yu 2009; Muzaka 2010). Although theoretical and empirical work on regime has abounded, normative work has perhaps been slower to react. This

is problematic because today, “[T]ransnational governance initiatives increasingly face the problem of regime complexity in which a proliferation of regulatory schemes operate in the same policy domain, supported by varying combinations of public and private actors” (Overdevest and Zeitlin 2012: 1). Given this empirical reality, normative scholars in general - and global democrats specifically - should be seeking to gain a foothold in the current situation.

My understanding of global democracy as the provisional and on-going instantiation of core values meshes well with Muzaka’s definition of regime (complexes) as evolving, dynamic, and contested sites of governance. In order to make the strategy for democratization more concrete, I argue that regime complexes should be disaggregated into two planes: a horizontal and a vertical dimension. This distinction follows on from Mitzen (2005: 402), who similarly argues that the legitimization of global politics can be conceived in terms of a *vertical* realm which focuses upon a cosmopolitan citizenry, transnational non-state actors, and private governance initiatives, and a *horizontal* realm which encompasses inter-state negotiation between national representatives. Of course, multilateral governance is directly impacted by non-state actors who increasingly have formal and meaningful participation in IGOs, as well as through public resistance and protests (Tallberg et al. 2012). In democratic terms, the horizontal dimension is comprised predominantly of rule-makers themselves, whereas the vertical dimension explicitly links rule-takers with authoritative rule-makers.

In a move that derives from Habermas’ (1984; 1996) work, Mitzen identifies these planes as ‘global public spheres’. Public spheres represent shared ‘lifeworlds’, in which participants engage in communicative action through a process of reason-giving in which uncoerced argumentation provides the motor for change. Although I find the vertical and horizontal heuristic insightful, I seek to show how a wide range of democratic values can be pursued in these fora. Perhaps precisely because regime complexes entail less ‘convergence of interest’, the bonds between actors within each ‘lifeworld’ break down, and we should thus search for the broader democratic values advocated previously. Therefore, I am not intrinsically tied to the notion of communicative action, although I certainly think it has an important role in the legitimization of global politics and thus global democratization (Risse 2000). Although other scholars have probed the deliberative democratic potential of international regimes (Bohman

1999; Payne and Samhat 2003), this article represents the first explicit attempt to develop a general democratic strategy at the level of regime complexity.^{ix}

I will argue that horizontal negotiations should be democratized through the equal participation of state and non-state actors, accountability to sets of previously agreed rules, and institutions which can be revised as democratic arguments develop over time. These multilateral negotiations partially rely upon the legitimating quality of communicative action (Müller 2004) to induce the broader set of democratic values. However, it does not rely solely upon the ‘gentle force of argumentation’ because regime complexes allow for forum shopping, issue linkages, cognitive framing, and even bargaining which can help promote democratization. Multilateral negotiators, as representatives of national interest and certain discourses, thus perform a crucial democratic function. Likewise, although INGOs might not be directly accountable to their stakeholders, they can still advance global democratization through contesting sites of authority, putting issues on the agenda, and exercising proxy accountability/representation functions (Dryzek 2012).

The vertical dimension links rule-makers with rule-takers through a variety of mechanisms. In general, these connections should be developed through a framework of democratic experimentalism (Sabel and Zeitlin 2011). Individuals should be piecemeal included as participants in authoritative governance structures in a way that upholds participation and accountability to multiple and overlapping demois that develop through time. Regime complexes contain fertile terrain for the democratization of both multilateral negotiation as well as the development of democratic experimentalism: I consider both components as integral to global democratization.

It is the goal of the second half of this article to elucidate the potential for this strategy through case-study analysis of the IPRs regime complex. Methodologically speaking, this move represents a type of ‘normative case study’ which combines empirical observation with normative assessment (Thacher 2006: 1632). Because property rights also represents a ‘tough case’ for global democracy, highlighting the democratic potential of this complex should provide optimism for the democratization of alternate issue-areas of transnational governance (Eckstein 1975: 118-20). This analysis operates at a fairly high level of abstraction in which I seek to

highlight a general pattern of democratic potential (as opposed to a sustained focus on a single institution or regime).

Democratizing Multilateral Negotiations for Intellectual Property Rights

The core argument of this section is that the structure of regime complexity opens the door for increased participation, accountability, and institutional revisability of multilateral negotiations and institutions. This occurs for several reasons, but predominantly these democratic improvements derive from linkages between institutions and the resultant ability of weaker actors to ‘regime shift’ in order to enhance their bargaining position and reframe normative/discursive issues (Helfer 2004; Busch 2007). This horizontal dimension understands multilateral negotiators as representatives of national constituencies and different ideological positions, and thus capable of acting in a democratic capacity. I begin with a brief history of the regime complex and then discuss each democratic value in turn, further drawing upon examples of regime-shifting within the IPR complex for support.

Intellectual Property Rights: An Evolving Complex

The IPRs complex has evolved through multiple – often conflicting – conventions, treaties, and agreements. The complex has been in development for over 500 years, with a xmajor shift coming in the late 1800s. At the Paris (1883), Berne (1887), and later Rome (1961) conventions, copyrights, patents, and performer’s rights were respectively ingrained as property rights. Although IPRs are often described as public goods, this change actually created scarcity and rivalry over the production of knowledge (Muzaku 2010: 764).

After World War II, the United States was predominantly interested in spreading its home-made variant of market liberalism abroad, and thus attempted to link IPRs with competition and antitrust measures (Porter 1986; Sell 2003). This US-led strategy was successful for many years, with the European Community (EC) and the US being able to dictate international IPR law from the 1950s until the mid-1980s. At this stage, developing states became increasingly dissatisfied with the IPRs regime and demanded revisions to the Paris Convention to gain preferential

treatment (Matthews 2007; Helfer 2004: 20). Eventually the Paris Convention Diplomatic Conference ground to a halt because the US and EC were unable to compel developing states to combat patent infringement or raise the standards of protection (Buscaglia and Guerrero-Cusumano 1995: 221-41). This gridlock led the US to determine that the World Intellectual Property Organization (WIPO) – with its one-country-one-vote governance system and UN mandate – was no longer an appropriate venue for IPR negotiation. Instead, buoyed by success its government had had in “linking intellectual property to trade in a series of bilateral consultations in the 1980s”, the US pressed for the inclusion of IPR issues in the Uruguay Round of General Agreement on Tariffs and Trade (GATT) negotiations (Braithwaite and Drahos 2000: 556).

