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## What NGO Accountability Means - and Does Not Mean

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## REVIEW ESSAY

### WHAT NGO ACCOUNTABILITY MEANS—AND DOES NOT MEAN

*NGO Accountability: Politics, Principles & Innovations*. Edited by Lisa Jordan and Peter van Tuijl. London, Sterling VA: Earthscan, 2006. Pp. xii, 257. Index. \$120, cloth; \$37.95, paper.

Before turning to review the book at hand, *NGO Accountability*, I want to begin by briefly setting the stage as to why accountability of NGOs has become significant during the past decade. In a story made famous by controversy in the world of international NGOs, journalist Sebastian Mallaby wondered back in 2003 about apparent local NGO opposition, then being loudly touted by International Rivers Network (IRN), an international campaigning NGO based out of Berkeley, California, to a World Bank–funded dam building project at Bujagali Falls, Uganda.<sup>1</sup> He traveled to see the local NGO in Uganda. The director of the local organization showed Mallaby its registry of what turned out to be a total of just twenty-five local members. Potential beneficiaries of electrification from the dam project, however, numbered in the millions, and displaced local villagers told him that they believed they had received adequate buyouts. Yet IRN involvement meant the death of the project. Afterward, the question became whether the result was the triumph of global environmentalism on behalf of otherwise unheard local people or the triumph of the priorities of Berkeley, California over the electrification needs of millions of poor Africans. Published in a hotly debated article in *Foreign Policy*,<sup>2</sup> Mallaby's account, in the wake of strong responses from IRN and many other NGOs (that believed their credibility was also at issue), became a flashpoint in the gradually developing debate over international NGOs and their accountability.<sup>3</sup>

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<sup>1</sup> SEBASTIAN MALLABY, *THE WORLD'S BANKER: A STORY OF FAILED STATES, FINANCIAL CRISES, AND THE WEALTH AND POVERTY OF NATIONS* (2004).

<sup>2</sup> Sebastian Mallaby, *NGOs: Fighting Poverty, Hurting the Poor*, *FOREIGN POLICY*, Sept.–Oct. 2004, at 50. For a response by IRN, see Peter Brosshard, *International Rivers Responds to Sebastian Mallaby's Attacks on NGOs* (Nov. 5, 2004), at <<http://internationalrivers.org/en/africa/bujagali-dam-uganda/international-rivers-response-sebastian-mallabys-attacks-ngos>>; see also Jim MacNeill, Correspondence to the Editor of *Foreign Policy* (Oct. 1, 2004), at <<http://internationalrivers.org/en/africa/bujagali-dam-uganda/jim-macneils-response-mallabys-ngos-fighting-poverty-hurting-poor>>. For an example of response by another NGO, the Institute for Sustainable Development, see Letter from Mark Halle, European Representative, International Institute for Sustainable Development, to the Editor of *FOREIGN POLICY* (Aug. 28, 2004), at <[http://www.iisd.org/pdf/2004/trade\\_fp\\_letter.pdf](http://www.iisd.org/pdf/2004/trade_fp_letter.pdf)>.

<sup>3</sup> In chapter 13 of *NGO Accountability*, former IRN executive director Juliette Majot reviews Mallaby's critique and offers a broader defense of the role of international advocacy organizations based around the view that international advocacy organizations can give voice to otherwise voiceless local people (pp. 226–27). In light of arguments over the substance of Mallaby's position that took place in 2004, Majot's argument is surprisingly cautious: it essentially limits itself to claiming that international advocacy

