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PROSPECTS FOR DEMOCRATIC GLOBAL
GOVERNANCE

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Nominal Democracy? Prospects for Democratic Global Governance

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In a brilliant book written fifteen years ago, Stephen D. Krasner coined the phrase, “organized hypocrisy,” to refer to situations in which “institutional norms are enduring but frequently ignored.” In such situations, “rulers must honor, perhaps only in talk, certain norms but at the same time act in ways that violate these norms.”¹

Contemporary global governance is in my view a worthy ideal. As the human impact on our ecosystem continues to increase, we will need it. But discussions of democratic global governance unfortunately conform well in many ways to Krasner’s characterization of sovereignty as organized hypocrisy. The rhetoric of global governance is heavy with references to the rule of law and democratic governance, but the reality, as the United States has taken military action in Iraq, China has become more powerful and assertive, and Russia has invaded Ukraine and annexed the Crimea, is at best mixed. In some respects, democratic pressures remain strong, partly because the democratic ideology is the only one that appears to have universal appeal; but there are trade-offs with other objectives and as a result, counter-pressures are manifold. There will be many temptations to make global democracy only nominal – hence extending organized hypocrisy into yet another realm.

This paper focuses on the difficulties that stand in the way of genuine global democratic governance, despite a *Zeitgeist* that emphasizes the value of democracy at every level of governance. What I fear is that the result will be a relatively empty form of global democracy – what I call “nominal democracy.” Genuine democracy is responsive to the preferences of real human beings. It requires elections that hold elected leaders accountable to publics and other arrangement that hold non-elected leaders accountable to elected ones. It also requires an effective rule of law with protection of individual rights; the existence of a vibrant civil society whose discussions are heard throughout the polity; substantial governmental transparency and procedures to ensure that leaders defend their

Thanks to Stephen D. Krasner for perceptive comments on an earlier draft of this talk.

¹ Krasner 1999: 66.

policies in public, along with some opportunities for confidential discussions to promote compromise.² Nominal democracy meets democratic standards on the surface and embodies the rhetoric of democracy, but lacks the content. Transnational and transgovernmental elite networks can play valuable roles in world politics,³ but they do not constitute democracy in the classic sense.

Contemporary global governance does have two crucial features that promote some semblance of democracy – features that were missing from the classical 19th century balance of power system or the system that prevailed between World Wars I and II. First, it is dominated by constitutional democracies, notably the United States and member states of the European Union, which requires democracy as a condition of accession. Constitutional democracies have procedures designed to combat special interests – what James Madison referred to as “faction” – although these procedures are not always effective.⁴ Constitutional democracies tend to protect individual and minority rights and foster collective deliberation, although imperfectly. The existence of constitutional democracies is therefore a necessary although not a sufficient condition for democratic governance at the global level.

Second, both the rhetoric and the practices of global multilateral institutions are infused with democratic principles: their assemblies feature open discussion and voting, and they increasingly manifest informational transparency. Global institutions, although not procedurally democratic, also perform functions that are supportive of democracy. They help to moderate narrowly nationalistic pressures, for instance in trade policy, through reliance on the principle of generalized reciprocity and through international adjudication. Multilateral institutions also serve to protect individual and minority rights through a variety of more or less legalized institutions. Finally, depending on the willingness of governments to deliberate, they foster collective deliberation, offering forums in which proposals for solutions and “best practices” can be discussed and experimental governance arrangements tried out.⁵

² Keohane, Macedo, Moravcsik 2009, 5-6.

³ Slaughter 2004; Ruggie 2014.

⁴ Hamilton, Jay, and Madison 1787.

⁵ Keohane, Macedo and Moravcsik 2009; De Burca, Keohane and Sabel 2014.