At the end of the Uruguay Round in 1994, the GATT transformed into the WTO. Membership in the WTO was, and still is, conditional upon national enforcement of the TRIPS Agreement. TRIPS provides a one-size-fits-all set of standards for global IPRs, which, due to the US influence in the WTO negotiations, covers a wide range of issues from plant genetic resources, literary patents, copyrights, geographical indication, layout designs (topography), and much more. TRIPS standards are applied ‘equally’ across all WTO members, a feature strengthened by the WTO’s ‘most-favored nation’ (MFN) provision and the dispute settlement body (DSB) which gives legal teeth to TRIPS. The US was directly responsible for the inclusion of ‘retaliation measures’ against non-compliant states being incorporated in TRIPS Agreement.

As a result of on-going contestation, there has been a series of fascinating developments occur within the regime complex of IPRs. Despite the enforceability of TRIPS, the past decade or so has seen widespread backlash against the unfair and uniform standards imposed under TRIPS, especially from developing states (and BRIC). Immediately following TRIPS, developed states attempted to solidify their institutional advantage ingrained in the WTO accession policy. Simultaneously, developing states have attempted to roll-back the more onerous provisions of TRIPS (Helfer 2009: 40) with some success. One notable example is the Article 31 (a-l) provision to TRIPS negotiated as part of the 2001 Doha Round which allows developing states to bypass stringent TRIPS patent laws in the face of national health emergencies. The US (and, to a

wider extent, the remainder of the QUAD) has attempted to strengthen TRIPS through a series of bilateral, TRIPS-plus agreements (Yu 2009).

Equal Participation

It is certainly not immediately clear from the preceding discussion that the IPR regime complex holds much democratic potential at the level of multilateral negotiations. However, the politics of forum shopping and issue linkage within a complex provides a strategy to enhance equality of meaningful participation between state representatives by undercutting power imbalances. This strategy also allows a fruitful role for non-state actors to lobby, provide information, and generally impact inter-state negotiations across a range of fora. Helfer (2004; 2009) has undertaken several systematic studies of the post-TRIPS development period. Helfer (2009: 41-43) argues that regime-shifting (the strategic choice of venue akin to forum shopping at the domestic level), chessboard politics, and the blurring of domestic/international law has characterized strategy within the IPR regime complex. I discuss each mechanism in terms of enhancing equality of participation between multilateral negotiators.

Regime shifting provides a mode to equalize bargaining positions and create ‘counterregime norms’. There are many prominent examples whereby developing states have forum shopped in order to obtain more favorable bargaining positions and reframe issues in a more normatively-desirable manner. For instance, in an endeavor to roll-back the stringency of TRIPS in areas of public health, plant genetic resources, and biodiversity, developing states decamped from the WTO and shifted venue toward the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and the Convention on Biological Diversity (CBD) (Helfer 2009: 40). These other institutions – all linked within the IPR regime complex – are mandated with issues other than intellectual property enforcement. Developing states have thus been able to create issue linkages and ‘counterregime norms’ (Helfer 2009: 41). As a specific example, the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) forged through the CDB and FAO saw increased recognition of farmer’s right, the sovereign claim to putative ownership of plant genetic resources, and facilitated access to international seed stocks. Moreover, because developed states are not always present in alternate institutions (i.e. the US

never ratified the CBD), there are often less power imbalances in these institutions. Alternate venues thus enabled the creation of rules within the IPR complex that run ‘counter’ TRIPS.

Although regime shifting can be modeled as a single-shot game, it is more accurately understood as a long-term, iterative process. This is what Alter and Meunier (2009) call chessboard politics, in which actors use regime complexity to create ‘strategic inconsistencies’ between regimes to alter the wider political setting. Marc Busch (2007) rightly notes that we can only understand the choice of venue in NAFTA-WTO disputes (both important elements of the international trade regime complex) when we realize that states select a venue to set long-term precedent, rather than to win individual suits. This means that actors do not always regime shift to change formal institutional rules. Rather, as Helfer (2004) identifies, regime shifting and chessboard politics can be a strategy to align preferences and craft proposals for the long-term. This is precisely what occurred in the 2001 TRIPS Agreement on Public Health: developing states used the WHO to coordinate their challenge against developed states by linking issue areas together (Muzaka 2010). Indeed, not only did the WHO allow developing states to formulate a consistent message against the TRIPS Agreement, but eventually the rules created in the WHO were employed as leverage to alter WTO rules in an (ironic) effort to ‘harmonize’ international law. As such, regime shifting can allow developing states an opportunity to align preferences and form a counterweight to hegemonic power blocs in a way that fosters equality of participation.

Finally, regime complexity impacts the domestic-international relationship of legal obligations (see also Krisch 2010). The nature of multiple and overlapping regimes covering a single issue area means that domestic governments have greater leeway to decide which rules to implement and how to interpret contradictions. Such an example can be seen in Decision 486 of the Common Regime on Industrial Property. In this decision, the Andean Community (Bolivia, Colombia, Ecuador, Peru, and several associate and observer countries) placed specific impositions on patents resulting for biological material found in the Andean region.^x Although this agreement appears to infringe upon TRIPS (and potentially even MFN status of the WTO), no state has filed a WTO dispute settlement complaint. In converse, these conflicting laws have allowed powerful states (such as the US) to demand in minilateral talks that developing states accept the more stringent rules available. As such, regime shifting is certainly a strategy adopted

by weak and powerful states (Drezner 2009). However, as a way to foster equality of participation, it is important to think about how weaker-state actors can use the contradictions in domestic/international law and the backstop of sovereignty to level the playing field in multilateral negotiations. More generally, it is important to question how regime complexity and issue linkages can be employed to equalize meaningful participation between rule-makers.

Accountability

While equality of participation is an important democratic value, its value is linked closely with accountability. In other words, the outcomes of bargaining and negotiation should set standards of accountability that bind weak and strong actors alike. Given the prevalence of power politics especially under conditions of regime complexity (Biermann et al. 2009), this is a difficult metric to uphold between states. However, there are glimpses that the IPR complex is capable of upholding this democratic standard. In this section, I focus on a very recent WTO decision in Dispute Settlement DS285 between the USA and Antigua and Barbuda: US-Gambling.