This intraglobal-bourgeois-elite (as we might call it) spat over Mallaby's report was a late-breaking incident in a larger controversy over NGO influence, accountability, and "representativeness" that had been gradually building since the mid-1990s. The end of the Cold War saw the "rise and rise"<sup>4</sup> of international and transnational NGOs in fields and issues ranging from human rights to the environment to gender issues to development to many more—the precise litany of issues, in other words, that seized the political imaginations and consciences of the affluent West in the 1990s. These international and transnational NGOs had watched the spectacular success of the international landmines ban campaign in that decade, in which a broad coalition of NGOs united—or, much more precisely, networked—around the world, together with a group of like-minded governments led by Canada. The result was a comprehensive landmines ban treaty, wide formal adherence to the treaty by states, and a sizable real-world reduction in production and use of anti-personnel landmines. Joint receipt of the 1997 Nobel Peace Prize by the NGO coalition, the International Campaign to Ban Landmines, and its coordinator Jody Williams, signaled to international and transnational NGOs everywhere that new internet technologies, changes in the international political system, and acceptance by at least some key governments and international organizations of the legitimacy of NGOs meant a new era of their power, influence, and authority in a world rapidly integrating economically and politically.

The landmines ban campaign led not only to the elaboration of new organizing and campaigning techniques by NGOs but also to a heady new theoretical framework for conceiving of them and their place in the world—international and transnational NGOs as "global civil society." In the hands of such political theorists as John Keane, global civil society was considered as the international equivalent of the myriad social movements and civil society organizations of successful domestic national societies. Civil society, long understood as crucial to the success of domestic democratic society, was now to be writ large upon the transnational stage.<sup>5</sup> An influential book edited by Canadian activists in- and outside of the official Canadian foreign ministry argued that global civil society meant the democratization of international politics, institutions, and the international community through global NGOs, transnational NGO networks, and transnational social movements; the landmines campaign showed the way.<sup>6</sup> Academic sociologists Margaret Keck and Kathryn Sikkink argued that transnational advocacy networks could play important roles in transforming certain issues in international politics.<sup>7</sup>

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NGOs simply provide an international platform for local organizations and civil society (*id.*).

<sup>4</sup> I borrow this phrase from KIRSTEN SELLARS, *THE RISE AND RISE OF HUMAN RIGHTS* (2002).

<sup>5</sup> JOHN KEANE, *GLOBAL CIVIL SOCIETY?* 1–4 (2003).

<sup>6</sup> *TO WALK WITHOUT FEAR: THE GLOBAL MOVEMENT TO BAN LANDMINES* 424–44 (Maxwell A. Cameron et al. eds., 1998).

<sup>7</sup> MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 25–38 (1998).

Influential international publications such as *The Economist* embraced the morality of the landmines ban as well as the global civil society theory underlying the ban *campaign*—arguing from a stance of high-minded, enlightened global business interests that global civil society could serve to humanize economic globalization. The World Bank under James Wolfensohn embraced the spirit of the age, as it were, making consultation and, where possible, the blessing of NGOs as close to bank policy as he could get.<sup>8</sup> The NGOs were no longer left outside the building or cooling their heels in the corridors of power, but became a presence inside the negotiating rooms of treaties, international agreements, contracts, and development projects large and small. NGOs were now an accepted player in nascent global governance. Yet the theory that transformed them from mere NGOs into “global civil society” presumed important things not only about the nature of NGOs but also about that supposedly emerging “global governance.”

Perhaps the high-water mark of claims for global civil society, its legitimacy in international affairs, and its supposed ability to do that which governments supposedly could not, came in a December 1999 speech by then-Secretary General Kofi Annan to the World Civil Society Conference, informing representatives of global civil society that “global people power” was the “best thing for [the] United Nations” in a “long time.”<sup>9</sup> Later, at the UN NGO Millennium Forum in 2000, he told NGO representatives that not only do “you bring to life the concept of ‘We, the Peoples,’ in whose name our United Nations Charter was written; you bring to us the promise that ‘people power’ can make the Charter work for all the world’s peoples in the twenty-first century.”<sup>10</sup> It is a formulation that today, after all the criticism and (let us be frank) subsequent backpedaling,<sup>11</sup> must seem quite remarkable. It would indeed be hard to come up with a more ringing endorsement of the claim of international and transnational NGOs, at least with respect to international organizations, to be representatives of the peoples of the world.

