PARTICIPATION, COORDINATION, AGREEMENT... ACTION?
EVALUATING THE MULTISTAKEHOLDER MODEL
IN INTERNET GOVERNANCE

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By

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ABSTRACT

Multistakeholderism has emerged as a potential mechanism to address the interconnected complexity that defines many of today's most pressing policy challenges. The goal of this thesis is to better understand the relationship between effectiveness and legitimacy in the nascent multistakeholder model, taking internet governance — one of the most frequently cited examples of multistakeholderism — as a case study. Applying four criteria elaborated from central theories that have influenced the development of multistakeholderism, this thesis evaluates several internet organizations based on participation, coordination, agreement, and action, with a focus on key differences between technical and political multistakeholder processes. Based on this analysis, the thesis concludes with recommendations for improving the legitimacy and effectiveness of multistakeholder policy-development initiatives related to internet governance as well as other fields.

To my mother, Susan, for her unfailing persistence
and weekly reminders that I need to graduate.

Love and thanks,
Collin

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INTRODUCTION

Climate change, terrorism, infectious disease, cyber attacks, world hunger. The world's most pressing problems require systemic change that can only be achieved by collective action on a global level. Traditional governance mechanisms, geared more toward the national pieces than the global whole, have proven inefficient in managing such cross-border challenges. Nation-states have existed for centuries as sovereign entities presiding over clearly defined populations within clearly plotted territories, but developments in the late 20th and 21st century have challenged the efficacy and even feasibility of such a system. National economies have been replaced by integrated markets, travel and mass migration have rendered citizenship a more relative phenomenon, and even the capacity to wage war no longer resides exclusively with states, as demonstrated by the ongoing conflicts with ISIS. While "globalization" has been an encompassing theme for many of these developments, interconnectivity is a defining characteristic of today's pressing public policy problems.

In spite of recent trends toward populism, isolationism remains better suited for slogans than strategy, and problem-solvers are increasingly considering bottom-up solutions as more scalable and sustainable solutions for wicked problems. Yet States are not necessarily receding in terms of decision-making power, merely changing the way they exercise sovereignty. The reconfiguration that Anne-Marie Slaughter famously referred to as a "new world order" points to a disaggregation of sovereignty, which permits certain parts of the state to act transnationally to confront the realities of a globalized world.¹ The resulting political institutions are pluralistic and increasingly

¹ Slaughter, Anne-Marie. *A New World Order*. Princeton, NJ: Princeton UP, 2004.

overlapping, labeled by some as “neo-medieval,”² and claims to extraterritorial jurisdiction are becoming increasingly common beyond typically authorized circumstances like diplomatic missions or competition law.

This is because current mechanisms for managing cross-border externalities and international public goods are imperfect at best, and unilateral decision-making has become less feasible for even the most powerful of states. Treaty negotiations are slow and inefficient, and the enforcement of regulations and policy standards is patchy even at the domestic level, let alone internationally. Moreover, the capacity for making rules or regulations, monitoring and enforcing their implementation, and even defining penalties for noncompliance are no longer concentrated within the nation-state nuclei. The role and influence of private actors continues to grow in parallel, further challenging our current international system.

Thomas Hale and David Held continue:

Without doubt, the modern nation state has been the most effective governance technology ever devised, securing, at its best, an unprecedented level of prosperity and security for its citizens. But in an interdependent world, no individual state, no matter how competent, can address transnational issues ranging from climate change, to financial regulation, to macroeconomic management, to extremist terrorist networks. Nor can it confront the moral challenges of our age like global poverty or disease. We are essentially using 17th-century institutional technology to confront 21st-century challenges.³

Many have commented on this perceived paradigm shift and speculated on the shape that a new international system may take. Since the 90s, one idea that has gained

² Korbin, S. “Back to the Future: Neomedievalism and the Postmodern Digital World Economy.” *Globalization and Governance*. Edited by Aseem Prakash and Jeffrey A. Hart. London: Routledge, 1999.

³ Hale, David, and David Held, eds. *Handbook of Transnational Governance: New Institutions and Innovations*. London: Polity, 2011. 3.

traction in many countries, international organizations, and companies is the notion of multistakeholderism, or collective action among actors in diverse sectors to address a specific issue. In that regard, frameworks for transnational governance already exist in many sectors that cannot be managed on a national basis, including banking and financial regulation, environmental policy, and global health initiatives.

