



Institute for International
Law and Justice

IILJ International Legal Theory Colloquium Spring 2010
The Turn to Governance:
The Exercise of Power in the International Public Space

Professors Benedict Kingsbury and Joseph Weiler

NYU Law School

Straus Institute for the Advanced Study of Law and Justice

Wednesdays 2pm-3.50pm on dates shown

Pollack Colloquium Room, Furman Hall 9th Floor, 245 Sullivan Street
(unless otherwise noted)

(additional seminar for students et al is Thursdays 4pm-5.50pm, on GAL)

Topics are indicative and are subject to change.

January 20 Andrew Hurrell, Oxford University

Topic: Emerging Powers, Global Order and Global Justice

January 27 Richard Stewart, NYU Law School

Topic: The World Trade Organization and Global Administrative Law

February 3 Robert Keohane, Princeton University

Topic: The Regime Complex for Climate Change (paper with David Victor, UC San Diego)

February 10 No Colloquium - Postponed due to weather conditions

February 17 No Colloquium

February 24 Gianluigi Palombella, University of Parma, Law Faculty

Topic: Rule of Law in Extra-National Governance

March 3 Joseph Weiler, NYU Law School

Topic: On the Distinction between Values and Virtues (and Vices) in European Integration

March 10 David Kretzmer, Hebrew University/Ulster

Topic: State Reports to the UN Human Rights Committee

March 11 Jan Klabbers, University of Helsinki

Topic: Controlling International Bureaucracies

March 17 No Colloquium – Spring Break

March 24 Marta Cartabia, University of Milan

Topic: Rights in Europe

March 31 No Colloquium

April 7 Grainne de Burca, Fordham Law School

Topic: EU External Relations: Foreign Policy or Governance?

April 14 Beth Simmons, Harvard Government Department

Topic: Effects of Investor-State Treaty Regimes and Arbitral Processes

Thurs April 15- **(SPECIAL SESSION, 4pm-5.50pm, Furman Hall 214)**

Daryl Levinson, Harvard Law School

Topic: Public Law: Constitutional and International

April 21 Benedict Kingsbury, NYU Law School

Topic: Techniques of Global Governance

Emerging Powers, Global Order and Global Justice

Andrew Hurrell

It is clearly a very important time to be discussing the changing character of global order. The tectonic plates are shifting. Both the international political system and the structures of global capitalism are in a state of flux and uncertainty. There is a strong argument that we are witnessing the most powerful set of challenges yet to the global order that the US sought to construct within its own camp during the Cold War and to globalize in post-Cold War period. Many of these challenges also raise questions about the longer-term position of the Anglo-American and European global order that rose to dominance in the middle of the 19th century and around which so many conceptions and practices of power-political ordering, international legal construction and global economic governance have since been constructed.

This paper draws on my Straus Institute project on Brazilian and Indian policy towards four international institutions/regimes (WTO, non-proliferation, climate change, and UNSC) in the period since 1990. Much of my recent research has been descriptive and explanatory: trying to lay out in detail what the policies of Brazil and India have been and how we might best explain them. The idea of this paper is to undertake a more evaluative analysis, including of the normative implications. It is an initial and somewhat rough and ready attempt to see what the overall picture looks like and which elements and arguments need to be highlighted. It begins by sketching out a framework for thinking about global order and of the system into which rising powers such as India or Brazil may be said to be emerging. It then considers some of the major characteristics of their behaviour: how engaged have they been? How might we characterize their policies – status quo, reformist, revisionist, resisting? And what explains policy choices? It then seeks to draw out some conclusions in relation to changing conceptions and practices of global order. And, finally, it looks at the some of the possible normative implications.

I

First, how – in very general terms -- might we think about the problem of global order in the post-Cold War period? In summary fashion we can say that the system has faced a series of classical Westphalian problems especially to do with power transitions and with the rise of new powers; but that it faces these problems within a context that has marked post-Westphalian characteristics.

In the 1990s global order was widely understood through the lens of liberal internationalism or liberal solidarism. Globalization was rendering obsolete the old Westphalian world of Great Power rivalries, balance of power politics and an old-fashioned international law built around state sovereignty and strict rules of non-intervention. Bumpy as it might be the road seemed to be leading away from Westphalia – with an expanded role for formal and informal multilateral institutions; a huge increase

in the scope, density and intrusiveness of rules and norms made at the international level but affecting how domestic societies are organised; the ever-greater involvement of new actors in global governance; the moves towards the coercive enforcement of global rules; and a fundamental changes in political, legal and moral understandings of state sovereignty and of the relationship between the state, the citizen and the international community. In addition to an expansion of inter-state modes of governance, increased attention was being paid to the world of complex governance beyond the state. Such governance was characterized by the complexity of global rule making; the role of private market actors and civil society groups in articulating values which are then assimilated in inter-state institutions; and the increased range of informal, yet norm-governed, governance mechanisms often built around complex networks, both transnational and trans-governmental, and the inter-penetration of international and municipal law and of national administrative systems.

Academics, especially in the United States, told three kinds of liberal stories about these changes. Some stressed institutions and the cooperative logic of institutions. Institutions are needed to deal with the ever more complex dilemmas of collective action that emerge in a globalized world. As large states, including large developing states such as China, India or Brazil expand their range of interests and integrate more fully into the global economy and world society, they will be naturally drawn by the functional benefits provided by institutions and pressed towards more cooperative and 'responsible' patterns of behaviour. The process is neither easy nor automatic, but, on this view, the broad direction of travel is clear. Others stressed the Kantian idea of the gradual but progressive diffusion of liberal values, partly as a result of liberal economics and increased economic interdependence, partly as a liberal legal order comes to sustain the autonomy of a global civil society, and partly as a result of the successful example set by the multifaceted liberal capitalist system of states. A third group told a more US-centred story. The US was indeed the centre of a unipolar world. But, true both to its own values but also to its rational self-interest, Washington had a continued incentive to bind itself within the institutions that it had created in the Cold War era in order to reassure smaller states and to prevent balancing against US power. A rational hegemon in an age of globalization would understand the importance and utility of soft power. In return for this self-binding and the procedural legitimacy it would create and in return for US-supplied global public goods and the output legitimacy that they would create, other states would acquiesce and accept the role of the United States as the owner and operator of the system.