On the surface, at least, the practices of these institutions mimic democratic ones, although the votes are cast by states rather than by individuals. Although the democratic façade of multilateral institutions may often be used by at

least some of its participants merely as a cover for non-democratic practices, generating hypocrisy, as a form of hypocrisy it can also make a difference in actual practices. Behind the scenes, however, powerful states may hold the purse-strings and constrain decisions in global institutions.⁶

In this paper I emphasize the shortcomings of contemporary moves toward democratization of global governance, and of democracy as a form of governance at the global level. I will begin by pointing out that democracy generates *trade-offs* and *dilemmas* as much as it provides solutions to governance issues. I will illustrate this argument with reference to money-laundering measures by the UN Security Council and attempts to take effective action on climate change. The core of the lecture then identifies three *gaps in global democratic governance*: what I call the *interest-public goods gap*, the *emotional gap*, and the *infrastructure gap*. Well-functioning domestic democratic systems have over decades or centuries developed institutions or common values to avoid creating such gaps, or to bridge them; but the contemporary global system does not have parallel institutional or value infrastructure. Practitioners of global governance are therefore like tightrope walkers without a safety net. If the policy dilemmas become too severe or the pressures too great, they do not have this infrastructure to rely on.

In my view, the three global governance gaps are serious, and make it difficult to imagine that truly democratic global governance will appear within the next few decades. But this conclusion is not the counsel of despair for people like ourselves who participate in, and even constitute, many of the transnational networks that are increasingly numerous and thick. As I will argue at the end of this lecture, there is much that we in this room can do without persuading ourselves that we are the vanguard of a truly democratic global system.

⁶ Stone 2011.

Respecting Democratic Principles: Dilemmas and Trade-Offs

I begin with two *dilemmas*, or *trade-offs*, generated by pressures for global democratic governance. It seems that on some issues, notably those having to do with terrorism, more democratization could force changes in established practices that might endanger their efficacy, making attainment of worthwhile objectives more difficult. The struggle against terrorism highlights a set of tradeoffs on which we need to reflect when discussing global governance and democracy. These tradeoffs became particularly clear when the United Nations Security Council sought to take action against the financing of terrorism.

Money Laundering and European Law

Even before the attacks of September 11, 2001, the Security Council passed resolutions designed to restrict money laundering as a means of aiding terrorist groups. In particular, the Security Council invoked the mandatory provisions of Chapter 7 of the United Nations Charter, in its Resolutions 1267 and 1373, to require states to impose strict measures to prohibit actions that could facilitate money laundering for terrorists. The Financial Task Force has enacted various measures to make these requirements operational.

The Security Council's money-laundering measures conflicted with domestic, and European, rule-of-law principles. The regime's lack of due process became apparent in 2002 when Sweden pushed for and failed to obtain the removal of three Somali-born Swedish citizens who were added to the sanctions list immediately following 9/11.⁷ Arguments about due process in the 1267 regime became part of a broader discussion in the UN about the need to incorporate human rights principles into global counterterrorism cooperation.⁸ Yet for many years the Security Council did not modify the 1267 regime to address these concerns in any significant way. Although a UN body concluded in 2005 that "the many legal challenges to the measures, in particular in Europe and the United

⁷ The Swedish government's request was initially blocked by three permanent members of the Security Council. Sweden then entered into bilateral negotiations with the United States and eventually all three names were removed from the list (Heupel 2009: 310, citing Cramér 2003).

⁸ See, for example, UN General Assembly Resolution 56/160 (2002) and UN General Assembly Resolution 57/219 (2003).

States, pose a serious impediment to the success of the sanctions regime”⁹, the Security Council made only minor adjustments to the regime until the European Court of Justice, in the famous *Kadi* cases, challenged it.

In 2008, the Court struck down the European Union regulations, ruling that Kadi had been denied the right to defense, the right to a legal remedy, and the right to property. At this point the whole sanctions regime was put at risk. Kadi’s case led to major institutional reforms, although the process was a slow one. The Security Council changed its procedures and agreed to the appointment of an Ombudsperson in 2010. Since her appointment through 2013, at least 26 individuals had been delisted through this process, and only 3 requests had been denied.¹⁰ On 5 October 2012 the Security Council declared that the assets freeze, travel ban, and arms embargo formerly applied to Kadi was no longer in effect.¹¹

But the courts were not satisfied. In July 2013, the ECJ issued its decision on the *Kadi II* appeal, upholding the European General Court’s decision to strike down the EU regulation implementing sanctions against Kadi. Not only did the ECJ affirm its right to review all EU measures implementing UN Security Council resolutions, but it also suggested that nothing short of an external court will provide sufficient due process for listed individuals.¹²

The *Kadi* case made clear the tensions between global governance as practiced by the Security Council and democratic rule-of-law principles. The Security Council relied on financial sanctions but the system lacked any built-in checks and balances, so the great powers – in particular the United States – sought to dictate the system, which put prevention of terrorism far above protection of individual rights on a scale of values. Privileging security over rights was unacceptable for the European Court of Justice, and the struggle I have just described ensued. *The dilemma is that* advancing otherwise

⁹ 1267 Monitoring Team Report 2005: 16.