In March of 2003, Antigua and Barbuda (Antigua) filed a complaint with the WTO DSB against the US. In short, Antigua was claiming that the US had violated its WTO trade agreement by preventing citizens from gambling on overseas websites (cross-border restrictions). This allegedly caused Antigua's gaming industry to collapse from the second-largest employer of people in the Caribbean at around 4000 employees in 2000 to fewer than 500 by 2004 (Thayer 2004). In 2005, the WTO found in favor of Antigua, and the US opted to implement a series of recommendations laid-out by the WTO pursuant to a 'reasonable timeframe.' In 2007, Antigua claimed that, pursuant to Article 22.2 of the DSB, the US were not eligible for concessions, and were therefore responsible for the loss of annual USD \$21 Million to Antigua's economy. In 2012, bilateral negotiations between Antigua and the US broke-down, and Antigua asked the WTO to rule against the US. In these cases, the WTO would usually allow the complainant to raise tariffs against the respondent. However, given the size of the Antiguan economy, this would not help recuperate the losses. As of January 2013, the WTO has instead granted Antigua the right to sell US media downloads without compensating the makers, thus legalizing 'pirated' material.

Of course, this 2013 ruling is not the end of the story. However, the point is this: the US originally demanded retaliation measures be included in the TRIPS negotiation. As we have now seen, the WTO DSB has used these retaliation measures to impose original and powerful standards against the US (and EC in other cases). As Grant and Keohane suggest, accountability is the ability to set standards, to judge whether these standards have been met, and to impose sanctions in instances of breach. The WTO DSB has fulfilled this tripartite division by setting standards over IPRs, judging that the US is in breach for international gambling restrictions, and imposing sanctions which also directly related to IPRs in the form of copyrights over media products. Although a full exploration is not possible here, this ruling by the WTO DSB is at least partially a result of the inter-institutional competition provided by regime complexity in which the WTO must deliver clear and consistent results in order to maintain a standard of legitimacy, as Pascal Lamy (2012) himself notes. It is the case that states and non-state actors alike should employ formal accountability measures in multilateral negotiations to support this value of democratization.

Institutional Revisability

Within a regime complex, institutions must also be subject to revisability in the face of contestation. The IPR complex exhibits a great deal of revisability which entails democracy-enhancing potential. I focus briefly on two specific examples.

First, regime complexity – and especially the politics of regime shifting – has enabled a wide variety of non-state actors to play a decisive role in multilateral negotiations. This contributes to an equality of participation standard as well by increasing the number of actors, interests, and discourses within the horizontal dimension (Dryzek 2009). Additionally, it elucidates the potential of regime complexity to generate revisability through contestation and competition. Another reason that developing states shifted away from the WTO is because the WHO, FAO, and CBD are all much more ‘friendly’ to civil society participation. Through the CBD, developing countries and sympathetic NGOs (such as the Access to Knowledge movement) managed to establish links between biodiversity, the environment, and trade in ways that

conflicted with the TRIPS Agreement (Pugatch 2004; Kapczynski 2008). The ability of non-state actors to bolster the bargaining position of developing states by creating issue linkages is encouraging from a democratic standpoint, both in terms of equality of participation and institutional revisability. During the same time period, the WTO DSB has also become more ‘open’ to civil society participation. Dunoff (2004) has documented the ways in which civil society groups have been granted the right to file amicus briefs as a type of public participation. Although how and why multilateral institutions have opened up to civil society is still contested (Tallberg et al. 2012), the diffusion of this practice – and its impact on horizontal negotiations – provide optimism that IGOs are subject to democratic revision.

Finally, the reemergence of WIPO as a central institution in global IPRs highlights the revisability of the overall regime complex. The US and EC originally moved negotiations to the GATT/WTO precisely because they felt stifled by the gridlock in WIPO. Over the past two decades, WIPO has spent much time and energy fighting back against its partial marginalization during the Uruguay Round (May 2007: 161). For example, in 2002 WIPO established a ‘Patent Agenda’ under Article 2 which sought to take account of the unfair rules imposed on developing states by the TRIPS Agreement. In 2004 the Patent Agenda was followed up by the Development Agenda which is now being implemented by the Committee on Development and Intellectual Property (CDIP) as part of WIPO’s commitment to global development goals. The WTO has allowed, and even facilitated, limited changes to the TRIPS Agreement in the face of inter-institutional pressure. Such innovations are endemic of regime complexity in which no hegemonic power is able to eliminate competition at will (Keohane and Victor 2011). From this section, it is possible to argue that multilateral negotiations within the IPR complex uphold, to varied degrees, equal participation, accountability, and institutional revisability.

Democratic Experimentalism and the Intellectual Property Rights Complex

Multilateral negotiations play a legitimating role in world politics and will be, in certain respects, essential to broader global democratization efforts (Mitzen 2005). This is especially important given that, as Garrett Wallace Brown (2011: 53-66) has noted, cosmopolitans have a tendency to neglect the importance of nation-states in advancing their normative visions. Although the realm

of inter-state negotiations between rule-takers may be important, it is not *sufficient* for global democratization. To remedy the democratic deficit, rule-takers need to be included in the democratic framework of world politics. I argue that democratic experimentalism provides both the most desirable and feasible path toward this strategy. Regime complexity provides an appropriate governance architecture to induce democratic experimentalism.

Democratic Experimentalism and Regime Complexity

Democratic experimentalism is a pragmatic approach which finds its philosophical roots in the works of John Dewey (1996). At its core, experimentalism is “a recursive process of provisional goal setting and revision based on learning from comparison of alternative approaches to advancing these goals in different contexts” (Overdevest and Zeitlin 2012: 4). Perhaps the most comprehensive explication of experimentalism governance comes from Michael Dorf and Charles Sabel (1998: 267), who argue that experimentalism seeks to decentralize authority “to enable citizens and other actors to utilize their local knowledge to fit solutions to their individual circumstances.” Knowledge developed through local decentralization should then be disseminated and diffused by higher levels of governance so that other citizens facing similar problems can learn and adapt. As such, information pooling, coordination, and mutual learning increases efficiency as well as heightens “accountability through participation of citizens in the decisions that affect them” (Dorf and Sabel 1998: 267).