Simultaneous with that high-water moment, however, anti-globalization rioters managed to break up and shut down the December 1999 Seattle meetings of the World

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<sup>8</sup> According to *The Economist*, then-World Bank president Wolfensohn made “dialogue with NGOs a central component of the institution’s work. . . . More than half of World Bank projects [in 1998] involved NGOs. . . . From environmental policy to debt relief, NGOs are at the center of World Bank policy.” *Special: Citizens’ Groups: The Non-governmental Order: Will NGOs Democratize, or Merely Disrupt, Global Governance?*, *ECONOMIST*, Dec. 11, 1999, at 20, 21.

<sup>9</sup> Kofi Annan, Secretary-General, United Nations, Address at World Civil Society Conference (Dec. 8, 1999) at M2 Presswire, Dec. 9, 1999 (“Secretary-General says ‘global people power’ best thing for United Nations in long time.”).

<sup>10</sup> Kofi Annan, Secretary-General, United Nations, Address at Millennium Forum (May 22, 2000), at M2 Presswire, May 23, 2000 (calling for an intensified “NGO revolution”).

<sup>11</sup> See *infra* text at notes 12–21.

Trade Organization.<sup>12</sup> The ideological challenge came not just from violent protestors in the streets, but from a wide array of NGOs who had been invited to participate in the official process and, not coincidentally, grant it legitimacy and a sort of Good Housekeeping Seal of Global Civil Society Approval. In that moment in Seattle, the legitimacy and goodwill of the transnational NGOs became a large question mark for an increasing number of critics and one-time supporters.<sup>13</sup>

It was one thing when the issue was landmines: no one, not even the United States, was really willing to defend them except on such grounds as dire military necessity.<sup>14</sup> Trade, however, was understood as an entirely different matter. For many, including the World Trade Organization itself, trade was an unalloyed social good for everyone, rich and poor but especially poor.<sup>15</sup> And even if it were not a wholly uncontested or uncontestable social good, free trade—unlike a morally indefensible weapon like landmines—seemingly had to be considered as a matter of complex economic and social tradeoffs, decisions about which had to be made by those who represented whole populations.<sup>16</sup>

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<sup>12</sup> See, e.g., Sam Howe Verhovek & Steven Greenhouse, *National Guard is Called to Quell Trade-Talk Protests; Seattle is Under Curfew After Disruptions*, N.Y. TIMES, Dec. 1, 1999, at A1; Helene Cooper, *Seattle Showdown: Third World Pragmatism Spars With American Ideals*, WALL ST. J. ASIA, Dec. 3, 1999, at A1.

<sup>13</sup> See, e.g., Barun S. Mitra, *WTO Protesters vs. the Poor*, WALL ST. J., Dec. 9, 1999, at A26. My own experience in those days suggests too that the refusal of many of the “respectable” seat-at-the-table NGOs inside the discussions in Seattle to condemn the violence instigated by anti-globalization protesters or even very much to distance themselves from it contributed considerably to a sense among governments that the governments had quite possibly made a strategic mistake.

<sup>14</sup> See Kenneth Anderson, *The Role of the United States Military Lawyer in Projecting a Vision of the Laws of War*, 4 CHI. J. INT’L L. 445, 448–53 (Fall 2003).

<sup>15</sup> See, e.g., Dan Ben-David, Håkan Nordström & L. Alan Winters, *Trade, Income Disparity and Poverty* (June 19, 2000) (study sponsored by WTO Secretariat) at <[http://www.wto.org/english/news\\_e/pres00\\_e/pov1\\_e.pdf](http://www.wto.org/english/news_e/pres00_e/pov1_e.pdf)>; Press Release, WTO, *Free Trade Helps Reduce Poverty, Says New WTO Secretariat Study* (June 13, 2000).

<sup>16</sup> This assessment was approximately Kofi Annan’s position. To his considerable credit, and regardless of one’s view of the substantive issue, Annan had the courage to confront the NGOs directly in the Millennium Summit a few months after the Seattle debacle and state flatly that the “overarching challenge of our times is to make globalization mean more than bigger markets. . . . [W]hile globalization has produced winners and losers, the solution is not confrontation. It is not to make winners of the losers and losers of the winners. It is to ensure that nobody sinks, but that we swim together with the current of our times.” Kofi Annan, *Address to the Millennium Forum* (May 22, 2000) at <<http://www.un.org/News/Press/docs/2000/20000522.sgsml7411.doc.html>>; see Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets*, 5 YALE HUM. RTS. & DEV. L.J. 85, 112–14 (2002).