Through a mix of these three processes those states of the old Third World that had previously challenged the western order would now become increasingly enmeshed, socialized and integrated. The challenge of the Second World had been seen off. The challenge of the Third World was being tamed if not rendered obsolete. This challenge had involved both the demands for a New International Economic Order in the 1970s but also the idea of a longer-term 'revolt against western dominance' that stretched back to the early 20th century and that had incorporated the successive struggles for decolonization, for equal sovereignty, for racial equality and for economic justice. The 1990s, then, were marked by a clear sense of the liberal ascendancy; a clear assumption that the US had the right and power to decide what the 'liberal global order' was all

about; and a clear belief that the western order worked and that it had the answers. Yes, of course there would be isolated rogues and radical rejectionists. But they were on the ‘wrong side of history’ as President Clinton confidently proclaimed.

However, well before Bush and certainly before the financial crisis, a compelling list of factors were pushing in a rather different direction. These included: the renewed salience of security, the re-valorization of national security, and a renewed preoccupation with war-fighting and counter-insurgency; the continued or renewed power of nationalism, no longer potentially containable politically or analytically in a box marked ‘ethnic conflict’ but manifest in the identity politics and foreign policy actions of the major states in the system; the renewed importance of nuclear weapons as central to major power relations, to the structure of regional security complexes, and in the construction of great power hierarchies and the distribution of seats at top tables; and finally the quiet return of balance of power as both a motivation for state policy (as with US policies in Asia) and as an element in the foreign policy of all second-tier states – not hard balancing and the building up of hard power; but soft balancing either in the form of attempts explicitly delegitimize US hegemony or to argue for alternative conceptions of legitimacy.¹

As the 1990s progressed economic globalization also fed back into the structures and dynamics of a Westphalian state system rather than pointing towards its transcendence.² The state as an economic actor proved resilient in seeking to control economic flows and to police borders; and in seeking to exploit and develop state-based and mercantilist modes of managing economic problems, especially in relation to resource competition and energy geopolitics. Most important of all, the very dynamism and successes of liberal globalization was having a vital impact on the distribution of inter-state political power – above all towards the East and parts of the South. If the debate over power shifts in the 1990s concentrated on the shift of power from states to firms and non-state actors, the ‘power shift’ of the past decade has focused on rising and emerging powers, on state-directed economic activity, and on the mismatch between existing global economic governance arrangements and the distribution of power amongst those with the actual power of effective economic decision.

The global financial crisis fed into these changes. In part this has been the result of the degree to which emerging economies have been relatively less directly affected. But in part it has followed from less direct impacts. It is, for example, historically extremely

¹ Even without living in a balance of power system there are numerous ways in which power-based thinking can affect issues that are fundamental to global order. Take nuclear proliferation. Russia probably does not wish to see a nuclear-armed Iran; but nor does it wish to see a clear US victory over Iran and a consolidation of US power in the region.

² The ironies – or maybe the dialectics – are striking. A central part of the response to the relative decline in US hegemony in the 1970s was to foster and encourage an aggressive phase of globalization, especially of financial globalization. And yet it was precisely the particular character of economic globalization and debt-fuelled growth that helped to create the conditions for the successful emerging economies of today. The other central feature of the US policy in the 1970s was to revive a policy of active intervention as part of the Second Cold War. Whilst this may have been a successful element in the victory of the West in the Cold War it also helped to foster, or deepen, or shift the character of many of the conflicts that are proving so intractable to Washington today, especially in relation to Islam. Seen from both perspectives the 1970s become more important in understanding where we are today, and the end of the Cold War rather less so.

significant that the financial crisis broke out and most seriously damaged the centre of the global capitalist system and not, as in the 1990s, affecting only its periphery. Certainly the governments of many emerging economies have taken every opportunity to highlight the degree to which the crisis has undermined the technocratic and moral authority of the core capitalist world, with, for example, President Lula mocking the pretensions of western economists to have the answers. But it also matters that responses to the crisis are putting back into the realm of the political many of the decisions which the liberal economic orthodoxy of the 1990s had sought to consign to the market – as with the role of independent central banks domestically or networks of financial regulators internationally. And, beyond the fixation with short-term management, we need to ask where the dynamic of resumed capitalist development will come from. If the first post-1945 phase was built around states and welfare states and a second phase was built around globalized finance and global production, where does capitalism move next? And what does this mean for the United States and the greater West, especially in a world where it will be much harder for the Washington to set the rules of the global economic game and where the US government is finding it hard to re-regulate powerful financial and economic interests at home?

Reflective of these pressures, and alongside formal multilateral institutions and complex governance beyond the state, the post-1990 period witnessed a steadily increasing emphasis on different sorts of informal groupings, clubs, concerts and coalitions. One possible route to global order is to try and return to a far more Great Power-centred order – both to get greater consensus and effectiveness in tackling the new and complex governance challenges such as climate change, terrorism and global economic governance and to deal with the return of the harsher and more traditionally Westphalian tendencies highlighted above. Faced by the intractability of many international crises and by the limits of its own power, the United States should secure its own interests, reduce the range of its burdens, and share the costs of tackling shared challenges by negotiating a new set of bargains with major emerging and regional powers. This kind of thinking is visible in the language of forming new ‘concerts’ made up of varying groups and finding new ways of ‘organizing for influence’ in the new ‘great game’. Such a view of order can come in harsher neo-realist clothes – but note here the extent to which even many neo-realists whose theoretical view of order is based narrowly on material power have come to talk more in the language of global governance and to lay emphasis on issues of legitimacy, norms and values. Or it may come in a revival of some of the core elements of an approach that stresses the virtues of major power accommodation – which is why it is so central to all those interested in the role of emerging powers.