Overdevest and Zeitlin (2012: 4) identify four features that a system of experimental governance must uphold. First, broad framework goals - and tangible metrics for gauging their achievement - are provisionally set through a combination of central and local units in consultation with affected citizens. Second, local units are then given broad discretion to pursue and attain these targets in their own way. These local units can be private citizens, public groups, or public-private partnerships. Third, these local groups should report regularly on their performance and participate in peer review benchmarking. This involves a learning function in which local units that are failing to meet pre-set standards take corrective measures. Finally, the goals, standards, and review process itself is understood as provisional and thus is up for debate by “a widening circle of actors” (Overdevest and Zeitlin 2012: 4; see also Sabel and Zeitlin 2012).

Regime complexes provide the scaffolding for experimentalism. This argument has now been advanced in the issue-areas of climate change (Keohane and Victor 2011; Abbott 2012), forest governance (Overdevest and Zeitlin 2012; McDermott et al. 2009), genetically-modified food governance (Krisch 2010), trade (de Búrca 2008), and transnational regulation (Black 2008). Without an explicit grounding in experimentalism, similar arguments have been advanced in the areas of financial regulation (Helleiner and Pagliari 2011) and – with a democratic focus – supply chain governance (Macdonald and Macdonald 2010). Regime complexes offer a productive structure for experimentalism for three reasons. First, no hegemon can impose a single set of rules and thus cooperation between interconnected regime elements tend to be based on flexible, adaptable, and decentralized learning (Keohane and Victor 2011). Second, regime complexes exhibit multi-level governance that stretches from the local to the supra-national. Finally, complexes contain multiple institutional venues such as INGOs, public-private partnerships, regulatory bodies, and IGO experiments which generate the preconditions for direct connections between rule-takers and rule-makers. The extent to which the IPR complex engenders democratic experimentalism based around participation, accountability, and revisability is the core concern here.

Equal Participation

Regime complexes tend to include a wide range of actors, including citizens. The DSB, as agreed under the original Marrakesh Treaty, can source information from any actor it deems necessary. This has included both NGOs (in the *Shrimp-Turtle* dispute) and local communities (in the *Softwood Lumber* dispute between the US and Canada). Martha Minow (2003) has demonstrated how public-private partnerships are able to import public values into private-sector economy and IPR institutions by fostering a healthy version of pluralism.^{xi}

Outside of these quite formal channels, the IPR complex provides many other ways for citizens to be involved in IPR governance. In a now well-known example, ICANN – who determine the internet domain names for websites and have, on occasion, been involved in IPR disputes over naming rights – held public, on-line elections for several of its board-of-director seats. Similarly,

open-sourced software development provides a clear example of experimental governance in operation. As Benkler and Nissenbaum (2006: 395) succinctly note, “[T]he best known examples of commons-based peer production are the tens of thousands of successful free market projects [...] that occupy the software development market.” This open-sourcing experimentalism – pushed along by near-global internet access and increased bandwidth capacity – involves a collective effort of individuals contributing toward a common goal. No one person ‘owns’ the software, instead it emerges from the collaboration of citizens and developers (Benkler and Nissenbaum 2006: 395). Companies (IBM, Microsoft), governments (the US, China), and IGOs (The World Bank) have all begun investing in this kind of open-sourced software development in an effort to connect local citizens with higher sites of governance. These projects are typically inclusive and network-based, with problem-solving and mutual-learning being paramount.

An alternate example of the inclusion of citizens in global governance structures can be seen in the Public Intellectual Property Resource for Agriculture (PIPRA) network. This group links together around 50 institutions in 15 different countries and is designed to facilitate innovators in the development and dissemination of crops for developing countries. As a form of benchmarking and standard-setting so crucial to experimental governance, PIPRA also develops inclusive educational materials for training a broad range of professionals including scientist, policy-makers, attorneys, and administrators. PIPRA and other non-state actors explicitly establish best-practice guidelines and disseminate this knowledge to other stakeholders. In an example of the consequential uptake of this local decentralization in the IPR complex, PIPRA aided farmers in India to defend their traditional knowledge by claiming Geographical Indication (GI) protection over their products. This move managed to use TRIPS to slow neo-liberal economics and created a precedent for GI to be claimed by other local groups (Subbiah 2004).

As an on-going process, the democratization of a regime complex strives toward equal and maximal inclusion of significantly affected individuals (c.f. de Búrca). As sites of authority change their mandate, rules, and representatives, the bounds of affected individuals will also shift. Because world politics entails an ever-moving terrain, it is useful to have a conceptualization of democracy that can function alongside empirical reality. Within the IPR complex, civil society involvement, open-sourced software, and networked governance can

provide inclusive mechanisms in line with democratic experimentalism. These bodies provide a way to think about connecting rule-makers directly with rule-takers in multiple and overlapping institutional innovations. To be sure, equality of participation is not an automatic consequence of regime complexity. However, the point is to emphasize a productive strategy that academics and practitioners concerned with the global democratic deficit can pursue in a tangible way.

Accountability

Accountability is again a very tough criterion to apply in regime complexity. However, it is democratically important that rule-takers are able to set, monitor, and enforce standards as part of their collective efforts of self-governance. Keohane and Victor (2011: 17) explicitly single out accountability as a normative goal that regime complexes should strive to uphold. Although they shy away from the term ‘democratic’, these authors note that institutions within a complex should be accountable not just to states, but also NGOs and *publics*. Here I provide two concrete (but far from exhaustive) examples. The first comes from within the IPR complex. The second comes from the regime complex on international trade. Given that ‘joints’ – institutional points of intersection - between regime complexes tend to produce innovation (Raustiala and Victor 2004), global democrats should seek to create issue linkages which advance democratic experimentation, and endeavor to diffuse good democratic experiments from one institution (or complex) to another.

