

ANNE-MARIE SLAUGHTER

A NEW WORLD ORDER

CONCLUSION

“The only way most states can realize and express their sovereignty is through participation in the regimes that make up the substance of international life.”

Abram Chayes and Antonia Handler Chayes,

*The New Sovereignty: Compliance with International Regulatory Agreements*¹

Global governance through government networks is good public policy for the world and good national foreign policy for the U.S., the EU, APEC members, and all developing countries seeking to participate in global regulatory processes and needing to strengthen their capacity for domestic governance. Even in their current form, government networks promote convergence, compliance with international agreements, and improved cooperation among nations on a wide range of regulatory and judicial issues. A world order self-consciously created out of horizontal and vertical government networks could go much further. It could create a genuine global rule of law without centralized global institutions and could engage, socialize, support and constrain government officials of every type in every nation. In this future, we could see disaggregated government institutions – the members of government networks – as actual bearers of a measure of sovereignty, strengthening them still further but also subjecting them to specific legal obligations. This would be a genuinely different world, with its own challenges and its own promise.

1. Government Networks and Global Public Policy

Wolfgang Reinecke, like many others, argues that national governments are losing their

ability to formulate and implement national public policy within territorial borders rendered increasingly porous by the forces of globalization, immigration, and the information revolution. He proposes that they “delegate tasks to other actors and institutions that are in a better position to implement global public policies – not only to public sector agencies like the World Bank and the IMF, but also business, labor, and nongovernmental organizations.”² He offers this strategy as an alternative to “[f]orming a global government,” which “would require states to abdicate their sovereignty not only in daily affairs but in a formal sense as well.”³ In other words, national governments have already lost their sovereignty, but they should compensate for that loss by delegating their responsibilities to a host of non-state actors – international organizations, corporations, and NGOs.

This is precisely the globalization trilemma. National governments are losing power. They can only recreate this power at the global level by creating a global government, but that is “unrealistic,”⁴ so the alternative is a hodgepodge of public international and private sector organizations – for profit and not for profit. It is exactly this hodgepodge that Reinecke calls governance instead of government, and it is exactly why another group of critics fear that the formulation of global public policy is being left to experts, enthusiasts, international bureaucrats and transnational businesspeople – everyone but politically accountable government officials.

A self-conscious world order of government networks could address these problems. National government officials would retain primary power over public policy, but work together to formulate and implement it globally. They would delegate some power to supranational officials, but then work closely with those officials through vertical networks. And they would interact intensively with existing international organizations, corporations, NGOs, and other actors in transnational society, but in a way that makes it clear that government networks are the

accountable core of these larger policy networks.

This conception of a networked world order rests on fundamentally different assumptions about both the international system and international law. The old model of the international system assumes unitary states that negotiate formal legal agreements with one another and implement them from the top down, with a great emphasis on verification and enforcement. The new model advanced here assumes disaggregated states in which national government officials interact intensively with one another and adopt codes of best practices and agree on coordinated solutions to common problems – agreements that have no legal force but that can be directly implemented by the officials who negotiated them. At the same time, in this new model, states still acting as unitary actors will realize that some problems cannot be effectively addressed without delegating actual sovereign power to a limited number of supranational government officials – such as to judges and arbitrators in the WTO, NAFTA, and the ICC. In such cases, the international agreements negotiated will be more immediately and automatically effective than the majority of agreements negotiated in the old system, because they will be directly enforced through vertical government networks.

In practice, of course, these two models of the international system will co-exist. Government networks, both horizontal and vertical, will operate alongside and even within traditional international organizations. Reinecke describes these traditional organizations as the “institutions of interdependence,” meaning the institutions created by unitary sovereign states to manage the “macroeconomic cooperation” required by the growing economic interdependence of the 1960s and 1970s.⁵ He describes transgovernmental regulatory organizations such as the Financial Stability Forum as “institutions ... of globalization,” meaning “the integration of a cross-national dimension into the very nature of the organizational structure and strategic

behavior of individual companies.”⁶ Linking these two types of institutions, as he notes, “would help avoid bureaucratic overlap and turf fights between international institutions and permit a more integrated approach to developing economies’ dual challenge of national liberalization and global public policy.”⁷

But what transgovernmental networks can do that traditional international organizations cannot is to counter and engage transnational corporate, civic, and criminal networks. They permit a loose, flexible structure that can bring in national officials from a wide range of different countries as needed to address specific problems. They can target problems at their roots, plug loopholes in national jurisdictions, and respond to goods, people, and ideas streaming across borders. Their members can educate, bolster, and regulate one another in essentially the same ways that make private transnational networks so effective. They are indeed the “institutions of globalization,” and far better suited to global governance in an age of globalization and information.