Internet governance is a policy area that exemplifies the potential benefits and unforeseen challenges that the modern world's interconnectedness brings. The internet has quickly become a bedrock technology of modern existence, transforming virtually all sectors of society from healthcare to politics, education to leisure. In terms of connecting knowledge, people, and resources, the internet has provided unprecedented advantages on a global scale. By permitting knowledge sharing and collaborations across countries, sectors, and disciplines, it has broken down previous difficulties associated with the exchange of both tacit and explicit knowledge. Benefits of such exchanges include work on patents, scientific publications and co-authorship, collaborative research and development, the globalization of human resources for science and technology, open science, and data-driven innovation.⁴

Socially, the internet has served to connect diasporas, as well as far-flung families or friends. It has facilitated civic participation, provided a means for increased government transparency, and empowered social democracy. In terms of global trade, the open internet reduces costs and boosts economies of scale for firms trading across borders, creating new opportunities for trade in goods and services and enhancing the

⁴ Box, Sarah. "[OECD Work on Innovation – A Stocktaking of Existing Work](#)." *OECD Science, Technology and Industry Working Papers*, 2009.

value of existing trade.⁵ This has lead many international organizations to deem internet access a basic component for development. Finally, Frank La Rue, former Special Rapporteur for the United Nations, has identified human rights advancements as a fundamental benefit of the internet: “By vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an ‘enabler’ of other human rights, the internet boosts economic, social and political development, and contributes to the progress of humankind as a whole.”⁶

Unfortunately, these benefits are only one side of the coin: the internet can just as easily be used to harm rights, stunt development, or jeopardize people’s physical safety. Headlines about revenge porn, online harassment, or international crime rings operating online give only a glimpse of the dark side of the internet. The problem becomes even more complicated when values are less aligned: while most people would agree that sexual abuse images featuring young children are an atrocity that should be wiped from existence, offenses such as hate speech or incitation to violence exist in a gray zone that makes them difficult to systematically negate.

Courses of action are further muddled in situations where balance must be struck between competing objectives. Mass surveillance, for instance, harms individual privacy and has a chilling effect on freedom of expression, yet intelligence gathering by governmental authorities can also benefit society by preempting violence, maintaining the rule of law, and assisting in judicial proceedings. We may decide that defamatory

⁵ As an empirical example, the European Commission’s commitment to the Digital Single Market as a policy priority speaks to economic value that digital networks. See "[Digital Single Market](#)." European Commission. February 08, 2017.

⁶ La Rue, Frank. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#). Report no. Agenda Item 3. Human Rights Council, 17th Session, United Nations General Assembly, 16 May 2011.

content should be removed because it violates one's privacy or jeopardizes their livelihood—but if s/he is a doctor and the claim is malpractice, we may also decide that the right to information holds more weight and the content should remain available. Such questions are far from being resolved.

Multistakeholderism has evolved alongside the development of the internet, gradually becoming a hallmark—if not the defining feature—of its governance, so much so that it is sometimes referred to as the “internet model.”⁷ That said, multistakeholderism does not exist solely within the remit of internet affairs; on the contrary, there are countless policy spaces where multistakeholder initiatives have taken root, both before and after the model became so closely associated with internet governance.

Considering the interconnected complexity that defines most of today's global challenges, could multistakeholder decision-making processes be the governance mechanism that will come to supplant the strained international system of societies and technologies past? *The goal of this thesis is to better understand the relationship between effectiveness and legitimacy in the nascent model of multistakeholder governance.* Based on a framework elaborated through a survey of several theories that have contributed to the development of multistakeholderism, the criteria for evaluation are: Participation, Coordination, Agreement, and Action.

This thesis proceeds as follows: Chapter 1 provides a more detailed explanation of multistakeholderism, with definitions and examples. Chapter 2 establishes the theoretical framework for considering the dynamic tensions at play in multistakeholder governance and evaluating the model in terms of efficacy and legitimacy. Chapter 3 chronicles the

⁷ Overheard in an ICANN session at the 2016 UN Internet Governance Forum.

evolution of internet governance, offering overviews of relevant institutions related to standards and protocols, names and numbers, and the United Nations. Chapter 4 applies the theoretical framework to evaluate each of these categories, and Chapter 5 concludes with recommendations for improving multistakeholder internet governance processes and areas for future research.

CHAPTER I: THE MULTISTAKEHOLDER MODEL

The challenges addressed by multistakeholder processes are typically collective action problems, or situations in which all actors would benefit from improvements but are deterred from action individually because of the associated costs.⁸ Multistakeholder initiatives can be found in many sectors, including environmental, finance, health, or development, as well as certain industries. Common components of these arrangements include:

- The involvement of two or more parties;
- A voluntary and collaborative nature;
- A common purpose;
- Sharing risks and responsibilities;
- Understanding that all participants will contribute and gain something; and
- The conviction that working with diverse actors will achieve more than working alone.⁹

⁸ “[More than the Sum of its Parts: Making Multi-stakeholder Initiatives Work](#).” Global Development Incubator. 2015. 6.

⁹ Coulby, Hilary. “[A Guide to Multistakeholder Work: Lessons from the Water Dialogues](#).” *The Water Dialogues: Multistakeholder Dialogues on Water and the Private Sector*, May 2009, 7.

Multistakeholder processes are carried out under many aliases, and may be identified as commissions, coalitions, alliances, associations, networks, or partnerships. At their core, such organizations generally operate with one of three goal areas: industry and market development, policy and political support, or resource mobilization and optimization.¹⁰ Within these goal areas, processes vary a great deal in their “purpose, scope, complexity, level of engagement (local to global), size, and diversity of partners.”¹¹

This chapter begins by exploring several definitions of multistakeholderism, then offers a brief survey of several diverse multistakeholder initiatives and organizations that perform functions related to consultation, resource allocation, catastrophe and risk management, and transparency.