During the last decade, views concerning NGO representativeness have shifted. Global civil society loudly proclaimed through the 1990s, on the strength of the moral crusade of the landmines campaign, that the representatives of the world's peoples to international organizations and states were to be global civil society. By 2000, not everyone was so sure: increasing numbers of skeptics thought, even in the case of less than democratic states in the poor world, that decisions about economic tradeoffs for populations concerning trade should be made by governments or, at any rate, someone other than self-appointed advocacy groups.<sup>17</sup> By mid-2000, Fareed Zakaria, managing editor of *Foreign Affairs*, remarked in an interview with *The Spectator* that, with respect to the Seattle collapse, "my concern is that governments will listen too much to the loud [NGO] minority and neglect the fears of the silent majority" with the effect of devolving power to "interested, unelected, unrepresentative and unaccountable NGOs."<sup>18</sup> *The Economist*, in an alarmed about-face following Seattle, opined that the "general public tends to see [NGOs] as uniformly altruistic, idealistic and independent. But the term 'NGO,' like the activities of the NGOs themselves, deserves much sharper scrutiny. . . . They are rarely obliged to think about trade-offs in policy."<sup>19</sup> It added, for good measure, that NGOs "are not accountable to anyone."<sup>20</sup> And as David Rieff put it rather more sharply, "So who elected the NGOs?"<sup>21</sup>

That carries matters up through 2000. The book under review, aptly titled *NGO Accountability*, largely takes in the much more chastened, much more bridled discussion of the years since and is an attempt squarely aimed to offer some answers to those criticisms and those critics.<sup>22</sup> Unlike other volumes on the subject and despite the sometimes differing views of contributors, the book is mostly targeted to the specific questions of what NGO accountability means and does not mean, why it is significant and why it is not, and what can be done to achieve what the authors respectively believe

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<sup>17</sup> One of them being Mallaby. See Sebastian Mallaby, *Big Nongovernment*, WASH. POST, Nov. 30, 1999, at A29.

<sup>18</sup> Justin Marozzi, *Whose World Is it, Anyway?* SPECTATOR (London), Aug. 5, 2000, at 14.

<sup>19</sup> *NGOs: Sins of the Secular Missionaries*, ECONOMIST, Jan. 29, 2000, at 25.

<sup>20</sup> *Id.*

<sup>21</sup> David Rieff, Address at the Conference on the Landmines Campaign and International Civil Society, Washington College of Law, American University (Feb. 27, 1998) (panel moderated by Kenneth Anderson); see also David Rieff, *The False Dawn of Civil Society*, NATION, Feb. 22, 1999, at 11.

<sup>22</sup> I should disclose that I have played a minor role in the debate as one of the critics of the NGOs. See, e.g., Kenneth Anderson & David Rieff, *Global Civil Society: A Skeptical View*, in GLOBAL CIVIL SOCIETY 2004/5 26–38 (Helmut Anheier et al. eds., 2004); Kenneth Anderson, *The Ottawa Convention Banning Landmines: The Role of International Non-governmental Organizations and the Idea of International Civil Society*, 11 EUR. J. INT'L L. 91–120 (2000); Kenneth Anderson, *The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations*, 2 CHI. J. INT'L L. 371–88 (2001).

is key in the way of accountability in admirably practical terms. Its focus means that I expect to consult the work as a whole rather than merely using it as a printed repository of just one or two specific articles.