The chairs around the table should be re-arranged and the table probably expanded. There would be a good deal of ‘global à la cartism’, a mosaic of different groupings, and a great deal of ‘messy multilateralism’. In part, groupings would be functional and be formed according to the needs of the problem in hand. But issue-specific interests, functional problem-solving, and the provision of global public goods would only be one part of the story. The really important thing about such groupings is that the logic would be power-centred -- both in terms of negotiating bargains quite narrowly around the core interests

of the major powers and in terms of the forums being essentially hierarchical and exclusionary.

Pressure for change in this direction comes in part from the perception in Washington that the US must reduce the range of its burdens. This is reinforced by the view in Washington and elsewhere that, whilst formal multilateralism might be legitimate, it is also a bad way to reach agreements (clearly demonstrated for many by the recent climate change negotiations in Copenhagen) as well as ineffective when it comes to enforcement (as illustrated for many by the problems of enforcing sanctions against Iran). The ideological skepticism towards multilateralism is giving way to a more pragmatic skepticism. But, whilst the particular emphasis has varied, the bottom line is clear: revising and reforming global order is about re-arranging the seats around the table to include those with the power and the relevant interests, as well as in some cases expanding the size of the table – as in the move from the G7/8 to the G20.

In some areas it is very hard to imagine how this pattern could ever be wholly avoided. In relation to a reconstructed non-proliferation regime, could this be anything other than hierarchical and discriminatory? In other areas the question of ‘who counts’ and ‘who should be at the table’ will depend on how order is conceived. Should, for example, new UNSC members be those with the capacity to ‘enforce’ peace and security in a traditional sense? Or should it not be expanded to include those whose traditions, values and interests speak to a much broader view of what peace and security in the 21st century should be about? Again, these questions speak directly to the choices that Brazil and India have been facing. In looking to promote their own interests and to increase their influence, should they place greater emphasis on traditional multilateralism, or should they seek to play more directly in the clubs and councils of the major powers? In their campaign for reform of the UN Security Council, what sort of power counts?

It is clearly difficult to move very far towards this kind of more power-centred order without coming into conflict or tension with important elements of the global liberal order that the US has espoused, especially since the end of the Cold War. For example, accommodating the regional interests of other players by accepting claims for regional predominance cannot be easily compatible with expansive notions of democratization and human rights. And it is perhaps harder still to move in this direction without coming into tension with even weak liberal notions of constitutionalism and the global rule of law, with their emphasis on such important procedural virtues as reason-giving, consultation and giving voice, transparency and accountability, and epistemic and moral openness. Even if ad hoc groupings and coalitions of major powers are supposed to act according to agreed international principles, where are such principles themselves supposed to come from? And by what principles other than effective power are the groupings themselves to be formed?

II

Second, what patterns of behaviour can we identify on the part of emerging powers and what drives that behaviour?

We can begin with an assessment of activism and engagement. For Brazil and India, unlike post-1978 China, engagement has not been a matter of 'joining the world'. Both countries have a long and active history of multilateral engagement. It is true that, in the early 1990s in both countries there was a heavy concentration on domestic economic liberalization, a great deal of caution engendered by the end of the Cold War, and uncertainty as to how to accommodate and adjust to the sheer extent of US and western power. But since then activism and engagement have increased along many measures and the data is clear (size of delegations, campaigns to promote nationals to important positions, and centrality to core negotiating processes, role in peacekeeping etc). In the period since 2003, for example, Brazil opened 33 new embassies, 5 new permanent missions to international organizations (including the IAEA and the Human Rights Council) and 19 new consulates.

Multilateral activism has been especially important for Brazil. There is nothing new about the country's emphasis on multilateralism. Brazil is a country that has long foresworn hard and coercive power in favour of an emphasis on multilateralism and international organization. So it is hardly surprising that, as its foreign policy assertiveness increases from the late 1990s, there should have been a major revival of the country's long campaign for the reform of the UN Security Council. Even if the prospects of actual reform have remained distant, the momentum of the campaign has, at least for its defenders, helped to maintain the country's position as one of the 'natural candidates' –both in the UN itself but also spilling over to other bodies and groupings. Equally, it is no surprise that the defenders of foreign policy should view Brazil's position at the heart of WTO trading system as a major achievement, with the old 'old quad' of core negotiating states (US, EU, Canada, Japan) giving way to the 'new quad' (US, EU, India, Brazil). And, as the inadequacies of the current global financial order were exposed by the 2008 financial crisis Brazil led demands for reform of the voting structures of the Bretton Woods institutions. Note both the focus of concern and the language used in this official statement: 'The end to hereditary claims on the top post at the International Monetary Fund ... and at the World Bank ... is a first and necessary step in ensuring that emerging economies and developing countries generally have a greater say in decision-making'.

Nor is it surprising that Brazil's strategy of emergence should have laid emphasis on development of different forms of clubs and groupings. A prominent theme of the Lula years has been the search for recognition, for securing Brazil's 'sovereign presence' via an assertive and activist foreign policy, not by means of direct confrontation in the style of Chavez, but rather through engagement and negotiation within the changing circuits of global decision-making. For Brazil the creation of the G20 in November 2008 in the midst of the financial crisis as the most important forum for the management of globalization was a major step. For the country's foreign minister the significance was clear: 'The G8 is dead, of that there is not the slightest doubt'. Moreover, as the G20 has sought to re-structure global financial management it has both created new, and potentially important, institutions (with the transformation in April 2009 of the Financial Stability Forum into the Financial Stability Board) and insisted on expanded membership

(with Brazil and other BRICS becoming full members of both the FSB and a range of standard setting and regulatory bodies).