1.1. Definitions

Describing it as an “inchoate global institution,” Mark Raymond and Laura DeNardis define multistakeholder action as constituting “two or more classes of actors engaged in a common governance enterprise concerning issues they regard as public in nature, and characterized by *polyarchic* authority relations constituted by procedural rules.”¹² The authors continue,

further disaggregate[ing] the concept of multistakeholderism into a typology that distinguishes the nature of authority relations between them. This typology reflects the existence of considerable variation among

¹⁰ Coulby, 11.

¹¹ Malena, C. “[Strategic Partnership: Challenges and Best Practices in the Management and Governance of Multi-Stakeholder Partnerships Involving UN and Civil Society Actors.](#)”

Background paper prepared for the Multi-Stakeholder Workshop on Partnerships and UN-Civil Society Relationships, 2004.

¹² Raymond, Mark and Laura DeNardis. “Multistakeholderism: Anatomy of an Inchoate Global Institution.” *International Theory* 7, 2015, 573. Emphasis mine.

particular instantiations of the generic institutional form. In this sense, we suggest that the rules and practices structuring the institution remain in flux.¹³

Though multistakeholderism has become popular enough to warrant an ever-expanding body of literature on the topic, it is important to acknowledge that it is relatively new, potentially disconcerting, and quite amorphous as a governance model.

Advocates of multistakeholder governance portray the concept as crucial for managing global problems in cross-border contexts, as well as a tool for encouraging democratic processes, fostering broader participation in governance processes, empowering citizens, and enriching frameworks for representative democracy.¹⁴ According to Bertrand de La Chapelle, “multiplying multistakeholder forums and participatory deliberation processes and connecting them with existing governance structures is the only way to create a distributed global governance framework that is not a global government.”¹⁵

The explicit distinction between multistakeholderism and global governance is of note here: multistakeholderism is posited as connecting and harmonizing processes without necessarily challenging sovereignty or infringing on the authority of existing governance structures. While such a distribution would be a more scalable approach to solving global policy challenges, its amity may be contingent upon the hypothetical alignment of irreconcilable values, goals, or trajectories.

¹³ Raymond and Denardis, 2015.

¹⁴ De La Chapelle, Bertrand. “[Multistakeholder Governance: Principles and Challenges of an Innovative Political Paradigm](#).” Edited by Wolfgang Kleinwächter. *MIND [Multistakeholder Internet Dialogue] Collaboratory Discussion Paper Series 1* (September 2011).

¹⁵ De La Chapelle, 2011.

Consider Nathalie Steins and Victoria Edwards' definition of multistakeholder mechanisms as “*decision-making bodies* (voluntary or statutory) comprising different stakeholders who perceive the same resource management problem, realize their interdependence for solving it, and come together to agree on action strategies for solving the problem.”¹⁶ This definition adds an impetus to consensus and subsequent action, which could undermine the autonomy or authority of participating stakeholders in the scenario that consensus was not unanimous. If stakeholders, particularly governments, then proceeded to unilateral action in spite of their participation in a multistakeholder process, the model lacks the means to force stakeholders to comply with agreed-upon courses of action.

Multistakeholderism is one form of governance beyond governments, but it rarely functions as governance without governments. Once again, the nation-state has yet to be superseded and remains the supreme power or authority in many cases. Whereas governance can be carried out through different mechanisms, in different structures, and by many different kinds of actors, sovereignty, referring to the right and power of a state to govern within its borders, is a more ephemeral social construct that “has evolved over time as a means of enhancing legitimacy and easing social tensions.”¹⁷ Gabriela Kütting and Philip Cerny further:

Despite the growing involvement of a wide range of actors, key decision-making institutions remain governmental in nature. Juridically, the claim to state sovereignty retains its primacy and the political framework of the

¹⁶ Steins, Nathalie and Edwards, Victoria. “Platforms for Collective Action in Multiple-use Common-pool Resources.” *Agriculture and Human Values* 16 (1999), 244. Emphasis mine.

¹⁷ Powers, Shawn M. and Michael Jablonski. *The Real Cyber War: The Political Economy of Internet Freedom*. Chicago: U Illinois P, 2015. 156.

liberal global political economy has not changed despite the apparent undermining of state power per se.¹⁸

Without the participation and sustained involvement of governmental institutions (among other stakeholder groups), multistakeholder governance may be considered illegitimate in theory and/or toothless in practice.

That being said, the preservation of state sovereignty within multistakeholder processes can easily undermine the collaborative, inclusive, horizontal nature that proponents tout as hallmarks of the model. The existence of disproportionate levels of power and influence between participants is a perennial criticism of certain multistakeholder initiatives, or even the model as a whole. Leveling the weight of participating stakeholders in multistakeholder endeavors is an acute and persistent challenge, especially when the final outcome may threaten the sovereignty or autonomy of certain stakeholders.

Even so, the reconciliation of goals and aggregation of interests prescribed by multistakeholderism is sometimes required for practicality's sake, as a degree of coordination is necessary to prevent negative externalities on a global level. The following section surveys various concrete multistakeholder initiatives in terms of the problem they seek to address and the functions they serve.