Chapters are organized in four sections: 1) the current NGO accountability debate as fundamental questions and concepts; 2) traditional responses through law, best practices, and donor regimes; 3) consideration of accountability in the context of particular country settings; and 4) forward-looking approaches to NGO accountability. Some chapters in each section focus on individual country settings; the ability to compare Jassy Kwesiga and Harriest Namisi's chapter on Uganda's "first generation" NGO law with Sarah Okwaare and Jennifer Chapman's chapter on newer, forward-looking NGO accountability practices in Uganda is particularly useful. Other chapters focus on countries' different accountability mechanisms regarding transnational NGOs that work within their respective borders. The authors and editors have done a good job using country case studies, such as Hans Antolov, Rustam Ibrahim, and Peter van Tuijl's chapter on NGO governance in Indonesia, to offer lessons beyond their geographical settings. Much of the notion of accountability driving the book chapters is about NGO accountability *within* a particular society. Still others, such as Hetty Kovach's contribution to innovations in accountability, look to the global setting for international and transnational NGOs and to the relationship of NGO accountability to global governance.

Accountability of international and transnational NGOs continues to have political salience not merely because NGOs are often single-interest advocacy groups—Zakaria's "loud minority"—or because they are located in Berkeley but opine loudly and influentially about rural Uganda or because not even NGOs are somehow magically immune from personal corruption leading to the diversion of charitable assets or institutional rent-seeking behavior or any of the other concerns that corporate governance as a general apolitical matter seeks to check in all spheres of legally chartered organizations. It would be pleasant if issues of accountability could be confined to a society and its own NGOs or to the NGOs that come there from abroad, or if accountability could be limited to apolitical issues of corporate governance. Large and important questions arise in these areas, which much of this book takes on with great acuity. But I persist in pressing the questions of accountability—taken up by a minority of the articles in the volume—that exist, not because of corruption or poor management, but because of the very conception of global governance implicit in the concept of NGOs as global civil society. The book exhibits a curious schizophrenia on this issue—one I fully share—in wanting on the one hand to leave aside questions of representativeness and discuss other matters of accountability while somehow not being able to leave the question of representation aside at all. The issue is not resolved by a tacit agreement not to discuss the issue: we will be vexed by the return of the repressed.

NGO accountability became a central issue in large part after all because it was linked to the question of whether and to what extent NGOs should be seen as "representative" of the world's peoples—as one half, in other words, of an equation about global governance. But what, then, is the other half? It will turn out to be international

organizations in general and the United Nations in particular. The accountability issue became more than simply apolitical corporate governance because NGOs in the 1990s took the mantle of representativeness in this equation of global governance upon themselves, and because international organizations such as the United Nations embraced them as a source of legitimacy through “representativeness” that bypassed the increasingly problematic legitimacy of international organizations through nation-states. The Ford Foundation’s Michael Edwards, in his short forward to the book, denies this dynamic, but that was simply not my experience as the Human Rights Watch Arms Division director and later as general counsel to a leading international donor, the Open Society Institute.<sup>23</sup> From the very beginning, I was deeply involved in the landmines ban campaign, and, based on that experience, I do not know how one could otherwise interpret the triumphalist speeches by NGOs during the period,<sup>24</sup> the lengthy theorizing of precisely such by political and social theorists such as John Keane or David Held,<sup>25</sup> the strategic reconceptualizing of NGOs and social movements as “global civil society” by

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<sup>23</sup> One can accept that a useful debate exists today on “costs and benefits of different approaches to accountability” without accepting the quite remarkable contention of Edwards that “no NGO, to my knowledge, has subscribed to” the claim that they “compete with governments as representatives of the electorate” (p. ix). We seem to have lived through two quite different NGO worlds in the 1990s. I can recall conversations to that effect with program officers and senior executives of the Ford Foundation, the Rockefeller Foundation, the Rockefeller Brothers Fund, the MacArthur Foundation, and various others, just on the donor side of the global NGO world. Add to that the euphoria that permeated the NGOs as well as a substantial part of the international organization community, the UN and its agencies, which saw the NGOs as an avenue for a legitimacy “end run,” as it were, around the member-states that they saw, correctly, as hampering their freedom of action. Why should this be any surprise? The claim of being the legitimate representatives of the peoples of the world before international organizations was endorsed, after all, by Kofi Annan and the Secretariat, and it was a featured part of the appeal for funding to the donor foundations. To get funding, NGOs not only told all about the specific good things that they would do with the money; they also inserted a narrative about the more general effect of representing the world’s peoples. In my experience, donor organizations loved this kind of appeal because it raised their grant-making above the grubby level of helping specific people with specific things and gave it a patina of permanently reshaping “our global community.” I personally raised a substantial amount of money on precisely this claim, and I was far from alone, however embarrassing or overwrought the whole pitch might seem a dozen years later.