How can we categorize the substantive positions adopted? Here the crucial point to highlight is the degree to which Brazil and India have continued to press for the revision of many dominant international norms and for the on-going reform of global governance institutions: not radically revisionist but certainly not content with the status quo. In the case of Brazil being nearer the centre of global multilateral bodies is perfectly compatible with a willingness to challenge the status quo, to reject US-favoured positions, and to favour new forms of global governance. By opting for continued market liberalism in 2002/2003 Lula may have 'saved Brazil for capitalism' (as a former finance minister under the military regime put it). But this does not mean that Brazil becomes an easy or accommodating partner³. In the case of India neither the broad moves to economic liberalization since the early 1990s nor the more recent strategic rapprochement with the United States have been shifted India from an overall continuity in terms both of negotiating strategies (and the perception that 'saying no' works) and in terms of a broader revisionism towards the international system. There is, then, no necessary link between liberal economic integration on the one hand and quite strongly nationalist stances on other issues. This behaviour stands in quite striking contradiction to the liberal expectations of the 1990s highlighted earlier. It is this sense of a one-way road and the easy categorization of states as joiners or rejectionists that has become blurred and unhelpful.

Within the WTO the structure of decision-making has clearly shifted and the centrality of India and Brazil has clearly increased. As my co-author, Amrita Narlikar puts it: 'The old Quad has been radically reconstituted. It has taken various permutations in the Doha Development negotiations: the "New Quad", Five Interested Parties or the "Quint", the G6, and the G7. In all these groups that represent the core of the consensus-building process, four parties appear as constants: the EU and the US, and Brazil and India. The G7, which was brought together by Pascal Lamy in the latest Geneva talks, included Australia, the EU, Japan, and the US, and also Brazil, China, and India. India has thus acquired a position of considerable importance at the High Table of trade negotiations. And it is a position of some power: both Brazil and India have demonstrated the ability to veto a deal, and all members (including the EU and the US) recognize that the conclusion of the Doha round will be impossible without the new powers on board.'⁴ However, these changes have not been accompanied by equivalent changes in India's tactics or broad objectives. 'What this analysis then adds up to is that in the WTO, despite the fact that the institution and its membership have proven amenable to adapting to India's rise, India has not responded with any reciprocal changes in its own behavior.

³ The external environment has facilitated a historically unusual degree of Brazilian flexibility. For all its ideological differences with the neo-liberal capitalist order, Lula's Brazil was one of the great winners of the perverse and unstable 'casino capitalism' that marked the period from 2003 to 2008. As a result, the Lula government sought to play at both Davos (the World Economic Forum) and at Porto Alegre (the World Social Forum). It sought – and succeeded to a significant extent – to be both the favoured son of Wall Street investors and to claim to speak for the progressive Global South.

⁴ Amrita Narlikar, 'Reforming Institutions, Unreformed India?' forthcoming in Alan Alexandroff ed., *Rising States, Rising Institutions* (CIGI/Brookings), page 6.

Contrary to constructivist explanations, we see no sign of its socialization within the institution. Contrary also to straightforward rationalist explanations, India has not abandoned its old allies as its power has risen, nor has it tempered the use of its distributive strategies (strategies which are clearly detrimental to the institution), even though its stakes within it have increased. What we see instead is a form of revisionism at work of both balances of power and of balances of norms. India's pathway to power so far, along with both certain domestic interests and even more powerful domestic ideas, together mean that accommodating India's rise at least in the WTO will not be as easy as some have hoped.⁵

In the Brazilian case, the post-1990s period divides into two. During the years of the Cardoso administration there is an emphasis on the need to restore Brazil's damaged credibility, to establish the country's credentials, and to concentrate on domestic reform and protecting the country from external economic vulnerability. Shifting away from older-style third-worldism and accepting many of the post-Cold War international norms were essential elements of this stance – on arms control and proliferation, on human rights, on environmental sovereignty. Since the Lula government assumed office in 2003, however, policy has moved into more activist and challenging mode.

On climate change and in the WTO Brazil has continued to argue that its interests lead it to side with other developing and emerging countries. Brazil has also rejected the idea that emerging powers to become more 'responsible' and act as 'responsible stakeholders'. From the Brazilian perspective, who is and who is not responsible depends on where the camera stops and from where one is filming. Snapshots of particular developing country positions at Copenhagen might appear to justify claims of being 'unwilling to assume global responsibilities'. But, for Brasilia as for New Dehli, it is just as clear that, in the bigger picture, the US remains the 'great irresponsible' when it comes to climate change and was prepared to bring precious little to the negotiating table.

In the case of nuclear non-proliferation policy has shifted significantly compared to the 1990s. Gathering pace through that decade Brazil came to reverse its traditional resistance to the NPT and progressively moved more into line with dominant international norms, signing the NPT itself in 1998. However in the period since 2004 there has been a renewed Brazilian interest in accelerating and protecting its indigenous technological development and in reviving its nuclear energy programme. This has led to a renewed emphasis on the discriminatory character of the regime (especially given the absence of serious disarmament on the part of the nuclear weapon states); and a resistance to international measures that would restrict the freedom of those states such as Brazil that have developed their own enrichment capabilities (although insisting on its own openness to international scrutiny). For many at the nationalist end of the spectrum the policy of 'responsible integration' of the 1990s had brought few rewards, whilst India was rewarded for playing under the old rules. It stood outside the club of responsible states, moved in 1998 to weaponization, and was rewarded by Washington with recognition of its major power status.

⁵ Ibid, page 16.