1.2. Examples of Multistakeholder Initiatives

An early example of a multistakeholder initiative designed to foster harmony between actors with different levels of influence and potentially competing objectives

¹⁸ Kütting, Gabriela and Philip Cerny. "Rethinking Global Environmental Policy: From Global Governance to Transnational Neopluralism." *Public Administration* 93.4 (Dec 2015), 911.

was the International Labour Organization, a United Nations agency founded in 1919 that consisted of governments, employers, and workers. The idea behind this tripartite arrangement was to “aggregate the diversity of political concerns and backgrounds into identifiable groups, which ideally negotiate consensual rules or recommendations that are accepted as legitimate by all those affected, regardless of whether or not they directly participated in the process.”¹⁹ Grouping concerns and opinions made the process more efficient, while including the viewpoints of multiple groups (including workers) increased the palatability of decisions for both participants and non-participants.

Bringing stakeholders to the table for bottom-up policymaking processes is a fundamental objective of multistakeholderism, both to legitimize and inform policymaking. Yet this constitutes only one of the practical benefits of multistakeholderism. In the paragraphs that follow, multistakeholder initiatives from a variety of sectors and policy spheres are identified based on their purpose, benefits, and/or outcomes. These are often overlapping and mutually reinforcing, but include policy shaping, resource allocation, catastrophe and risk management, and transparency.

Policy Shaping

Pooling the knowledge of relevant stakeholders from a variety of sectors and specialties can help give decision-makers a more nuanced perspective on challenges and potential policy solutions, especially when the issue being addressed requires navigating fiercely opposing viewpoints or has the potential for transnational impacts.

¹⁹ Hoffman, Jeanette. 2016. “Multi-stakeholderism in Internet Governance: Putting a Fiction into Practice.” *Journal of Cyber Policy* 1 (1), 29-49.

The Mekong River Commission (MRC) is an example of a multistakeholder initiative designed to gather knowledge and perform a consultative function for policy-makers. As a “platform for water diplomacy,”²⁰ the MRC Secretariat facilitates dialogue among governments, the private sector, and civil society. They also provide advice on agricultural and fishery activities, sustainable hydropower, flood management, and other activities with the goal of balancing ecological and energy needs in Cambodia, Laos, Vietnam, and Thailand with occasional contributions by “upstream partners” Myanmar and China. Yet despite their positioning as an inter-governmental organization, the MRC is not involved in high-level decision-making processes, which remain inaccessible for non-state actors. As reported by UNESCO in 2013:

We observe that core decision-making processes about water in the Mekong region are still often opaque to all but privileged insiders. Meaningful public deliberation is still the exception rather than the rule. Nevertheless, more recently, we have seen a deliberative turn and hopeful signs of water governance change, for example:

- Vibrant elements in the Chinese media interested in understanding and reporting the water-related perspectives of neighboring countries;
- A pause for reconsideration of future development in a new era for Myanmar;
- An increasingly inquisitive National Assembly in Laos;
- Bold inputs to public policy-making debates by Vietnamese scientists;
- Increased space for civil society analysts in Cambodia to engage in state irrigation policy debates.²¹

Thus, while the Mekong River Commission and other similar multistakeholder initiatives in the Mekong river basin may not yet have a seat at the table during high-level decision-making, there has been a positive impact in terms of multistakeholder participation and

²⁰ "Mekong River Commission." About MRC » Mekong River Commission.
<http://www.mrcmekong.org/about-mrc/>.

²¹ UNESCO. *Free Flow: Reaching Water Security through Cooperation*. Paris: UNESCO, 2013.

involvement in transnational water debates that could result in new regional policy standards moving forward. In addition, the Mekong River Commission has received express appreciation by members of governments for their role in organizing regional multistakeholder consultations.²²

Similar multistakeholder consulting bodies include the International Union for Conservation of Nature, a membership union consisting of government and civil society organizations dating back to 1948²³; the Consultative Group to Assist the Poor (CGAP), housed by the World Bank and launched in 2014 to advance financial inclusion²⁴; and the guidelines produced by the World Commission on Dams, active between 1997 and 2001.²⁵

Resource Allocation

Multistakeholder arrangements can also serve to coordinate efforts addressing the allocation and management of finite resources. For example, the Worldwide Slot Guidelines (WSG) are a set of agreements designed to address the problem of allocating space for aircrafts in airports.²⁶ Slots refer to the gates within the airport from which different airlines' planes conduct takeoff and landing operations. As there are a finite

²² "Regional Multi-Stakeholder Consultation on the MRC Hydropower Programme." Mekong River Commission. <http://www.mrcmekong.org/news-and-events/speeches/regional-multi-stakeholder-consultation-on-the-mrc-hydropower-programme/>.

²³ "About the IUCN." International Union for Conservation of Nature. <https://www.iucn.org/about>

²⁴ <http://www.cgap.org/about>.

²⁵ See Dubash, Navroz K, et al. "[Multistakeholder processes: The Legacy of the World Commission on Dams](#)." In *A Watershed in Global Governance?: An Independent Assessment of the World Commission on Dams* (July 2013).