2. National Support for Government Networks

The EU is pioneering governance through government networks in its internal affairs. As the multiple examples relied on in this book emphasize – from the relations between national courts and the European Court of Justice to the creation of European information agencies to help the work networks of regulators across the EU – the EU is a vibrant laboratory for how to establish the necessary degree of collective cooperation among a diverse group of states while retaining the dominant locus of political power at the national level. It has limited supranational institutions, albeit more powerful than any that currently exist at the global level, but they cannot function without the active cooperation and participation of national government officials. Beyond the Court and the Commission, the power in the EU rests with networks of national

ministers and lower level officials, who make decisions at the European level and implement them at the national level.

The EU has many features that make its distinctive form of government by network exportable to other regions and to the world at large. It remains a collection of distinct nations, even as it works to create the governing power and institutions at the supranational level necessary to solve common problems and advance common interests for all its members. We might thus expect the EU to support the creation of global government networks. In fact, however, it is the United States that has led the way in supporting these networks at the global level. The U.S. Securities and Exchange Commission, the Environmental Protection Agency, and even the U.S. House of Representatives have taken the lead in organizing global government networks. And the U.S. Department of Justice established the Global Competition Network as an alternative to efforts to develop global antitrust regulations through the WTO. Even the U.S. Supreme Court and lower federal courts, although latecomers to global transjudicial dialogue, are beginning to network actively with their foreign counterparts. The U.S. has also been an active member of APEC, which has insisted on and refined the network form of regional governance.

More recently, the U.S. has pushed the even more informal approach of “coalitions of the willing,” both at the unitary state level of enlisting military allies and at the disaggregated state level of networking to combat terrorist financing, share intelligence on terrorist activity, and cooperate in bringing individual terrorists to justice. Promoting actual government networks in all these areas is a far better approach, as it would institutionalize the cooperation that already exists and create a framework for deepening future cooperation in virtually every area of domestic policy. At the same time, however, government networks are far more transparent than “coalitions of the willing”; if done right, they would have a permanent and visible existence,

criteria for membership, and groundrules for their operation applicable to all. U.S. officials could and would play a leading role in many instances, as they do already in existing government networks, but they would have to share the stage with officials from many other countries and be prepared to listen and learn.

Over the longer term, government networks can tackle the domestic roots of international problems and can do so both multilaterally and in a way that empowers domestic government officials in countries around the world to help themselves. The exchange of information, development of collective standards, provision of training and technical assistance, ongoing monitoring and support, and active engagement in enforcement cooperation that does and can take place in government networks can give government officials in weak, poor, and transitional countries the boost they need. Their counterparts in more powerful countries, meanwhile, can reach beyond their borders to try to address problems that have an impact within their borders.

For maximum impact and effectiveness, however, the work of government networks cannot be done in the shadows. Existing networks breed suspicion and opposition in many quarters, leading to charges of technocracy, distortion of global and national political processes, elitism and inequality. The U.S. and other countries should champion them openly as mechanisms of global governance and be prepared to reform and improve them as necessary. They will almost certainly have to become more visible and engage more systematically with corporate and civic networks. They should include more and more effective networks of legislators as well as of regulators and judges. And their members are likely to be subject to more national oversight and regulation specifically aimed at integrating the national and international dimensions of their jobs.

To maximize the accountability of the participants in government networks, it would be

possible to take a step further and give them a measure of individual, or rather institutional, sovereignty. In a world of disaggregated states, the sovereignty that has traditionally attached to unitary states should arguably also be disaggregated. Taking this step, however, requires a different conception of the very nature of sovereignty. As described in the next section, sovereignty understood as capacity rather than autonomy can easily attach to the component parts of states and includes responsibilities as well as rights.