Within the IPR complex, rule-takers are directly incorporated in a wide range of standard-setting organizations (SSOs), which are supposed to provide best-practice guidelines that can be used as accountability benchmarks for manufacturers and companies (Lemey 2002). The Internet Engineering Task Force or Web3C provide this function. Although a large number of SSOs occupy different regime complexes, this does not seem to create a regulatory ‘race to the bottom’. Instead, individual citizens (consumers, programmers, and interested stakeholders), companies, and civil society bodies contribute to the development of SSOs by providing information, highlighting shortcomings in different standards, reformulating goals, and expounding standards for ‘good governance’. This supports the finding of Overdevest and Zeitlin (2012: 11) who claim that the emergence of private certification schemes in the complex of

forest governance has not exacerbated regime fragmentation but rather encouraged productive interactions. For instance, different standards established by the Forest Stewardship Council and its competitors have resulted in mutual adjustment, learning from experience, and increased accountability of schemes to one another *and to external audiences*.^{xii}

As with participation, rule-makers can be held accountable to rule-takers through a number of mechanisms. Although it is an issue of trade and development, a useful example from the World Bank is the ICT4Gov project. Based on the notion of participatory budgeting, this project has developed software that enables citizens in deprived communities to communicate with their government and the World Bank through mobile phone technology. In 2012, this technology was used across Africa in an effort to improve dialogue between the “public, stakeholders (provincial governments, decentralized territorial entities, civil society and the public and private sectors) and local authorities” in order to foster trust and learning over time.^{xiii} This system works by having local authorities present their budget to citizens who deliberate over priorities, set goals, and monitor the implementation of activities. To quote the ICT4Gov site, “[T]his participatory approach has enabled the decentralized territorial entities involved in the pilot project to improve local governance through social accountability, effective participation of citizens in the management of public affairs and citizen monitoring of public investments.” The World Bank thus performs two democratic functions. First, it provides a form of accountability by implementing the project and ensuring local goals are indeed met through SMS consultation with citizens. Second, the World Bank has also learnt from the experiment in South Kivu and is diffusing the project to alternate localities in a provisional yet recursive manner.

Institutional Revisability

Finally, democratic experimentalism places the notion of institutional revisability at the heart of efficient and legitimate governance. This revisability should be explicitly linked with local level actors and openness of participation (de Búrca et al. 2013). A specific example from the IPR complex helps to tie this criterion together. The Treatment Action Campaign (TAC), running from 1998 to 2008 in South Africa, sought to alleviate the costs of antiretroviral (ARV) medicine, with a specific focus on HIV medication. The TAC engaged multiple targets for

governance reform from the South African government, health care providers, the pharmaceutical lobby, and the South African legal system. In direct contrast to TRIPS, the TAC was able to create an issue link between human rights, public health, and IPRs (Heywood 2009). TAC was not only started as a grassroots organization, but deliberately sought to link individually-affected citizens (rule-takers) with national and global rule-makers.

Democratic experimentalism emphasizes the importance of local knowledge in creating and monitoring standards in governance rules. These rules should themselves be periodically revisable, with alterations being made in light of better information and the success/failure of other institutional schemes in similar situations (Overdevest and Zeitlin 2012). The TAC specifically incorporated new actors in discussions over the baseline for adequate public health provisions, such as HIV infected mothers and new public experts. This campaign also had macro-level uptake in multiple ways. First, TAC managed to induce revisions in the policy of multiple pharmaceutical companies (which donated the AVR *Nevirapine*). Second, TAC won a constitutional court case against the South African government which made it a legal ‘best practice’ that the government had to provide preventative medication against mother-to-child-transmission of HIV. The TAC campaign is still involved in monitoring local clinics, hospitals, and other medical facilities to ensure this standard is being met. Third, when pharmaceutical companies attempted to sue the South African government for violations of TRIPS, the TAC submitted amici briefs on the government’s defense, eventually culminating in the pharmaceutical companies dropping their lawsuit.

Ultimately, this specific case involved local communities involved in a recursive practice of standard-setting and continuous monitoring. The case exhibits institutional revisability in terms of the TAC itself (which employed networks of actors and other NGOs to bolster their position), changes to local governance policy (the regulations and monitoring standards of hospitals and clinics), national level (constitutional court amendments), and the global level (a direct challenge to TRIPS and the pharmaceutical market through issue linkage and the diffusion of new ‘best practice’ standards at the local level).

Conclusion

This article has operated at high level of abstraction in which I have analyzed many different components of the IPR complex. Although I could have focused on a single institution or one-off events, such studies have been conducted with much competence (Dingwerth 2005; Brassett et al. 2012). However, elucidating a general strategy for global democratization is equally illustrative. I have not meant to suggest that regime complexes are already particularly democratic: surely they are not. However, I have sought to demonstrate that there are multiple channels to think about the democratization of regime complexes that take seriously the current state of affairs. This connects neatly with the normative conception of democracy presented from the outset as provisional and on-going. As de Búrca (2008: 157) has argued, democratizing transnational governance should adopt a ‘striving approach’, which works on the premise that “although the dominant model of democracy cannot simply be transposed from the national domain, we can and should try to translate the core values of democracy into a realizable institutional form when designing or reforming transnational governance practices.”

This places some limitations on the immediate attainment of global democracy. It is not possible to draw precise boundaries for all significantly affected individuals because authoritative relationships between rule-makers and rule-takers are shifting over time (Zürn 2000). It is possible, though, to think about incremental steps which advance equality of participation in multilateral politics and direct citizen governance. Similarly, accountability standards should be re-thought to understand how rule-makers can be held democratically accountable through normative conditions, proxy standards, INGO influence, and experimental citizen input. Finally, we should prepare for many institutional and normative revisions in the face of the bumpy road ahead.

Ultimately, though, the democratization of regime complexes has multiple advantages. First, it allows global democrats to think about normative and institutional prescriptions which are issue-area specific rather than one-size-fits-all. This is useful because some issue areas might be more susceptible to discursive democratization, whereas other issues require hardline responses. Second, and relatedly, the strategy allows for truly global democratization through the

application of the three principles to trade, IPRs, human rights, supply chains, refugee politics, and all other issue-areas. Finally, the focus on regime complexity offers new and innovative potential for democratic institutional change in world politics. Issue linkages and regime shifting can be employed to advance normative values and successful democratic practices can be diffused within and across complexes. This provides a long-term strategy which requires sustained interest, analysis, and application for the pursuit of global democratic standards.