²⁶ Gasser, Urs, Ryan Budish, and Sarah Myers West. "Multistakeholder as Governance Groups: Observations from Case Studies." *Berkman Center for Internet & Society Research Publication Series* (2015), Appendix A.

amount of slots in any given airport, their allocation is an issue of resource management involving organizations and stakeholders at many levels. The International Air Transport Association (IATA) is the body created to oversee this coordination, managing the interests of passengers, airport staff, and more than 240 airlines. Because they manage a valuable economic resource, the IATA's transparency and independence are of particular concern; this has resulted in the institutionalization of a negotiating process to ensure accountability among key stakeholders. Notably, this example involves coordination only among actors in the private sector with little to no involvement by governments or civil society groups.

Environmental policy initiatives, such as the Mekong river groups mentioned above, also employ multistakeholder strategies to better manage natural resources. A clear example of this was the Banff Bow Valley Round Table, convened by the Minister of Canadian Heritage in 1995 to address concerns and conflicts over the development or preservation of Banff National Park. The round table brought together representatives from fourteen interest sectors, including local and national environmental groups, tourism and local businesses, park users, the local community, social and cultural interests, and others.²⁷

In their study of the multistakeholder proceedings, Tazim Jamal and Marcus Eyre found that “discourses of science and instrumental reason served to empower certain interests and agendas in the process,” jeopardizing consensus-based processes by

²⁷ Jamal, Tazim, Stanley Stein, and Thomas Harper. “[Beyond Labels: Pragmatic Planning in Multistakeholder Tourism-Environmental Conflicts](#).” *Journal of Planning Education and Research* 22.2 (Dec 2002), 164-177.

enabling certain stakeholders to dominate and legitimize their claims.²⁸ This assessment highlights the difficulty of placing participants on equal footing in multistakeholder processes, pointing out that those aspiring to represent nature as a stakeholder with intrinsic value were seemingly placed at a disadvantage as “qualities such as wonder and respect are easily trampled upon and are not enough when politics and economics are stacked against preservation.”²⁹

Even so, the final report detailed several recommendations that received approval by consensus in the end, citing the fact that participants “sought common ground and used it as a foundation for the vision, principles, and values that will guide the management of the Banff Bow Valley into the next century.”³⁰ It comes as no surprise that the final report of the process portrayed it in a positive light, but as one of the participating experts elaborated:

...it is fair to report that in comparison with other approaches, the process did appear to facilitate the breaking down of strongly held positions, to promote the seeking of positive outcomes, and to enhance a genuine commitment to shared decision-making. Perhaps most important, since the report has been issued the IBN [Interest Based Negotiation] planning process has definitely appeared to facilitate the implementation of those recommendations that require meaningful compromise on the part of all key stakeholders.³¹

In this way, multistakeholderism can bring about more durable solutions for resource management challenges.

²⁸ Jamal, Tazim and Marcus Eyre. “Legitimation Struggles in National Park Spaces: The Banff Bow Valley Round Table.” *Journal of Environmental Planning and Management* 46.3 (May 2003), 417-41.

²⁹ Jamal and Eyre, 2003.

³⁰ “[Banff-Bow Valley: At the Crossroads](#).” Summary report of the Banf-Bow Valley Task Force, October 1996. 10.

³¹ Ritchie, J and R. Brent. “Interest Based Formulation of Tourism Policy for Environmentally Sensitive Destinations.” Edited by Bill Bramwell and Bernard Lane. *Tourism Collaboration and Partnerships: Politics, Practice, and Sustainability*. Toronto: Channel View, 1999. 44-77.

Catastrophe and Risk Management

Straddling sectors and policy spheres, multistakeholder initiatives can also be well positioned to coordinate collective action by multiple entities by reducing fragmentation and the duplication of efforts, which can be especially effective during complex and unpredictable periods of catastrophe. An example of this can be observed in global health initiatives, such as the international response to address and contain the 2014 Ebola virus epidemic in West Africa. In addition to emergency actions taken by national governments to mitigate the transfer of the disease, the outbreak required efforts from many different sectors including governments, pharmaceutical companies, implementing partners, nongovernmental organizations, and local communities. At the World Health Summit's annual meeting following the outbreak, WHS co-president Detlev Ganten explained:

Health is an extremely complex issue and the question for the future is how to cope with this complexity. The Ebola crisis has shown that this can be done through collaborations with all the stakeholders. Research from academic circles has to be translated into health [outcomes] in populations and for that we need politicians, the private sector, industry, and civil society.³²

Along these lines, the WHO sought to establish new, more responsive programs for outbreaks and emergencies with health consequences that demonstrate “the capabilities and competences needed to ensure the satisfactory management of health risks and health emergencies from multi-hazard, multi-stakeholder, and multi-country perspectives.”³³

Other multistakeholder health initiatives include the Global Alliance for Vaccines and

³² Quoted in Dobrovolny, Michelle. “[Ebola Crisis Pushes Health Linkups to Top of Agenda](#).” *SciDev 11* (March 2014).

³³ Nabarro, David. “[WHO Responses to Outbreaks and Emergencies with Health Consequences](#).” Advisory Group on Reform, World Health Organization, July 20, 2015.