3. Disaggregated Sovereignty

Theorists, pundits and policymakers all recognize that traditional conceptions of sovereignty are inadequate to capture the complexity of contemporary international relations. The result is a seemingly endless debate about the changing nature of sovereignty – What does it mean? Does it still exist? Is it useful? Everyone in this debate still assumes that sovereignty is an attribute borne by an entire state, acting as a unit. Yet if states are acting in the international system through their component government institutions – regulatory agencies, ministries, courts, legislatures – why shouldn't each of these institutions exercise a measure of sovereignty – sovereignty specifically defined and tailored to their functions and capabilities?

This proposal may seem fanciful, or even frightening, if we think about sovereignty the old way – as the power to be left alone, to exclude, to counter any external meddling or interference. But consider the “new sovereignty,” defined by Abram and Antonia Chayes as the capacity to participate in international institutions of all types – in collective efforts to steer the international system and address global and regional problems together with their national and supranational counterparts.⁸ This is a conception of sovereignty that would accord status and recognition to states in the international system to the extent that they are willing and able to engage with other states – engagement that necessarily includes accepting mutual obligations.

Chayes and Chayes, like Wolfgang Reinecke, begin from the proposition that the world has moved beyond interdependence. Interdependence refers to a general condition in which states are mutually dependent on and vulnerable to what other states do. But interdependence still assumes a baseline of separation, autonomy, and defined boundaries. States may be deeply dependent on each other's choices and decisions, but those choices and decisions still drive and shape the international system. For Chayes and Chayes, by contrast, the international system itself has become a "tightly woven fabric of international agreements, organizations and institutions that shape [states'] relations with one another and penetrate deeply into their internal economics and politics."⁹

If the background conditions for the international system are connection rather than separation, interaction rather than isolation, and institutions rather than free space, then sovereignty as autonomy makes no sense. The new sovereignty is status, membership, "connection to the rest of the world and the political ability to be an actor within it."¹⁰ However paradoxical it sounds, the measure of a state's capacity to act as an independent unit within the international system – the condition that "sovereignty" purports both to grant and describe – depends on the breadth and depth of its links to other states.

This conception of sovereignty fits neatly with a conception of a disaggregated world order. If the principal moving parts of that order are the agencies, institutions, and the officials within them who are collectively responsible for the legislative, executive, and judicial functions of government, then they must be able to exercise legislative, executive, and judicial sovereignty. They must be able to exercise at least some independent rights and be subject to some independent, or at least distinct, obligations. These rights and obligations may devolve from more unitary rights and obligations applicable to the unitary state, or they may evolve from the

functional requirements of meaningful and effective transgovernmental relations. But the sovereignty of “states” must become a more flexible and practical attribute.

If sovereignty is relational rather than insular, in the sense that it describes a capacity to engage rather than a right to resist, then its devolution onto ministers, legislators, and judges is not so difficult to imagine. The concept of judicial comity discussed in Chapter II rests on judges’ respect for each other’s competence as members of the same profession and institutional enterprise across borders. It assumes that a fully “sovereign” court is entitled to its fair share of disputes when conflicts arise, can negotiate cooperative solutions in transnational disputes, and can participate in a transnational judicial dialogue about issues of common concern. Regulators would be similarly empowered to interact with their fellow regulators to engage in the full range of activities described in Chapter I. And legislators would be directly empowered to catch up.

But if disaggregated state institutions are already engaged in these activities, as is the argument of this book, what difference does it make if they are granted formal capacity to do what they are already doing? The principal advantage is that subjecting government institutions directly to international obligations could buttress clean institutions against corrupt ones and rights-respecting institutions against their more oppressive counterparts. Each government institution would have an independent obligation to interpret and implement international legal obligations, much as each branch of the U.S. government has an independent obligation to ensure that its actions conform to the Constitution. As in the domestic context, either the courts or the legislature would have the last word in case of disputed interpretations of international law, to ensure the possibility of national unity where necessary. In many cases, however, international legal obligations concerning trade, the environment, judicial independence, human rights, arms control, and other areas would devolve directly on government institutions charged

with responsibility for the issue area in question.

By becoming enrolled and enmeshed in global government networks, individual government institutions would affirm their judicial, legislative, or regulatory sovereignty. They would participate in the formulation and implementation of professional norms and the development of best practices on substantive issues. And they would be aware that they are performing before their constituents, their peers, and the global community at large, as bearers of rights and status in that community. not only before their constituents, but also before an audience of their peers.