- Abbott KW (2012) Engaging the Public and the Private in Global Sustainability Governance. *International Affairs* 88(3): 543-64.
- Alter KJ and Meunier S (2009) The Politics of International Regime Complexity. *Perspectives on Politics* 7(1): 13-24.
- Archibugi D (1998) Principles of cosmopolitan democracy. In: Archibugi D, Held D and Köhler M (eds) *Re-imagining Political Community: Studies in Cosmopolitan Democracy*. London: Polity Press, 198–227.
- Archibugi D (2004) Cosmopolitan democracy and its critics: A review. *European Journal of International Relations* 10(3): 437–473.
- Archibugi D (2008) *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*. Princeton, NJ: Princeton University Press.
- Archibugi D, Koenig-Archibugi M and Marchetti R (2012) *Global Democracy: Normative and Empirical Perspectives*. Cambridge: Cambridge University Press.
- Benkler Y and Nissenbaum H (2006) Commons-Based Peer Production and Virtue. *The Journal of Political Philosophy* 14(4): 394-419.
- Betts A (2009) Institutional Proliferation and the Global Refugee Regime. *Perspective on Politics* 7(1): 53-58.
- Bexell M, Tallberg J and Uhlin A (2010) Democracy in Global Governance: The Promise and Pitfalls of Transnational Actors. *Global Governance* 16(1): 81-101.
- Biermann F, Pattberg P, van Asselt H and Zelli F (2009) The Fragmentation of Global Governance Architectures: A Framework for Analysis. *Global Environmental Politics* 9 (4): 14-40.
- Black J (2008) Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes. *Regulation & Governance* 2(2): 137-64.
- Bohman J (1999) International Regimes and Democratic Governance: Political Equality and Influence in Global Institutions. *Ethics and International Affairs* 75(3): 499-513.
- Bohman J (2007) *Democracy across Borders: From Dêmos to Dêmoi*. Cambridge, MA: MIT Press.
- Braithwaite J and Drahos P (2000) *Global Business Regulation*. Cambridge: Cambridge University Press.
- Brassett J, Richardson B and Smith W (2012) Private Experiments in Global Governance:

- Primary Commodity Roundtables and the Politics of Deliberation. *International Theory* 4(3): 367-99.
- Brown GW (2011) Bringing the State Back into Cosmopolitanism: The Idea of Responsible States. *Political Studies Review* 9(1): 53-66.
- Buchanan A and Keohane RO (2006) The legitimacy of global governance institutions. *Ethics & International Affairs* 20(4): 405–438.
- Buscaglia E and Guerrero-Cusumano J-L (1995) Quantitative Analysis of Counterfeiting Activities in Developing Countries in the Pre-GATT Period. *Jurimetrics Journal* 35(2): 221-41.
- Busch ML (2007) Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade. *International Organization* 61(4): 735-61.
- Cabrera L (2004) *Political Theory of Global Justice: A Cosmopolitan Case for the World State*. London: Routledge.
- Cabrera L (2010a) *The Practice of Global Citizenship*. Cambridge: Cambridge University Press.
- Cabrera L (2010b) World government: Renewed debate, persistent challenges. *European Journal of International Relations* 16(3): 511–531.
- Carothers T (2008) *Is a League of Democracies a Good Idea?* Washington, DC: Carnegie Endowment for International Peace.
- Chon M (2011) Global Intellectual Property Governance (Under Construction). *Theoretical Inquiries in Law* 12(1): 349-380.
- Cohen J and Sabel CF (1997) Directly-Deliberative Polyarchy. *European Law Journal* 3(4): 313-42.
- Cohen J and Sabel CF (2005) Global Democracy. *NYU Journal of International Law and Politics* 37(4): 763-97.
- Cooper S, Hawkins DG, Jacoby W, and Nielson D (2008) Yielding Sovereignty to International Institutions: Bringing System Structure Back In. *International Studies Review* 10(3):501–24.
- de Búrca G (2008) Developing Democracy Beyond the State. *Columbia Journal of Transnational Law* 46(2): 101-58.
- de Búrca G, Keohane RO and Sabel C (forthcoming 2013) New Modes of Pluralist Global Governance. *NYU Journal of International Law and Politics*.

- de Wilde P and Zürn M (2012) Can the Politicization of European Integration be Reversed? *Journal of Common Market Studies* 50(S1): 137-153.
- Dewey J (1996) *The Collected Works of John Dewey: The Electronic Edition*, ed. L. A. Hickman. Charlottesville, VA: Intelix Corporation.
- Dingwerth K (2005) The Democratic Legitimacy of Public-Private Rule Making: What Can We Learn from the World Commission on Dams. *Global Governance* 11(1): 65-83.
- Dorf MC and Sabel CF (1998) A Constitution of Democratic Experimentalism. *Columbia Law Review* 98(2): 267-473.
- Doyle M (2012) Dialectics of a Global Constitution: The Struggle over the UN Charter. *European Journal of International Relations* 18(4): 601-24.
- Drezner D (2009) The Power and Peril of International Regime Complexity. *Perspectives on Politics* 7(1): 65-70.
- Dryzek JS (2000) *Deliberative Democracy and Beyond: Liberals, Critics, Contestation*. Oxford: Oxford University Press.
- Dryzek JS (2006) *Deliberative Global Politics: Discourse and Democracy in a Divided World*. Cambridge: Polity Press.
- Dryzek JS (2008) Two Paths to Global Democracy. *Ethical Perspectives* 15(4): 469-486.
- Dryzek JS (2009) Democratization as Deliberative Capacity Building. *Comparative Political Studies* 42(11): 1379-1402.
- Dryzek JS (2010) *Foundations and Frontiers of Deliberative Governance*. Oxford: Oxford University Press.
- Dryzek JS (2012) Global Civil Society: The Progress of Post-Westphalian Politics. *Annual Review of Political Science* 15: 101-19.
- Dunoff J (2004) Public Participation in the Trade Regime: Of Litigation Frustration, Agitation and Legitimation. *Rutgers Law Review* 56(4): 961-70.
- Dunoff J and Trachtman J (2009) *Ruling the World? Constitutionalism, International Law, and Global Governance*. Cambridge: Cambridge University Press.
- Eckstein H (1975) Case Study and Theory in Political Science. In: Greenstein FI and Polsby WI (eds) *Handbook of Political Science: Strategies of Inquiry*, Vol. 7. Reading, MA: Addison-Wesley, 79-138.