<sup>24</sup> Approving examples can be found in, for example, ALISON VAN ROOY, *THE GLOBAL LEGITIMACY GAME: CIVIL SOCIETY, GLOBALIZATION, AND PROTEST* 33 (2004).

<sup>25</sup> Among Held’s voluminous writings in this area, see, e.g., DAVID HELD ET AL., *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* (1999); DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* (1995). Held is noteworthy for working out the theory of precisely what Edwards denies—the argument that NGOs can serve as an alternative source of democratic, representative, and participatory legitimacy for international organizations reaching to global governance.

activist-intellectuals as Alison van Rooy,<sup>26</sup> or the fawning upon “global civil society” by Kofi Annan, Mark Malloch Brown, Louise Fréchette, and so many other international organization officials as they saw the advantages of NGOs as a source of legitimacy.<sup>27</sup> The issue of accountability in relation to a particular conception of global governance does not suddenly go away simply because corporate governance officers at leading donor agencies decide that accountability is instead about relations with local governments rather than with international organizations. Accountability, Edwards says, is “the price to be paid . . . for the freedom to exercise power and authority in a democratic society” (p. ix). This statement is stunning both for its hubris and for its complete elision of the two central issues: that accountability matters whether or not one exercises such power and authority and that accountability is not a sufficient ground on which to exercise power and authority in a democratic society.

Rather than denying that the 1990s involved much rhetorical and theoretical excess on the issue of NGO “representativeness,” wiser counsel is that adopted by many organizations following 2000 and discussed in the book. Enrique Peruzzotti has written an exceptionally thoughtful chapter on civil society and representation, which straightforwardly accepts criticism of legitimacy inflation in the 1990s and moves on. The task, which Peruzzotti admirably undertakes, is conceptually to separate the matter of representation from accountability. This chapter forms, along with Steve Charnovitz’s chapter on NGOs and global governance (and his writings on related topics in AJIL<sup>28</sup>), the best current restatement of the conceptual issues of which I am aware. In that regard, accountability is a matter that only partly overlaps with the concerns of representation. Representation and democratic participation—seen from the viewpoint of organizational accountability—are mechanisms by which an organization can be made accountable for itself and its actions—provided that meaningful ways exist for those being represented to exercise participation in and, ultimately, control over the organization. But that is rarely the case with NGOs. If the claim, after all, is to represent the peoples of the world, it seems vanishingly small that the peoples of the world will be able to exercise meaningful control or even express themselves with respect to the method and content of that representation. This is no less true, of course, in many other governance settings that make far more modest claims about representation—ordinary corporate governance, for example—and so we look for public accountability in most instances in different ways. Fiduciary obligation enforced by courts, legal rules regarding utilization of resources in

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<sup>26</sup> VAN ROOY, *supra* note 24, at 127–61.

<sup>27</sup> A recurrent minor theme throughout one account of the United Nations under Kofi Annan is the argument between those characterized by political scientist and UN official John Ruggie as, within the United Nations, the “traditionalists” who favor a member-state orientation for the organization and the “modernizers” who favor seeking to bypass member-states to the extent possible, in part by building links directly to global and cosmopolitan constituencies, of which transnational NGOs are a core part. JAMES TRAUB, *THE BEST INTENTIONS: KOFI ANNAN AND THE UN IN THE ERA OF AMERICAN WORLD POWER* 383 (2006).