This idea is not as far-fetched as it may seem. Actual examples already exist or are being proposed. Eyal Benvenisti has raised the possibility of formally empowering sub-state units to enter into agreements.¹¹ The Princeton Principles on Universal Jurisdiction make the case for establishing clear rules and principles under international law that are directly aimed at national judges, as they are the actual subjects of the international law doctrine. The ambiguity that helps statesmen negotiate treaties is often disastrous for judges, who must actually apply the law.

At first glance, disaggregating the state and granting at least a measure of sovereignty to its component parts might appear to weaken the state. In fact, it will bolster the power of the state as the primary actor in the international system. Giving each government institution a measure of legitimate authority under international law, with accompanying duties, marks government officials as distinctive in larger policy networks and allows the state to extend its reach. If sovereignty were still understood as exclusive and impermeable rather than relational, strengthening the state would mean building higher walls to protect its domestic autonomy. But in a world in which sovereignty means the capacity to participate in cooperative regimes in the collective interest of all states, expanding the formal capacity of different state institutions to interact with their counterparts around the world means expanding state power.

In conclusion, consider the following thought experiment. Imagine beginning with a world of sovereign states and trying to design a feasible, effective, and just system of global governance. Imagine that the governments of many of those states are seeking to fight crime, collect taxes, guarantee civil rights and civil liberties, protect the environment, regulate financial markets, provide a measure of social security, ensure the safety of consumer products, and represent their citizens fairly and accurately. Now assume that for a host of reasons, national government officials cannot do their jobs solely within their borders. Assume further that some of the problems they seek to address have global dimensions, and that the creators and carriers of those problems are acting through transnational networks. At the same time, individuals, groups and organizations that can help address those problems are also acting through transnational networks. Finally, assume that one of the things the citizens of all these countries want is a safer, fairer, cleaner world.

These national government officials would never cede power to a world government, although they would certainly recognize that with respect to some specific problems only genuinely powerful supranational institutions could overcome the collective action problems inherent in formulating and implementing global solutions. In most cases, however, they would seek to work together in a variety of ways, recognizing that they could only do their jobs properly at the national level by interacting – including both cooperation and conflict – at the global level. Their ordinary government jobs – regulating, judging, legislating – would thus come to include both domestic and international activity. Over time, they would also come to recognize responsibilities not only to their national constituents but to broader global constituencies. If granted a measure of sovereignty to participate in collective decision-making with one another, they would also have to live up to obligations to those broader constituencies.

In short, they would create a world order. It would encompass many of the elements of the present international system and build on the trends I have described, but would overlay and surround them with government networks of all kinds. It would be a world order created by and composed of disaggregated state institutions, allowing nation-states to evolve in ways that keep up with changes in private institutions and that expand state power. It would be an effective world order, in the sense of being able to translate paper principles into individual and organizational action. But to be truly effective, it would also have to be a just world order – as inclusive, respectful, tolerant, and equal as possible.

It would be a world order in which human hope and despair, crime and charity, ideas and ideals are transmitted around the globe through networks of people and organizations. But so too would be the power of governments to represent and regulate their people. Harnessing that capacity, and strengthening it, is the best hope of a new world order.

¹ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, Mass.: Harvard University Press, 1995), 27.

² Wolfgang H. Reinecke, "Global Public Policy," *Foreign Affairs* 76 (1997):127-38, 132.
See also Wolfgang H. Reinecke, *Global Public Policy: Governing without Government?* (Washington: Brookings, 1998).

³ Ibid.

⁴ Ibid.

⁵ Ibid., 133, 127.

⁶ Ibid., 133, 127.

⁷ Ibid., 134.

⁸ Chayes and Chayes, *The New Sovereignty*, 4.

⁹ Ibid., 26. As noted above, Reinecke similarly emphasizes the extent to which globalization, unlike interdependence, penetrates the deep structure and strategic behavior of corporations and other actors in the international system.

¹⁰ Ibid.

¹¹ Eyal Benvenisti, "Domestic Politics and International Resources: What Role for International Law?" in *The Role of Law in International Politics: Essays in International Relations and International Law*, ed. Michael Byers (New York: Oxford University Press, 2000), 109.