- Erman, E (forthcoming) In Search of Democratic Agency in Deliberative Governance. *European Journal of International Relations*.
- Falk R (1975) *A Study of Future Worlds*. New York: The Free Press.
- Falk R and Strauss A (2001) Toward Global Parliament. *Foreign Affairs* 80 (1): 212-20.
- Forst R (2007) *Das Recht auf Rechtfertigung. Elemente einer konstruktivistischen Theorie der Gerechtigkeit*. Frankfurt a.M.: Suhrkamp.
- Gallie WB (1956) Essentially Contested Concepts. *Proceedings of the Aristotlean Society* 56: 167-98.
- Goodhart M (2011) Democratic Accountability in World Politics: Norms, Not Agents. *The Journal of Politics* 73(1): 45-60.
- Goodin RE (2003) *Reflective Democracy*. Oxford: Oxford University Press.
- Goodin RE (2010) Global Democracy: In the Beginning. *International Theory* 2(2): 175-209.
- Grant R and Keohane RO (2005) Accountability and Abuses of Power in World Politics. *American Political Science Review* 99(1): 29-43.
- Habermas J (1996) *Between Facts and Norms*. Cambridge, MA: MIT Press.
- Habermas J (2001) *The Post-National Constellation*, ed. Max Pensky. Cambridge, MA: MIT Press.
- Held D (1995) *Democracy and the Global Order*. Cambridge: Polity.
- Held D (2004) *Global Covenant*. Cambridge: Polity.
- Held D (2006) *Models of Democracy*. 3rd ed. Cambridge: Polity Press.
- Helfer LR (2004) Regime shifting: The TRIPs agreement and new dynamics of international intellectual property lawmaking. *Yale Journal of International Law* 29(Winter): 1–83.
- Helfer, LR (2009) Regime Shifting in the International Intellectual Property System. *Perspectives on Politics* 7(1): 39-44.
- Helleiner E and Pagliari S (2011) The End of an Era in Financial Regulation? A Postcrisis Research Agenda. *International Organization* 65(1): 169-200.
- Hix S (1998) The Study of the European Union II: The ‘New Governance’ Agenda and its Rival. *Journal of European Public Policy* 5(1): 38-65.
- ICT4Gov (2012) Homepage available at:
<http://www.worldbank.org/en/news/feature/2012/09/10/participatory-budgeting-an-experience-in-good-governance>

- Johnson T and Urpelainen J (2012) A Strategic Theory of Regime Integration and Separation. *International Organization* 66(4): 645-77.
- Kapczynski A (2008) The access to knowledge mobilization and the new politics of intellectual property. *Yale Law Journal* 117: 804–884.
- Keohane RO (1984) *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press.
- Keohane RO (2006) Accountability in World Politics. *Scandinavian Political Studies* 29(2): 75-87.
- Keohane RO and Victor DG (2011) “The Regime Complex for Climate Change. *Perspectives on Politics* 9(1): 7-23.
- Kingsbury B, Krisch N and Stewart R (2005) The emergence of global administrative law. *Law and Contemporary problems* 68(3): 15–61.
- Koenig-Archibugi M (2010) Is global democracy possible? *European Journal of International Relations* 17(3): 519-42.
- Koenig-Archibugi M and Macdonald K (forthcoming) Accountability-by-Proxy in Transnational Non-State Governance. *Governance*.
- Koremenos B, Lipson C and Snidal D (2001) The Rational Design of International Institutions. *International Organization* 55(4): 761-99.
- Krasner SD (1983) *International Regimes*. Ithaca, NY: Cornell University Press.
- Krisch N (2010) *Beyond Constitutionalism: The Pluralist Structure of Postnational Law*. Oxford: Oxford University Press.
- Lamy P (2012) Global Governance: From Theory to Practice. *Journal of International Economic Law* 15(3): 721-28.
- Lamy P (2013) The WTO in Global Governance: Solid? Liquid? Gaseous? *Global Policy*, online first, available at: <http://www.globalpolicyjournal.com/blog/02/04/2013/wto-global-governance-solid-liquid-gaseous>.
- Leebron D (2000) Symposium: The Boundaries of the WTO: Linkages. *The American Journal of International Law* 96(1): 5-27.
- Lemley MA (2002) Intellectual Property Rights and Standard-Setting Organizations. *California Law Review* 90(6): 1889-1981.
- Levy MA, Young OR and Zürn M (1995) The study of international regimes. *European Journal*

- of International Relations* 1(3): 267–330.
- Lobel O (2004) The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought. *Minnesota Law Review* 89(2): 342-470.
- Macdonald K and Macdonald T (2010) Democracy in a pluralist global order: Corporate power and stakeholder representation. *Ethics & International Affairs* 24(1): 19–43.
- Macdonald T (2008) *Global Stakeholder Democracy*. Oxford: Oxford University Press.
- Macdonald T and Ronzoni M (2012) Introduction: The Idea of Global Political Justice. *Critical Review of International Social and Political Philosophy* 15(5): 521-33.
- Matthews D (2007) The Role of International NGOs in the Intellectual Property Policy-Making and Norm-Setting Activities of Multilateral Institutions. *Chicago-Kent Law Review* 82(3): 1369-87.
- May C (2007) The World Intellectual Property Organization and the Development Agenda. *Global Governance* 13(2): 161-70.
- May JD (1978) Defining Democracy: A Bid for Coherence and Consensus. *Political Studies* 26(1): 1-14.
- Miller D (2009) Democracy's Domain. *Philosophy and Public Affairs* 37(3): 201–228.
- Mitzen J (2005) Reading Habermas in Anarchy: Multilateral Diplomacy and Global Public Spheres. *American Political Science Review* 99(3): 401-417.
- Moravcsik A (2004) Is there a 'democratic deficit' in world politics? A framework for analysis. *Government and Opposition* 39(2): 336–363.
- Müller H (2004) Arguing, Bargaining, and All That: Communicative Action, Rationalist Theory, and the Logic of Appropriateness in International Relations. *European Journal of International Relations* 10(3): 395-435.
- Muzaka V (2011) Linkages, contests and overlaps in the global intellectual property rights regime. *European Journal of International Relations* 17(4): 755-76.
- Overdevest C and Zeitlin J (forthcoming) Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector. *Regulation and Governance*.
- Patomäki H (2011) Towards global political parties. *Ethics & Global Politics* 4(2): 81–102.
- Patomäki H and Teivainen T (2004) *A Possible World: Democratic Transformation of Global Institutions*. London: Zed.
- Pogge TW (2002) *World Poverty and Human Rights*. Cambridge, Polity.