<sup>28</sup> See Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AJIL 348 (2006).

charitable public trust, and so on are mechanisms of accountability that have frankly little to do with democracy or representation in any specific, concrete sense, but instead rely on bureaucratic or legal structures in the fashion of a financial regulator, auditors, and courts of law. Accountability only partly overlaps with representativeness, and accountability is very frequently best obtained through mechanisms that are not fundamentally about representation or democracy except in the most abstract sense of the rule of law.

Democracy and representative legitimacy are, however, values in and of themselves, quite apart from their potential to establish accountability. In that regard, to ask about accountability is really to ask whether NGOs are representative of those they claim (or once claimed) to represent and whether they merit the legitimacy that they claim such representativeness confers. In this sense, to ask about accountability is not merely to ask whether NGOs “responsibly” exercise their power but instead whether a basis exists for them to be invested with such power in the first place. Before getting to the question of whether NGOs meet the standards of fiduciary duties, we must first ask on what basis they claim to be legitimate fiduciaries. And if it is on the basis of representing “people” or “peoples” or “the world’s Peoples,” then we should not frame the question of accountability as a merely technical question of execution and so presume the quite radical conclusion that they have legitimate claim to “represent,” and account for the interests and desires and values of all these “people” in the first place. NGOs helped themselves to this legitimacy by making otherwise unsubstantiated claims of representation; this issue persists for the legitimacy of global governance independently of, and prior to, the issue of whether or not NGOs properly execute their fiduciary duties.

Critique of international and transnational NGOs is thus only partly about accountability in the fiduciary sense or even the single-issue sense versus social trade-offs sense. Rather, the critique centers on the NGOs’ assertion of a legitimating role in global governance. The implication is that they hold a position—simultaneously adopted by NGOs as a means of gaining admission to officialdom and assigned to them by international organization bureaucracies in search of legitimacy for themselves<sup>29</sup>—on that

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<sup>29</sup> Lest one think this tradeoff as merely theoretical, consider, for example, the support given by leading international human rights monitors such as Human Rights Watch for the watered down, compromise replacement of the discredited UN Human Rights Commission by the Human Rights Council in 2005–06, which required repudiation of many core issues on which human rights organizations had insisted. Acceptance of the Human Rights Council is really only explainable in my view by a preference, and the preferment that comes with it, of these international NGOs for international organizations and internationalism as such, even under circumstances where it involves setting aside a considerable amount of the organization’s substantive moral agenda to support the political legitimacy of an international organization. Not everyone will agree (starting presumably with Human Rights Watch, although I wonder if it harbors private doubts), but even the New York Times editorial board thought this result was a bad bargain. See, e.g., Editorial, *The Shame of the United Nations: A Once Promising Reform Proposal for the United Nations Human Rights Commission Has Become So Watered Down that It Has Become an Ugly Sham*, N.Y. TIMES, Feb. 26, 2006, § 4, at 11. Not so Human Rights

most highly contested of issues, global governance.<sup>30</sup> Peruzzotti and Charnovitz, in their respective chapters, disentangle these separate issues, accountability from global governance. To the extent they offer or critique policy proposals—such as Charnovitz’s skepticism that NGO regulation can or should somehow seek to force NGOs away from single-interest advocacy—they focus on the issue of accountability rather than representation. These authors would seem to either accept the critique of representativeness or simply believe it to be overstated: in either case, they thus have reasons to focus on narrower and more practical issues of accountability.

My own concern, however, continues nakedly to be that powerful incentives for international and transnational NGOs to claim representativeness—as part of a mutually reinforcing dynamic in which global civil society offers legitimacy to international organizations in a notably undemocratic vision of global governance and takes back recognition, access, and legitimacy in their turn—are as present as ever. Charnovitz inquires of my own view why lobbying by an NGO to a “group of governments poses more risks to democracy than the same lobbying by that NGO to its ‘home’ government” (p. 42, n.11). The brief response is that to frame the question this way begins by presuming that lobbying a public international organization is the same as lobbying a “group of governments”—as though the UN were merely an agglomeration of member-state governments and not an institution with its own dynamics, interests, politics, and all manner of institutional existence beyond the member-states, singly or together. With respect to a single (democratic) government, NGO lobbying in the NGO’s domestic (democratic) society must contend with an electorate, a ballot box, and the checks upon the legitimacy claims of the NGO because it exists within a democratic structure and process against which its advocacy can be tested. That perspective is also true when NGOs lobby groups of (democratic) governments. Lobbying international organizations, however, is *not* the same as lobbying “groups of governments,” even if the international

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Watch. In my estimation, this is an example of a bargain exemplifying an NGO receiving access and legitimacy in exchange for granting legitimacy to an intergovernmental organization. Pay to play.