But there is an important secondary conclusion here. What counts as ‘status quo’ or ‘revisionist’ is itself politically contested. Any status quo has at least two dimensions, the first focused more or less directly on the distribution of material power; the second on the character of the international order and its dominant norms. It is often simply assumed that the dominant state or group of states in terms of power should be associated with the status quo. But this is a far from obvious assumption. Whatever may have been the case in earlier periods, this is hard to square with the record of the US and its European partners in the post-Cold War period. From the perspective of the dominant norms of the system, the United States has rarely been a status quo power and, as its power has grown so too has the revisionist character of its foreign policy. Since the end of the Cold War it has been in many ways a strongly revisionist power, sometimes a revolutionary power: in the 1990s in terms of pressing for new norms on intervention and for the opening of markets and for the embedding of particular sets of liberal values within international institutions; in the early years of this century, in terms of its attempt to recast norms on regime change, on the use of force, and on the conditionality of sovereignty more generally. Thus, for example, China, India and Brazil have not faced the United States within a stable notion of a ‘Westphalian order’. Quite the contrary: just as countries such as China had come to accept and to stress many of the core principles of the old pluralist system (non-intervention, hard sovereignty, hierarchy based on power), the dominant western states were insisting that many of the most important norms of the system ought to change, above all in ways that threatened greater interventionism and through norms that sought to shape the ways in which societies were to be ordered domestically.

Thirdly, how do we explain behaviour? Much can be explained by focusing directly in the constellation of interests involved. In cases such as climate change such an approach quickly highlights the difficulties involved. But one of the goals of the project is to evaluate the importance, first, of power considerations and power-related interests; and, second, of domestic factors and forces.

Let us look first at power. One class of power-related interests has to do with self-binding and the signaling of non-threatening intent. This is most evident in the case of China. China has clearly gained immensely from the existing global order – both economically but also politically in terms of being able to free-ride or at least minimize its costs and commitments. Its growing interdependence means that it has had a major interest in the overall stability of the system and the institutions that sustain that stability. It has, in other words, ‘bought in’ both for interest-based reasons but also to reassure others, globally and regionally. Whether this is merely tactical or strategic (or even structural) and whether it has been accompanied by processes of norm internalization and interest change are amongst the most important questions facing the world.

But the important point here is that this sort of power-based logic plays out differently as we move down to the next tier of emerging powers.⁶ In general both India and Brazil are

⁶ We would expect this logic to play out more strongly at the regional level where the asymmetry of regional power between Brazil and India and their neighbours is great. And, to a certain degree, one can see a willingness to engage in side-payments to smaller actors and to self-bind within regional institutions. Such at least is part of the rhetoric of the recent round of institution building in South America – UNASUR,

significantly freer of these kinds of constraints. A partial exception comes in the case of India and nuclear weapons. Having broken out of its isolation, achieved acceptance by the United States of its status as a nuclear weapons state, and having had Washington revise the rules of the regime to suit India's position, there is a clear interest for India in signaling its commitment to non-proliferation norms, export controls and so forth. Signaling 'responsibility' facilitates acceptance in both the old club of Great Powers and the new broader club of those states seeking to control further nuclear proliferation. But, even here it is important to note the number of voices pressing for further testing and deployment and for a more traditionally power-centred policy.

A further power-related interest has to do with the long-term impact on power of particular sets of multilateral negotiations. One way of seeking evidence of such concern is by looking at how issues are linked and how much there is a strategic view of foreign policy. In the case of Brazil this is very evident; in the case of India far less so. Climate change is an important case where issue-specific interests have been overridden by broader foreign policy goals. One reading of Brazil's interests would say that it has very little in common with India and other developing countries in the environmental field. Nevertheless the perceived need to maintain a strong southern coalition drove policy. Power and identity were stronger than an issue-specific interest. Another way is to note clear statements of such concern, perhaps especially coming from less expected sources. Hence it is interesting to note that even such a pragmatic person as the Indian prime-minister has placed great emphasis on the impact of a global climate change regime not on Indian welfare and development, but on its future global power.

But the most consistently important power-related interest concerns status, both status as prestige but more importantly status as membership. Understanding the role of status concerns is extremely important in terms of emerging powers – in terms of motivation and the potential drivers of foreign policy; in terms of the priorities given to particular aspects of foreign policy (especially the balance between seeking membership and recognition on the one hand as against immediate material interest on the other); and in terms of the strategies chosen and the sorts of power resources deployed. Status matters not primarily in terms of power rankings but in terms of membership.

The picture that seems to be emerging is that membership matters separate from the distribution of other costs and benefits. To the extent that emerging powers are not more willing to commit to multilateral governance, much of this can be explained by the perceived failure of existing institutions to reform faster. But equally 'rewarding' emerging powers with more central membership roles does not ensure greater overall regime compliance.

The other important set of explanatory factors concerns domestic politics. The issue of domestic politics arises almost automatically in relation to the United States. This is not just a contingent matter of Obama's limited domestic space to manoeuvre. It stems rather from the persistent difficulty of meshing the external bargains that are inevitably involved

the South American Defense Council etc. But the regional limits are still striking and this suggests a concern with sovereignty that is important in understanding their global as well as regional foreign policy.

in the on-going negotiation of hegemony with the complexity and relatively closed character of US domestic politics. But, and this the critical point, something similar can be said about today's large, complex and fast-developing emerging powers. India's domestic constraints on climate change are ever bit as complicated and contested as those in the US.

Is this new? In broad terms probably not. Think of the often stark domestic tensions produced by rapid economic change in the course of the rise of the United States, Germany and Japan, and the consequences that these tensions had for the foreign policy of these states and for their search for an international role commensurate with their rising power and their sense of themselves. But what is new – or at least harder to avoid – is the degree to which the substance of major power relations necessarily involves a wide range of issues that reach deep within the structure of domestic society.

There are two distinct possible expectations about how domestic politics enter the story. One is quite specific. It expects that there will be a strong and clear relationship between structural changes in the global economy and particular patterns of coalition formation. As the incentives on developing countries to integrate increase and as countries do integrate, so liberalizing coalitions will come to predominate over nationalist coalitions in a generally self-reinforcing process. But what we see in the cases of India and Brazil is far more hybrid regimes and hybrid supporting coalitions. As we have already noted, both governments have generally favoured continued economic liberalization and have prospered by doing so. And yet this has not prevented the adoption of strongly nationalist positions on many issues.