¹⁰ Office of the Ombudsperson 2013.

¹¹ Security Council SC/10785, press release, 5 October 2012.

¹² According to the ECJ, “The essence of effective judicial protection must be that it should enable the person concerned to obtain a declaration from a court, by means of a judgment ordering annulment whereby the contested measure is retroactively erased from the legal order and is deemed never to have existed, that the listing of his name, or the continued listing of his name, on the list concerned was vitiated by illegality...” (Paragraph 134). The full text of this decision is available at:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=139745&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1914364>

worthwhile objectives through global institutions conflicted with core values of liberal democracy as interpreted by the Court.

Of course this struggle can take place in domestic systems as well. Lincoln waived habeas corpus during the United States Civil War and Franklin Delano Roosevelt established internment camps for US citizens with Japanese ancestry. However, in an established system of constitutional democracy there is a court system, supposed to rule on the basis of fundamental principles, that is able to reach an authoritative judgment. Courts may fail to protect rights; but the fact that they are available to do enhances the chances that principled decisions will prevail.

Climate Change and Global Governance

Advocates of taking effective action against human-induced climate change resorted, beginning in the late 1980s, to global governance. Within a decade they had created a formidable set of institutions: the Intergovernmental Panel on Climate Change (IPCC) to study and report on the science, the UNF triple-C – the Framework Convention on Climate Change – to make binding rules, and the Kyoto Protocol to the UNF triple-C to specify these rules and how they would apply to individual countries. In the intervening years, the scientific consensus on the seriousness of the climate threat has only increased. The recent report of the Intergovernmental Panel on Climate Change states that: “In recent decades, changes in climate have caused impacts on natural and human systems on all continents and across the oceans.”¹³

Yet 17 years after the conference that created the Kyoto Protocol, efforts to construct a comprehensive climate change regime have failed, resulting in a “regime complex for climate change” rather than a coherent international regime.¹⁴ Although Europe has enacted regulations that have created a price for carbon, even that price is very low, with carbon trading below \$10 per ton in the winter of 2014. Neither the United States nor China – the two biggest emitters – has enacted strong climate change legislation, and countries that had joined the Kyoto Protocol, such as Canada and Japan, have pulled back on their ambitions. Advocates of serious action on climate have recently lowered their

¹³ IPCC WGII, AR5, Summary for Policy-Makers (31 March 2014), p. 6.

¹⁴ Keohane and Victor 2011.

sights, looking for “bottom-up” strategies to achieve something in the absence of comprehensive regulation by the largest states or an integrated international regime.

Regulating climate change is beset by the familiar free-rider problem. Virtually everyone in the world would benefit from effective regulation that prevented precipitous increases in temperature and associated climate disruptions – regardless of who implemented reductions in the use of fossil fuels, whose burning generates CO₂ in the atmosphere. Unfortunately, everyone would benefit *unconditionally*, regardless of whether they, or their country, made any contribution to solving the problem. Furthermore, reducing use of fossil fuels is costly. So everyone has an incentive to delay acting, hoping that others will solve the problem, and little or no incentive to be a leader, risking costly action that might not achieve very much if others do not follow. Failing to cooperate is unfortunately a malign equilibrium, and it is difficult to reach a more favorable equilibrium in which all major polluters contribute and face some sort of negative consequences for failing to cooperate. A favorable equilibrium is possible – indeed, we observe it in the field of international trade, which was beset for decades by an unfavorable uncooperative equilibrium. But in climate change such a transformation has not been achieved.

Democracy does not seem to help. Supported by the Obama Administration, the American Clean Energy and Security Act of 2009, providing for a cap and trade regime with a price on carbon, passed the House of Representatives,¹⁵ but never came to a vote in the Senate. Public opinion polling has consistently shown climate change regulation to be low on voters’ lists of priorities. There has usually been a plurality of support for legislation, but it has been neither intense nor overwhelming, and in the US political system super-majority support and intensity are typically required for the passage of controversial major legislation. It is striking that the important measures now being taken by the Obama Administration to restrict building of coal-fired power plants are taken by executive action under an interpretation of the Clean Air Act of 1990 – not as a result of new legislation.