<sup>30</sup> I realize that, for some readers of this book or of this review, the question of global governance, whether its desirability or its form, is not contested at all. But for others, like me, the failure even to regard it as contested *is* precisely the problem. However, I do not address in this review the most striking recent turn of the global governance debate, the intellectual move taken today at the forward intellectual margin, so to speak. It is that, through constructs of “global government networks” and the growth of global administrative governance, technocratically legitimate forms of global governance arise in which NGOs are curiously left aside in favor of the technocrats of intergovernmental networks. The question of political legitimacy proffered by NGOs, as global civil society, is no longer an interesting issue. Neither, for that matter, is the legitimacy of international organizations as political organizations as such. “Legitimacy,” in the new administrative-technocratic model, comes therefore not from any genuinely “political” source at all, but is instead simply a by-product of the competent provision of administrative services. Legitimacy, in such case, is no longer a matter of representativeness but merely a matter of who is able to make the internet run on time.

organizations are somehow in principle the servants of their member-states, and the differences between these two categories, national government(s) and international organizations, and the implied differences of incentives and strategic behavior, are as considerable as public choice theory might suggest. NGOs in the international arena do not have to contend with the appurtenances of democracy that would confront (and often confound) them in a national democratic society. Moreover, for a decade or so international NGOs came perilously close, or more, to claiming to *be* that democratic, or at least representative, structure in the international arena. These structural concerns about global governance have been relieved to some extent today by outside criticism, but the incentives that lead to such claims have not gone away.

My suggestion that representation and democratic debates over NGOs continue because the structural incentives have not changed within the argument over global governance does not detract, nor should it distract, from this book's main point. That point is to survey and advance the understanding of what can be done to develop meaningful accountability in the senses *apart from* representativeness. Accountability that recognizes that one great virtue of NGOs, as Peruzzotti puts it, is precisely that the "constituent politics of civil society leave great room for creative and innovative action, allowing social movements or NGOs to challenge present identities or existing constituencies without being concerned about electoral accountability or due process" (p. 48).<sup>31</sup> The glory of civil society institutions ought to be that they are *not* representative, and, because they are not, are free to argue and shout their visions of social justice, seek to persuade, offer alternatives that representative institutions cannot. They, for their part, need to understand that the rest of us are quite free to disagree with their ideas, to confound their plans, and to thwart their actions—or merely to ignore them.

But even civil society institutions that make no claim to democratic representation still need to be accountable, not only in the auditing, accounting, and fiduciary senses, but also in the transparency sense, so that others can judge them and their programs—transparency that allows outsiders to make their own judgments on many things about particular NGO proposals in particular circumstances, including the vexed issue of causes in Berkeley and effects in Uganda. Moreover, in societies and circumstances where NGOs wield economic power that starts uncomfortably to resemble that of governments or business,<sup>32</sup> other questions of accountability arise because NGO power goes beyond mere suasion. We are therefore in need of precisely the theoretically informed yet practically oriented discussion and policy analysis that this well-organized, thoughtful volume offers.

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<sup>31</sup> Drawing, as Peruzzotti does in this section (p. 49), I am not unhappy to report, from Anderson & Rieff, *supra* note 22.

<sup>32</sup> Or, for that matter, brigands. I leave aside here the dismaying recent episode of a French NGO entrepreneur deciding that humanitarian action meant involuntarily and covertly removing Sudanese children for adoption abroad without the consent of their parents or relatives. *See, e.g.*, Christopher Caldwell, *An Abduction of Idealism*, FIN. TIMES, Nov. 9, 2007, at 7.

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