The broader expectation that the combination of successful development and higher levels of economic integration will lead to greater pluralism domestically and increase the number of voices demanding to be heard. Ideas of this kind are indeed borne out. In both countries there have been significant changes in the traditionally top-down and closed character of foreign policymaking and a far greater range of interests and voices demanding a say in foreign policy – with 'foreign policy' including of course a far wider and more domestically intrusive range of issues. Shifts of this kind help explain interest change – the rise of Brazil as a global player on agriculture has had an obvious impact of balance between defensive and aggressive economic interests. Equally, new environmental coalitions have been crucial in pressing for shifts in Brazilian positions on climate change. In the case of India, domestic factors have clearly played a major role in supporting India's blocking position in the WTO; whilst those environmental movements that have been most critical of the Indian government domestically have often been most supportive of the country's foreign environmental policy. The data on the breakdown of elite consensus on foreign policy issues is clear and there are high levels of domestic political churning.

All of this suggests that one should focus less on the BRICs as a group; and more on the complex processes of change and 'bricolage' (to use Mary Douglas's term) that has been taking place within each of the emerging states. As part of a complex process of breaking-down and re-assembly old and new ideas, values and policies are melded

together producing something qualitatively different. The result works against the idea that today's emerging powers will simply be absorbed within expanded version of a liberal Greater West.

III

Third, what general conclusions might we draw about the increased importance of emerging powers in many aspects of global order? The challenges facing the international community in its search for new forms of global co-operation are immense. Multilateralism worked for much of the post-1945 period in part because it was not very multilateral. It was centred around a core of western developed states and many of the major institutions were dominated either by the US alone or by a small group of western and industrialized states. It excluded the Soviet bloc and the Soviet threat was essential to managing the geo-economic challenge posed by the economic rise of Japan, South Korean and the other Asian NICs (newly industrializing countries) from the middle of the 1960s on. The Third World played only a marginal role and, where it was engaged, its interests were limited and overwhelmingly defensive (very clearly illustrated by developing country participation in the GATT). None of this is to deny the insights of institutional analysis and the ways in which cooperation can emerge amongst self-interested states. But it is to stress the boundary conditions and to focus attention on how those conditions may be changing.

And clearly a great has been changing in the period since 1990. Today's new emerging and regional powers are indispensable members of any viable global order. The largest amongst them are indispensable for power-political reasons. The nature of international society means that the possibilities of coercing major players will always be extremely limited. To be effective and sustainable, global order must therefore be 'incentive compatible' and reflect the legitimate interests and values of the major players in the system. Today's new powers are also indispensable for functional reasons. It is impossible to conceive of managing climate change, nuclear proliferation, or economic globalization without institutions that included China, India and Brazil. And they are probably indispensable for reasons of justice – certainly in terms of what one might call the politics of global justice and the power that certain justice ideas exercise both within emerging societies and transnationally; but, also, as I shall try and indicate below, in terms of justice proper.

One obvious consequence of these changes is a greater heterogeneity of interests. From this perspective it is important that Brazil and India are large developing countries and that they will remain relatively poor in per capita terms. This has shaped – and will continue to do so -- their conception of interests; it has forced a heavy priority on domestic development; it has tended to engender resistance those external norms and institutions are seen as either limits to their development or attempts to freeze the status quo; and it has reduced their willingness and capacity to contribute to global public goods.

Recognizing the problem of heterogeneity, one strand of US thinking suggests that the US-led global order should be expanded not according to some measure of who has power or weight, but rather in line with identify and ideological affinity: a top table of democracies. However it is far from clear that Brazil and India fit easily into a view of international order that sought to give a privileged status or standing to a grouping of liberal democratic states. Indeed they illustrate some of the difficulties with such idea.

For all their political and social problems, both countries are large and consolidated democracies, and India in particular has a legitimate claim to be part of the 21st century debates on the meaning and nature of democratic rule. But, first of all, both governments have long stressed the importance of universalist multilateral institutions; they have been resistant to coercive liberal interventionism; continued to maintain the importance of national sovereignty; and they have consistently attacked what has been viewed as politically driven selectivity in relation to both human rights and humanitarian intervention. Second, they have seen clear geopolitical and economic advantage in developing ties with non-democracies, China most obviously. And Brazil's diplomatic soft power has depended on the claim that it can act as an interlocutor with many different kinds of states and political systems. Third, in the case of Brazil many (particularly on the left) have sympathy with those democratic developments in Latin America to which Washington is least attracted and that either (on one view) reflect the weaknesses of narrow electoralism or (on another view) open up new forms of participatory democracy. Fourth, (and however self-serving it might be), both governments have argued that the democratizing agenda should be about 'democratizing' global governance rather than re-forming the power of the currently dominant.

It may be true that, compared to the inter-war period or the Cold War, the level of consensus over the core principles of global order is higher. It might also be true to say that both countries are already integrated into the 'liberal order' if we define such an order at a very high level of generality. At the same time, Brazil and India illustrate the degree to which both views of the world and concrete foreign policy interests can vary greatly even among states that are liberal and democratic and, in Brazil's case, western.

A further argument is that today's emerging powers are problematic players in global order because of their particular commitment to sovereignty. This tendency is, in turn, often associated with their status as post-colonial societies and their history as countries that have suffered either directly or indirectly from western interventionism. This argument is not altogether without foundation; but it needs to be treated with caution. After all, Europe remains the outlier in its view of sovereignty and in the sorts of models and conceptions of global governance that it has sought to externalize and to export. (And the marginalization of Europe in Copenhagen is itself perhaps indicative of this outlier status). The United States has long had an ambiguous attitude to sovereignty – politically sovereigntist and economically highly mercantilist during its rise to power; favouring multilateralism as a means of securing and cementing its power in the post-1945 period; but with a strong domestic constituency that has long been deeply suspicious of multilateralism, let alone of global governance.