In 2011 three countries that had ratified the Kyoto Protocol – Canada, Japan and Russia – announced that they would not take on commitments beginning in 2012. Canada formally withdrew from the Kyoto Protocol in December 2011, effective December 2012. Its

¹⁵ The American Clean Energy and Security Act of 2009 (ACES) passed the House on June 26, 2009, by a vote of 219-212.

emissions in 2009 were 17% above 1990 levels, although the Kyoto provisions called for its emissions to be 6% below that level by the end of 2012.¹⁶ Although Russia is hardly democratic, Japan and Canada are, and it is reasonable to assume that the measures taken by their governments were not at serious odds with public opinion in their countries.

Democracy is a very effective form of government for representing organized interests – of corporations, unions, and pensioners, for example. But it does not solve the free rider problem and is much less good at representing interests that are diffuse, much less those of future generations. The costs of responding effectively to climate change come in the present, in the form of higher utility bills and gasoline prices. The benefits accrue, with some uncertainty, to future generations. This is not the type of issue to which democracies respond effectively. Furthermore, there is some evidence that having more information about climate change does not necessarily increase concern about it.¹⁷ Research also suggests that climate change does not generate strong moral intuitions from mass publics, and therefore “does not motivate an urgent need for action in the way that other moral imperatives do.”¹⁸ Climate change is a “wicked problem” for democracies and seeking to regulate it at a global level – while essential due to the nature of the problem – makes it even more difficult to deal with. The *dilemma* is that more democratic governance, domestically and internationally, does not make it easier to solve this existential problem.

Three Gaps in Global Governance

I will now use my two examples of global governance gone awry to illustrate the three gaps that I mentioned at the outset of this talk: the *interest-public goods gap*, the *emotional gap*, and the *infrastructural gap*.

The Interest-Public Goods Gap

Our basic theories of politics are based on the assumption that people, in general, act in what they perceive to be their own interests. At the local, national, and regional levels

¹⁶ David Ljunggren and Randall Palmer (13 December 2011). "[Canada to pull out of Kyoto protocol](#)". Reuters. Financial Post. Retrieved 12 May 2014.

¹⁷ Kellstedt et al 2008; Aklin and Urpelainen 2012.

¹⁸ Markowitz and Sherif 2012 (the quotation is from the abstract).

they form associations for this purpose, and they devise strategies to achieve their goals. We believe that if we understand their perceived self-interests, and the context in which they operate – including structures of power – we can at least make a start at understanding, and even anticipating, their behavior. This insight is the core of interest-group theories of politics and of most studies of world politics. It can even accommodate an understanding of values and norms, as well as political psychology, if we recognize that normative and psychological considerations affect how people view their own interests. In this case, of course, we have to explain the preferences that derive from values and norms.

But what if our overriding long-term interests lie in the production of a genuinely *public good*, such as prevention of runaway climate change? On the basis of our own relatively narrowly defined interests, we are likely to seek to push the burden of preventing, or adjusting to, climate change onto others – people in other countries, or future generations. But some of us, at least in our most public-spirited moments, recognize that to act in this way is to sacrifice the much greater public good.

Successful states have found ways to deal with public goods production, at least some of the time. In the extreme case, both democracies and non-democracies have proven murderously successful at persuading their citizens to fight and die in war. Employing the rhetoric of nationalism and demonizing “the other” are very effective ways of mobilizing human energy – as we see in the Ukraine today. But at the global level there is no readily identified “other” – at least until extra-terrestrials are credibly identified. So the most effective national strategy for closing the interest-public goods gap is not available. As we have seen, this strategy has not been available within the United States with respect to climate change; it is even less available globally.

The Emotional Gap

This discussion of nationalism raises the issue of the role of emotions in politics. Global Governance is a very rationalistic Enlightenment project. It often seems bloodless, technocratic, and bureaucratic: it does not engage the soul and does not generate strong feelings of identity. The populist reaction we see now against the European Union and immigration in a variety of European countries, including Britain and France, suggests the continuing power of emotions and feelings of identity in the contemporary world. Europe at

least can aspire to a sense of place and history that cannot be achieved by genuinely global governance; yet the European Union has been notably unsuccessful in building emotional support among its people.