Immunization (the Gavi Alliance),³⁴ the Global Polio Eradication Initiative,³⁵ and current actions underway in the United Nations to combat antimicrobial resistance.³⁶

In a similar vein, multistakeholderism is also taking root as an alternative to unilateral action in response to natural disasters. One such project was “Mission 4636,” put into action after the 2010 earthquakes in Haiti. The objective of this effort was to connect those affected by the quake with family members, aid workers, translators, and other services through calls or texts to the free phone number 4636.³⁷ The system involved mobile network operators and international aid agencies, as well as Haitian NGOs, multinational companies, universities, social enterprises, and a large group of Creole and French-speaking volunteers.³⁸ Beyond cataclysmic disasters like earthquakes, tsunamis, wildfires, or storms, efforts are also underway to develop long-term multistakeholder approaches to drought and flood risk management.

Transparency

Finally, other multistakeholder initiatives have been created to facilitate the sharing of information across countries and industries with the specific goal of improving transparency and allowing for comparison and evaluation among actors. With the participation of diverse actors, multistakeholder initiatives have the potential to help

³⁴ "Gavi, the Vaccine Alliance." Gavi. <http://www.gavi.org/>.

³⁵ "Global Polio Eradication Initiative." GPEI. <http://polioeradication.org/>.

³⁶ [Conference on Multi-Stakeholder Response to Combat Antimicrobial Resistance](#). United Nations Headquarters, New York, USA (September 20, 2016).

³⁷ "Mission 4636." <http://www.mission4636.org/>.

³⁸ Zyck, Steven and Randolph Kent. *Humanitarian Crises, Emergency Preparedness, and Response: The Role of Business and the Private Sector*. London: Overseas Development Institute, 2014. 2.

establish common vernacular, metrics, and standards to increase a sector's efficiency and accessibility for outside resources and review.³⁹

One such example is the International Aid Transparency Initiative (AITI), a voluntary multistakeholder initiative seeking to improve the transparency of aid and development resources. The AITI was launched in 2008 at the Third High-Level Forum on Aid Effectiveness in Ghana, which was attended by ministers from more than 100 countries, civil society groups, private foundations, and multilateral aid institutions such as the World Bank, European Commission, and the United Nations. The overarching goal of the conference was to make funds for aid and development more effective and transparent, and the Accra Statement issued at its completion urged all donors to:

- Publicly disclose regular, detailed, and timely information on volume, allocation, and when available, results of development expenditures to enable more accurate budgeting, accounting, and auditing by developing countries;
- Support information systems for managing aid; and
- Provide full and timely information on annual commitments and actual disbursements.⁴⁰

The AITI was specifically formed to fulfill this mandate. In 2011 the AITI Standard, a framework for publishing information on development cooperation activities, was agreed upon, with the corresponding Make Aid Transparent campaign launched months later. At present, the AITI hosts an online registry, or “technical publishing framework,” that contained voluntarily published data from 508 organizations as of January 2017.⁴¹ The information has been utilized by many entities, including UNICEF, The Refugee Project,

³⁹ “More than the Sum of its Parts: Making Multi-stakeholder Initiatives Work,” 2015. 13.

⁴⁰ “[Accra Statement](#).” International Aid Transparency Initiative, September 4, 2008.

⁴¹ “Welcome – IATI Registry.” International Aid Transparency Initiative. <https://iatiregistry.org/>.

the MIT Observatory of Economic Complexity, and the Center for Economic and Social Rights.⁴²

A similar industry initiative involving the participation of additional stakeholder groups is the Extractive Industries Transparency Initiative and corresponding EITI Standard.⁴³ This example of voluntary regulation requires information from industries that extractive metals, minerals, and aggregates through mining or other processes, tracking how revenues make their way through the government (how licenses and contracts are distributed) and back into the economy (through public benefits such as employment). A multistakeholder Board consisting of representatives from governments, the private sector, civil society, international organizations, and financial institutions develops and manages the EITI standard. As of January 2017, 51 countries have met requirements on transparency and accountability and are considered EITI implementing countries. In total, nearly 3 trillion USD of revenues has been disclosed in EITI reports.⁴⁴

CHAPTER II: THEORETICAL FRAMEWORK

As evident in the multitude of definitions and diverse incarnations of multistakeholderism, it is a broad ideal that lends itself to a plethora of interpretations. It exists in contours rather than relief, providing a call to action that mobilizes without directing. A revealing report from the Global Development Incubator urged potential

⁴² "Development data projects from around the internet." Open Development Toolkit. <http://opendevelopment.org/resources/development-data-projects.html>.

⁴³ "Overview." The EITI Standard | Extractive Industries Transparency Initiative. <https://eiti.org/standard/overview>.