Both Brazil and India have shifted significantly in their views of sovereignty in the period since 1990 across a range of issues, but the limits remain. Often sensitivity over sovereignty is tied to concerns over what can be delivered externally, rather than whether the world has a right to make demands. Thus Brazil's shift through 2009 on climate change targets was closely related to the increased confidence that the government was able effectively to control deforestation. The more important question is whether attitudes to sovereignty shift as part of a process of reciprocity, particular when the United States is prepared to move. The WTO and the dramatic increase in the use of dispute settlement suggest that they have done so. And both countries – both for domestic and genuine foreign policy reasons – continue to upbraid the US for its reluctance to commit firmly to increased rule-following.

Emerging powers are particularly important in terms of the relationship between an order based around smaller groupings of major states and broader multilateralism. The paper has already highlighted both the pressures pushing in this direction and the attractiveness to Brazil and India of membership in such groupings. Are moves towards a more power-centred order feasible? Certainly not on their own. Great Power orders have always had two sides – a horizontal set of relations amongst major players; and a vertical set of relations between the major states and the rest. On the one hand, the stability of major power relations will be significantly influenced by the degree to which major powers believe that their claims for equal status have been accepted by their peer or peers and their mutual interests recognised and accommodated. On the other, smaller states accept the legitimacy of the collective hegemony of the major powers to the extent that it provides some accommodation of their interests and to the extent that continued competition amongst the serves their interests.

Historically, this relationship between the powerful and the rest has long been crucial. You cannot be a successful major power unless you help to solve other people's problems or define your interests in a sufficiently broad enough way to foster at least some degree of legitimacy. But these traditional limits on top-down forms of global order have been reinforced by three of the post-Westphalian features of contemporary global politics. It is post-Westphalian, first of all, because of the structural changes in the nature of the foreign policy and governance challenges faced by states. Dealing with these challenges – climate change, stable trade rules, a credible system of global finance – necessarily involves both cooperation but also rules that will involve deep intervention in domestic affairs. This is a structural change. It is post-Westphalian, second, because of the changing problem of legitimacy. All states and social orders need to gain the authority and legitimacy that the possession of crude power can never on its own secure. All major powers face the imperative of trying to turn a capacity for crude coercion into legitimate authority. And it is post-Westphalian, third, because of the ever more complex linkages between top-down modes of governance (whether power-based or functional) and rapid social change and political mobilization, both within and across societies.

Where do Brazil and India fit in this picture? On one side emerging powers have been as immediately driven by their own interests as any other states. Indian and Brazilian views on intervention are driven by particular foreign policy concerns (whether

Kashmir or Colombia); whilst professions of concern for human rights have been overridden by material interests (securing resources in Burma or Sudan in the case of India, securing votes and political support in Africa and the Middle East in the case of Brazil). India's greater power gives it greater scope for playing hard-ball whatever the potential costs to the regime in question –as its WTO stance demonstrates. This reinforces the argument that today's emerging powers have continued to conceive of their interests in a narrow way and to eschew developing a clear vision of what their favoured global order might look like. To quote my co-author once again: '[I]ndia continues to act as the leader of coalitions of developing countries as it had done in the past. But it shows little sign of assuming the position of a responsible leader that is willing to make concessions and broker compromises that stabilize and reinforce the gains from the regime. If anything, its negotiation strategies implemented from a position of power have heightened the proclivity of the system to deadlock, and have dented the legitimacy and sustainability of the multilateral trading regime. In non-proliferation, India has taken on the commitments required of it and has signed the Indo-US nuclear accord. However, the many uncertainties still involved in the reform of this regime mean that the signing of the deal does not necessarily translate into regime conformity and leadership. If India's behavior in the WTO is any indication, India may still go on to use distributive and disruptive strategies after institutional reform is complete'.

Brazil has operated differently, perhaps simply reflecting its lesser overall power and its greater dependence on multilateral institutions. They, after all, provide the setting in which its institutional soft power can be most effective and where it can maximize its claims of southern representativeness and its well-established coalitional strategies. It is partly for this reason that Brazil has put greater emphasis than, say, India on the reform of the UN Security Council, that it has been more willing to engage in institutional innovation (as with the creation of Clean Development Mechanism in the late 1990s), and that, when push comes to shove, it has been prepared to look for an agreement (as at the July 2008 Geneva WTO ministerial or indeed on climate change at Copenhagen). Equally, whilst informal groupings represent an opportunity for Brazil, they pose serious dilemmas. Particularly in terms of informal groupings that are not tied to formal institutions (such as the G20), the risk for Brazil is that membership brings shared responsibility and calls for shared burdens but without the effective capacity to influence decision-making and without the protections provided by the rules of formal institutionalization.

On the other hand, both countries have seen their interests as being served by a combination of strategies -- seeking membership of informal groupings, pressing the strengths of multilateralism, and continuing to facilitate broad coalitions with other developing countries. It is also the case that this combination of roles is at the heart of their foreign policy dilemmas. Negotiating within the core of the WTO and, at the same time, maintaining support from other developing countries is far from straightforward. And Copenhagen provided further evidence of the difficulties of embedding informal groups of states within formal institutional and negotiating structures. And yet this is a position that is structurally difficult for Brazil and India to avoid.

IV

Fifth, what about justice? Brazil and India might matter in terms of power and the balance of power; and they might matter in terms of institutions and governance. But does any of this matter in terms of ideas and practices about global justice?

In the 1970s it was common to view the rise of the Third World through the lens of justice. Of course motives were mixed and state action contaminated by immediate self-interest. But the Third World challenge raised important claims for the reform of the international system in the interests of justice. By the early 1980s this had changed. The reformist rhetoric of the NIEO had been both defeated and deflated. Power-centred accounts of North/South relations stressed the existence of a 'structural conflict' reducible to contending sets of power and interest -- however encrusted within the empty rhetoric of justice. The powerful neo-liberal critique of rent-seeking southern elites cut deep into progressive third-worldism. On the left, post-colonial writers viewed the post-colonial state with deep disdain, whilst critical political economists argued that, to the extent that developing countries 'emerged', it would be as the result of structural changes in patterns of capitalist global production.