In the United States the National Anthem is played at sports events such as baseball games, and at high-toned ceremonies such as the Harvard University Commencement. One can sense, watching on television, the intensely patriotic identity of the New York Yankees manager when the National Anthem is played before a baseball contest. When Aretha Franklin sang the Anthem at Harvard last month she brought tears to many eyes. The American National Anthem may not be a great piece of music and was composed during the only war during which the United States capital was occupied and burned by an enemy army. But it resonates with Americans, reflecting their shared emotional identity, much more than the European anthem – Beethoven’s “Ode to Joy,” without the words -- resonates with Europeans, despite its much higher level of musical content. And there is no Cosmopolitan Global Anthem.

When national economic or political strategies fail, there is still The Nation. People rally around its symbols, which provide energy and strength to the country. When a cosmopolitan strategy fails, there is no safety net.

The Infrastructure Gap

Let us think again about the *Kadi* case, which I discussed earlier. One way to understand what was missing there is to think about *legal and institutional infrastructure*. There were no precedents at the global level for dealing with money laundering – no history of combatting organized crime, prohibition, or gambling. No laws already criminalized certain activities while constraining what the authorities could do – as a result of previous legislative and court decisions. When the Security Council seized onto the issue of money laundering it faced an institutional vacuum. No wonder that its policies were viewed by many as an abuse of power that required strong push-back.

Not only were legal institutions missing; so was the infrastructure of civil society. There was no Civil Liberties Union or Bar Association organized on a global, transnational basis. Democracy requires, as Robert D. Putnam has argued, voluntary associations,

whether bowling leagues or choral societies.¹⁹ If such institutions of global civil society had existed, there still would have been no global media able to magnify and focus complaints and to demand answers from leaders in a public forum. But in the actual situation leaders were able to hide behind their national security bureaucracies, and obscure their own roles because of the non-transparent bargaining institution that is the Security Council. Powerful and purposeful institutions generally seek to expand their power until checked; at the global level, there is neither the legal nor the civil society infrastructure to achieve this worthwhile end.

It is no wonder that global governance is so flawed, and so lacking in genuine democratic content. It is even harder than within countries to pursue public goods – yet global institutions are expected distinctively to achieve public goods. Emotional support for difficult or dangerous activities is lacking. And there is little legal, institutional, or civil society infrastructure to make democracy work effectively, and to push back against abuses of power.

Conclusion

As the trite phrase suggests, “global problems demand global solutions.” But this is an abstract slogan. Functionally it is correct but in politics demand does not automatically bring forth supply. And there is no guarantee that the global solutions that emerge will be democratic in character.

The symbols of democracy are all around us as we contemplate the institutions of global governance, but the substance is elusive. Without emotional support embodied in strong feelings of identity, people are unlikely to participate actively when their own actions seem to have little impact, much less to internalize the need for global public goods and pay for them. And without the legal, institutional, and civil society infrastructure that makes democracy work, nominal democratization can conceal either the routine or ruthless actions of faceless bureaucracies.

Many global residents may not even give democracy priority if they believe that tackling such issues as climate change is made more difficult, and tragically too late, by the requirement of wide discussion and consent. Others may not want to pay the price in

¹⁹ For his classic statement, focused on Italy, see Putnam 1993.

more terrorism, at the margins, if due process requirements have to be met to block bank accounts and to execute suspected terrorists through drone attacks.

We will continue, I expect, to hear more calls for “global democracy,” but those people issuing these calls may not have fully considered the dilemmas and tradeoffs involved, much less the interests, emotions, and infrastructure that would be required to make global democracy work. Realizing global democracy will be difficult – it is Max Weber’s long, slow boring of hard boards – and is unlikely to occur quickly.

More progress has been made – including by a number of people in this room, toward a global legal structure: a necessary but not sufficient condition for viable constitutional democracy. For a global constitutional democracy to emerge, there will have to be a further creation of global identities, involving a transformation of the concept of citizenship and the internalization of global citizenship around the world. Sustaining global democracy will require establishing a distinctively democratic global infrastructure on a worldwide basis. Meanwhile, however, the costs and tradeoffs of global democratization will provide ample incentives to turn the rhetoric of Global Democracy into the reality of Nominal Democracy.