⁴⁴ "Implementing Countries." The EITI Standard | Extractive Industries Transparency Initiative. <https://eiti.org/standard/overview>.

initiators to consider more established alternatives to achieve their goals, such as single projects, stand-alone organizations, or governmental initiatives, which often prove less costly and risky than launching multistakeholder endeavors. The same report found that, the average grade that people involved in multistakeholder processes assigned to their initiatives' performance when compared to their founding objectives was a "C."⁴⁵

Did these underachieving multistakeholders misjudge the potential for collective action in their field? Overestimate the effort and commitment stakeholders were willing to give their initiative? Assemble the wrong actors around the table? Set unrealistic goals in launching their global problem-solving initiatives? Pick an inopportune time, use the wrong slogan, or just have bad luck? Could be. Or perhaps the vulnerability of multistakeholderism lies at the very heart of the model itself, in its rosy-eyed promise of cooperation, collaboration, and collective action.

To repeat, multistakeholderism is an ideal in itself, a paragon to aspire toward rather than a metric to be graded against. Now that the potential benefits and functions of multistakeholder processes have been explored, a survey of several theories that have contributed to the model serves to illuminate and contextualize the friction within the model itself. The common thread through each of these lenses is a tension between effectiveness and legitimacy.

Clearly, effectiveness may easily serve to enhance the legitimacy and vice versa; however, when assessing multistakeholderism it appears that these qualities are more often opposing rather than mutually reinforcing. The problem is that multistakeholder processes gain legitimacy through being open, inclusive, and transparent while attracting and sustaining the participation (buy-in) of relevant stakeholders. While necessary

⁴⁵ "[More than the Sum of its Parts: Making Multi-stakeholder Initiatives Work](#)," 2015. 3.

ingredients, striving toward these qualities in absolute can harm an organization's ability to generate consensus, decide on courses of action, and deliver concrete results. Likewise, while executive decisions are an efficient means of setting policies, the very notion of unilateral, top-down decision-making is contradictory to the model's basic principles.

Manifestations of this core tension can be identified through each of the theories elaborated below—polyarchy, stakeholder theory, deliberative democracy, and the public sphere. Each lens presents a spectrum, the endpoints of which emphasize the underlying tension between effectiveness and legitimacy. The guiding questions emerging from each section will serve to structure the analysis set forth in Chapter 5.

2.1. Polyarchy

The term “polyarchy” was coined by Robert Dahl in the late 1980s to describe a system of governance in which power is invested in multiple people—from the word's Greek roots, *poly*, many, and *arkhe*, rule. Dahl's theory is predicated on the assumption of popular sovereignty and political equality, drawing from classical theories of democracy. A key objective of polyarchy is to ground such classical theories in more normative and empirical reality, honing in on decision-making processes that involve the cultivation and transmission of public will through elected representatives. Dahl assigned many characteristics to a polyarchic system, including:

- control through officials elected through regular, free, and fair procedures
- a highly inclusive level of political participation by the general population
- the inalienable presence of certain civil and political liberties, such as the right to vote and freedom of expression
- the availability of alternate sources of information without monopolization by a single group, and

- the ability of the populace to form political opinions or interest groups to peacefully influence the decision-making process.⁴⁶

Though the average citizen does not hold the power to initiate policies within this model, s/he is effectively afforded political power by virtue of possessing the ability to deliberate with her peers and influence the system, however minutely, via scheduled elections. Democracy is conceived in procedural terms as a decision-making process, with efficient administration and policy-making valued over certain classic democratic ideals.

Joseph Schumpeter interpreted the theory of polyarchy more cynically, summarizing it as an “institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”⁴⁷ Schumpeter and others viewed the polyarchic model as an “elitist theory of democracy” calling primarily for consensus-building among political and institutional elites, a defensible perspective in itself that was more clearly argued by political philosophers other than Dahl. Vladimir Key, for example, postulated that “the critical element for the health of a democratic order consists in the beliefs, standards, and competences of those who constitute the influential, the opinion-leaders, the political activists in the order.”⁴⁸ Theorists such as Lester Milbrath went even further, claiming that citizens should continue to be morally admonished to become active in the political system not for their participation, per se, but rather to feign the semblance of an open system as a check on the behavior of elites.⁴⁹

⁴⁶ Dahl, Robert. *Democracy and its Critics*. New Haven: Yale UP, 1989. 233.

⁴⁷ Schumpeter, Joseph. *Capitalism, Socialism, and Democracy*. London: Allen and Unwin, 1976. 269.

⁴⁸ Key, Vladimir. *Public Opinion and American Democracy*. London: Allen and Unwin, 1961. 558.

⁴⁹ Milbrath, Lester. *Political Participation*. Chicago: Rand McNally, 1965. 152.

The distinction between decision-makers and the general population—the agents and the stakeholders—and the appropriate balance of influence between them is the dividing line between the so-called “elitists” and the self-proclaimed “legitimists.” Jack Walker (a legitimist) synthesizes the debate as follows:

The principle aim of the critics whose views we are examining has been to make the theory of democracy more realistic, to bring it into closer correspondence with empirical reality. They are convinced that the classical theory does not account for much of the real machinery by which the system operates... But it is difficult to transform a utopian theory into a realistic account of political behavior without changing the theory’s normative foundations. By revisiting the theory to bring it into closer correspondence with reality, the elitist theorists have transformed democracy from a radical into a conservative political doctrine, stripping away its distinctive emphasis on popular political activity so that it no longer serves as a set of ideals toward which society ought to be striving.⁵⁰

It can be added that such ideals serve not only as a beacon for society, but also as a cornerstone of legitimacy in democratic republics. Conventions hold that social, moral, or political rules “can rightly be imposed on persons when the rules can be justified by appeal to ideas or arguments that those persons, at some level of idealization, endorse or accept.”⁵¹ This assessment is valid in both theoretical and realistic terms: countless revolts and rebellions attest to the combined might of the general population to inflict change upon or even overthrow systems of power.