Political theory moved sharply away from what was called the 'morality of states' and the notion that inter-state justice should attract our normative attention. Cosmopolitanism was clearly about achieving justice for individuals; it was about what 'we' in the rich world owed distant strangers. If this involved interventionism, paternalism, even renewed empire on the part of the rich and powerful then so be it -- so long as social justice was being promoted. For others, normative attention shifted away from Southern states and towards social movements and civil society groups within the Global South: the World Social Forum, anti-globalization groups, post-Seattle protest movements. The idea that the WSF represented the 'New Bandung' precisely captured this shift. In part anti-globalization movements were seen as exercising effective political agency and the most viable means of developing countervailing power in the face of market-driven globalization. But they also became central to a new generation of deliberative democratic theorists interested in bottom up approaches to the problems of unequal globalization and in the need for greater global democracy. Far-reaching claims came to be made about the normative potentiality of global civil society as an arena of politics that is able to transcend the inside-outside character of traditional politics, and to fashion and provide space for new forms of political community, solidarity, and identity.

As against this emphasis on non-state forms of political action, both Brazil and India have continued to assert their role as leading spokesmen for the South. India has proved far less willing to abandon its Third World-ist and developmentalist coalitions than many predicted. Procedural justice claims have been central to its arguments about reform of the UNSC and the WTO, whilst its climate change policy has been heavily shaped by arguments of historic responsibility and the duties owed by the rich to the poor. Global justice has been even more central to Brazilian foreign policy under Lula. From this

perspective Brazil's legitimacy in the world and the personal standing of the president are closely connected to the social commitments that have marked politics at home. These include tackling inequality and poverty and promoting programmes against racial discrimination, as well as concrete innovations in such areas as bio-fuels and concrete progress in tackling Amazonian deforestation. On this view, Brazil can speak with greater confidence and authority abroad because of what has been achieved at home. Brazil's campaign against global hunger, its emphasis on Africa, its attempt to promote new forms of development assistance, and its long-standing arguments in favour of new financial mechanisms for development therefore form part of a broader whole.

Clearly a great deal of the 'justice talk' of the past twenty years has been directly strategic and instrumental. Clearly too there are many aspects of Brazilian and Indian foreign policy that raise problematic normative questions (for example, Brazil's pattern of human rights voting; or India's positions on Burma and Dafur). And, as they take on more prominent international roles, the dilemmas of rich/poor, strong/weak relations have been played out in their own relations with their weaker and poorer partners and neighbours: India as an aid partner in Africa; Brazilian multinationals being nationalized by a reformist Bolivia, or Paraguay denouncing the unequal treaty on hydroelectricity signed during the military period.

What are we to make of such claims? We need to ask questions in at least three areas. The first follows the recent emphasis on deliberation, on the extension of the range of normative debate and on the importance of reason-giving. But it shifts attention back to the role of Southern states in introducing new deliberative practices or helping to re-frame issues in terms of global justice. Examples here include the role of Brazil on health and intellectual property rights; its emphasis on the need for new mechanisms for development financing; its claims that aid programmes should be more connected the 'social technology' of successful Southern states. Important too are the links and coalitions between certain Southern governments and civil society coalitions. After all, what is interesting about the WSF was the extent to which it was supported by both the Brazilian Workers' Party and funded by the Brazilian state. As Peter Evans argues, it is the braiding together of diverse constituencies that is crucial both to individual claims for greater justice and for the viability of social democratic alternatives to market-liberal globalization.⁷

If one theme concerns deliberation, the other concerns agency. Cosmopolitan liberal theory has been strangely silent on the question of agency. Recent liberal discourses on global justice often appear to be discourses about what the rich and powerful owe to the poor, weak and oppressed. The weak and oppressed appear mostly as the passive objects of (potential) benevolence. Their voices, visions, and understandings of the world are seldom heard or seldom deliberated upon. Instead we might look to more strongly republican modes of liberal thinking with their emphasis on the importance of states as agents, with their powerful ideal of non-domination, and with their central concern with minimizing alien control. Deliberation is never enough if the political terms of deliberation are insufficient or lacking. As Pettit suggests, the most serious danger posed

⁷ Peter Evans, 'Is an Alternative Globalization Possible?' *Politics and Society* 36, 2 (June 2008): 271-305.

by international institutions is not that they themselves will exercise alien domination but that they will fail to prevent different forms of inter-state domination. The legitimacy of international institutions will be seriously weakened to the degree that inter-state inequalities generate asymmetrical bargaining and involve the domination of weaker parties.⁸ It is for this reason that effective coalitions of weaker states become potentially important, as do the roles of major Southern states in leading and facilitating such coalitions.

Effective power also needs to be brought back into the mainstream of liberal thinking on global political justice. Liberal principles of political legitimacy are sustained by a combination of moral and strategic purposes. It is of course true that liberal political principles – such as ‘transparency’, ‘accountability’, ‘participation’, etc – are underpinned in part by purely moral values, such as the values of individual autonomy and equality. But they are devised also to serve the *strategic* function of constraining – as effectively as possible – abuses and misuses of power by those who wield it without regard for these liberal moral values. Principles of political legitimacy must articulate not only underlying moral values, but also the kinds of strategic mechanisms that are required to protect these values from real threats arising from prospective abuses of power. It is in the extremely messy world of non-ideal theory that power comes back into the story and that the normative implications of the rise of today’s emerging Southern powers need to be re-considered.

⁸ Philip Pettit, ‘Legitimate International Institutions: A Neo-Republican Perspective’ Princeton Law and Public Affairs Paper Series, paper No. 08.012 (2009).