Making the world more democratic is a noble cause, and in my view it is worthwhile, if pursued realistically with a long-term agenda. But it will not be achieved simply through rational argument. It requires institutional, legal, and social infrastructure, patiently built over the years. It requires attention to symbolism – symbolism that is deep and that engages the emotions, rather than thinly rhetorical. And it requires not just generosity of spirit but the ability to frame issues in a way that induces contributions to the public good. That is, it requires *leadership* that not only is capable of brokering deals among states or large transnational actors but of speaking to the hearts and minds of global publics, while being held broadly accountable. We are a long way from having reached the point at which such accountable global leadership is possible, but one of our aspirations should be to create such conditions for the next generation.

Can we – and can this new Society – help to create such conditions? We are lawyers, legal scholars, academic social scientists, normative theorists. Very few of us probably have the “popular touch,” so the inspiring cross-cultural political leaders that we need are unlikely to be sitting in our ranks today. But there are three things we can do to create the conditions for the global political leadership that will surely be needed.

First, we can work to develop structures of international law that mesh with democratic constitutional systems and that promote fairness and due process. These legal structures may not be fully democratic, but they can reduce arbitrariness and increase the fairness of practices engaged in by the great powers within the context of the Security Council or otherwise.

Second, we can encourage, monitor and criticize our current leaders. In particular, we can help to ensure that they don't get away with passing off nominal democracy – nationally, regionally, globally – as actual democracy. Those of us from the United States see such casuistry frequently. Consider, for instance, the debate about the use of lethal drones. The United States seems to me to have resorted to a defense of lethal drones based on a nominal view of democracy. The practices are justified, it is claimed, because they have been authorized by a government that was elected and in many ways behaves according to democratic principles. A claim that the United States is democratic is extended to the claim that because it is democratic, its practices that have been authorized by the Executive, with the claimed implicit or explicit consent of Congress, are also democratic. But the argument does not follow because the practices that this government uses to combat terrorism are among its least democratic: not authorized by legislation, not transparent, without effective checks and balances. The fault may lie with Congress as much as with the Executive, but in either case, calling current practices democratic is a form of what Giovanni Sartori once called “concept stretching.” In this case, the concept of democracy is stretched to cover practices that have not been democratically authorized and the principles for which are not transparent.²⁰

Third, we can continue to build transnational networks. These networks do not constitute democracy. Yet they can provide some of the infrastructure for it, by nurturing civil society at the elite level. These networks, and the personal ties and solidarity that they can nurture, can help to substitute to some extent for Putnam's bowling leagues and church suppers. We get to know one another, to build multi-dimensional ties, and therefore to create what Putnam calls “social capital.” Social capital can help us to work with one another to provide public goods, and may even provide new kinds of emotional ties that substitute to some extent for nationalism. That is, our professional associations and the public-private partnerships and transnational regulatory organizations that we help to

²⁰ Sartori 1970.

nurture, can help to build an infrastructure for global democratic governance. This infrastructure is not sufficient, since it is insufficiently popular, but it is necessary.

Finally, I have said that leadership is essential. A fine recent book on leadership declares that: “Leaders determine or clarify goals for a group of individuals and bring together the energies of members of that group to accomplish these goals.”²¹ With respect to global governance, the “group of individuals” is the active, publicly-oriented population of the whole world, and the task of determining or clarifying goals is a daunting one. As I have emphasized, creating the conditions under which such global leadership is possible is one of the tasks we face. Although we cannot provide essential political leadership, we can prepare ourselves to recognize it when we see it, and support good leaders, while we help to keep them accountable. Global democratic governance will require good leadership, but such leadership cannot thrive until people like us, and groups like this one, have worked to create the political infrastructure that makes it possible.

In his last major – and prescient – speech, Martin Luther King, Jr., declared that he had seen the Promised Land of racial justice but forecast that he would not live to see it realized. We may not live to see global democratic governance. But like Dr. King – in a much smaller way – we can engage in the “long, slow boring of hard boards” that can it make it possible for others to realize this dream for future generations.

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²¹ N. Keohane 2010: 23.

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