- Porter ME (1986) Competition in global industries: A conceptual framework. In Porter ME (ed.) *Competition in global industries*. Cambridge MA: Harvard Business School Press, 15–60.
- Public Intellectual Property Resource for Agriculture, The. “Homepage.” Accessed November 22, 2012. <http://www.pipra.org/>.
- Pugatch MP (2004) *The International Political Economy of Intellectual Property Rights*. Cheltenham: Edward Elgar.
- Raustiala K and Victor DG (2004) The regime complex for plant genetic resources. *International Organization* 58(2): 277–309.
- Reus-Smit C (1997) The Constitutional Structure of International Society and the Nature of Fundamental Institutions. *International Organization* 51(4): 555-589.
- Risse T (2000) ‘Let’s argue!’: Communicative Action in World Politics. *International Organization* 54(1): 1–39.
- Rubenstein J (2007) Accountability in an Unequal World. *Journal of Politics* 69(3): 616-32.
- Sabel CF and Zeitlin J (2008) Learning from Difference: The New Architecture of Experimentalist Governance in the EU. *European Journal of Law* 14(3): 271-327.
- Sabel CF and Zeitlin J (2011) Experimentalism in Transnational Governance: Emergent Pathways and Diffusion Mechanisms. Paper presented at annual conference of the *International Studies Association*, Montreal, March 16-19.
- Samhat N and Payne R (2003) Regimes, Public Spheres, and Global Democracy. *Global Society* 17 (July): 273–95.
- Saward M (1998) *The Terms of Democracy*. Cambridge: Polity Press.
- Scholte JA (2011) *Building Global Democracy? Civil Society and Accountable Global Governance*. Eds. Cambridge: Cambridge University Press.
- Scholte JA (forthcoming) Reinventing Global Democracy. *European Journal of International Relations*.
- Sell SK (1998) *Power and Ideas: North-South Politics of Intellectual Property and Antitrust*. Albany, NY: SUNY Press.
- Sell SK (2004) The Quest for Global Governance in Intellectual Property and Public Health: Structural, Discursive, and Institutional Dimensions. *Temple Law Review* 77(1): 363-400.
- Sell SK and Prakash A (2004) Using ideas strategically: The contest between business and NGO networks in intellectual property rights. *International Studies Quarterly* 48(1): 143–175.

- Slaughter AM (2004) *A New World Order*. Princeton, NJ: Princeton University Press.
- Squatrino T (2012) Conditions of Democracy-Enhancing Multilateralism: Expansion of Rights Protections in Europe? *Review of International Studies* 38(4): 707-33.
- Subbiah S (2004) Reaping What They Sow: The Basmati Rice Controversy and Strategies for Protecting Traditional Knowledge. *Boston College International and Comparative Law Review* 27(2): 529-559.
- Tallberg J, Squatrino T, and Sommerer T (2012) Dynamics of Institutional Change: Transnational Access to International Organizations, 1950-2010. Paper prepared for the conference *Explaining Institutional Change in World Politics: Historical Institutionalism and International Relations*, WZB, September 22-23.
- Tännsjö T (2008) *Global Democracy: The Case for a World Government*. Edinburgh: Edinburgh University Press.
- Thacher D (2006) The Normative Case Study. *American Journal of Sociology* 111(6): 1631-76.
- Urbinati N and Warren M (2008) The Concept of Representation in Contemporary Democratic Theory. *Annual Review of Political Science* (11): 387-412.
- Valentini L (2012) Assessing the Global Order: Justice, Legitimacy, or Political Justice? *Critical Review of International Social and Political Philosophy* 15(5): 593-612.
- Walt S (1987) *The Origins of Alliances*. New York: Cornell University Press.
- Whelan FG (1983) Democratic theory and the boundary problem. In: Chapman JW and Pennock RJ (eds) *Liberal Democracy*. New York: New York University Press, 13-47.
- WTO (2001) Doha Declaration on TRIPs and Public Health, WT/MTN(01)/DEC/W/2.
- WTO (2005) Hong Kong Ministerial Declaration, adopted 18 December, Geneva, WT/MIN(05)/W/3/Rev.2.
- Yu P (2004) Currents and crosscurrents in the international intellectual property regime. *Loyola of Los Angeles Law Review* 38: 1-72.
- Yu P (2009) The Objectives and Principles of the TRIPS Agreement. *Houston Law Review* 46(4): 979-1046.
- Zürn M (2000) Democratic Governance Beyond the Nation-State: The EU and Other International Institutions. *European Journal of International Relations* 6(2): 183-221.
- Zürn M, Binder M, and Ecker-Ehrhardt M (2012) International Authority and its Politicization. *International Theory* 4(1): 69-106.

ⁱ It is not entirely clear where global deliberative democracy would fit in terms of Scholte's distinction, though it is certainly closer to the cosmopolitan vision.

ⁱⁱ The dispute settlement mechanism (DSM) of the WTO is perhaps the most poignant example of authoritative global regulation.

ⁱⁱⁱ I am sensitive to the recent discussions questioning the relationship between justice and democracy in a transnational context (Macdonald and Ronzoni 2012). Laura Valentini (2012) and Philip Pettit (2011) have both suggested that the connections between justice and democracy run deep, but that institutional forms of democracy might be necessary to sort out issues of distributive justice given the reasonable disagreement entailed in pluralism. This argument gives credence for sustained focus on democracy beyond the state.

^{iv} Affectedness is a relational quality understood by reference to the nature of authority between rule-maker and rule-taker (Macdonald 2008).

^v Though, to be sure, it does not completely solve either problem in its finality.

^{vi} In Bohman's terminology the significantly affected individuals who deserve democratic standing vis-à-vis sources of authority are the multiple and overlapping *demos* of world politics.

^{vii} This is true despite the recent work spruiking the development(s) of global constitutionalism (Dunoff and Trachtman 2009; Doyle 2012).

^{viii} The disjuncture between 'global' and international' might appear stark at this stage. However, regime complexes encompass institutions which are truly global in nature. In the conclusion I suggest that this strategy for democratization can be usefully applied to other regime complexes.

^{ix} For a partial exception, see the excellent work by Nico Krisch (2010) in which he argues that a systemically pluralist structure of international law might provide grounds for deliberation and accountability. Systemic pluralism represents an institutional structure quite similar to regime complexity. Unfortunately, a full exploration of this line of argumentation is beyond the scope of this article.

^x See the GRAIN homepage. Available at: <http://www.grain.org/>

^{xi} See also Orly Lobel (2004: 285).

^{xii} My emphasis.

^{xiii} Available at: <http://www.worldbank.org/en/news/feature/2012/09/10/participatory-budgeting-an-experience-in-good-governance>.