But how is consent imparted? And, in governance structures that have the potential to affect individuals across traditionally defined borders, whose consent matters? Those advancing the notion of “cosmopolitan democratic communities”

⁵⁰ Walker, Jack L. “A Critique of the Elitist Theory of Democracy.” *The American Political Science Review* 60.2 (June 1966), 289.

⁵¹ Quong, Jonathan. “[Public Reason](#).” Edited by Edward N. Zalta. *The Stanford Encyclopedia of Philosophy*. 2013.

advocate for decentralization and creation of global constituencies as a possible remedy. Robert Keohane and Joseph Nye identify a global parliament or other internationalized legal system as an inevitable end to global cosmopolitanism, rebuking the vision as implying “the existence of a political community in which citizens of 198 states would be willing to be continually outvoted by a billion Chinese and a billion Indians.”⁵² Consent of the governed is aligned here with a perfunctory rejection of popular sovereignty when scaled up to a global scale.

This problem is compounded when members of a polity lay claim to sovereign powers beyond or apart from the political institution. Consider the example of the European Union, or as John Ruggie put it, “nothing less than the emergence of the first postmodern international political form.”⁵³ Critics of the supranational governance structure root claims of “democratic deficit” in a lack of consent, participation, and representation of the citizens over which it presides. While nationalism and a perceived erosion of state sovereignty are also at play here, there may be some truth in allegations that the EU is “policy without politics, and politics without policy.”⁵⁴ This begs the question, could the same economic, political, and social benefits be achieved if the EU was more purely democratic? Should effectiveness be subjugated to legitimacy?

Returning to the notion of polyarchy, multistakeholderism seeks to embody the open and pluralistic system of “minorities rule” that Dahl originally elaborated.⁵⁵ While

⁵² Keohane, Robert and Joseph Nye. “Governance in a Globalizing World,” in *The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy*. Washington DC: Brookings, 2000.

⁵³ Ruggie, John. “Territoriality and Beyond: Problematizing Modernity in International Relations.” *International Organization* 47.1 (Winter 1993), 139-174. 140.

⁵⁴ Schmidt, Vivien A. “Democracy in Europe: The Impact of European Integration.” *Perspectives on Politics* 3.4 (Dec 2005), 771.

⁵⁵ Dahl, Robert. *A Preface to Democratic Theory*. Chicago: U Chicago P, 1956.

some believe that widely diffused multistakeholderism is too scattered to be effective or accountable,⁵⁶ others maintain that the polyarchic distribution of decision-making power is a quintessential and desirable element of multistakeholder initiatives. The optimal point may lie somewhere in between. As Laura DeNardis points out, “multistakeholderism directed in a top-down manner or directed broadly rather than at a specific administrative function is usually a proxy for a broader political power struggle.”⁵⁷

When the state affiliation is removed from the polyarchic model, its core tenets of divided power, procedural transparency, and extensive political participation are ingredients for democratically legitimate processes that are able, in theory, to produce results according to the will of the people. Yet removing state affiliation also removes territorial boundaries, which are convenient lassos for corralling constituencies. Multistakeholder networks, especially those that are cross-border, could easily produce governance without the expressly manufactured consent of those being governed. *The first measure of multistakeholderism therefore concerns the inclusivity of processes and the viability of links between representatives and stakeholders, especially in the absence of formal constituencies.*

2.2. Stakeholder Theory

Coined by R. Edward Freeman in 1984, Stakeholder theory is a conceptual framework of organizational management that addresses ethical and moral values in the management of a business or organization. Freeman claimed that managers bear a fiduciary relationship to groups who have a stake in or claim on the firm, and that “just as

⁵⁶ See Mueller, Milton. *Networks and States: The Global Politics of Internet Governance*. Cambridge, MA: MIT P, 2010. 248.

⁵⁷ DeNardis, Laura. *The Global War for Internet Governance*. New Haven: Yale UP, 2014. 229.

stockholders have a right to demand certain actions by management, so do other stakeholders have a right to make claims.”⁵⁸ Defining stakeholders as suppliers, customers, employees, stockholders, and the local community, Freeman asserted that “each of these stakeholder groups has a right not to be treated as a means to some end, and therefore must participate in determining the future direction of the firm in which they have a stake.”⁵⁹ The stakeholder theory was well received in both academic and professional contexts in the 1980s, inspiring dozens of books and hundreds of articles in the years following Freeman’s original publication.⁶⁰

In a broader context, stakeholder theory was posited in relation to various “theories of the firm,” including neoclassical theories outlining economic principles of production, transaction cost theory explaining the value in coordination, and behavioral theory related to internal management structures.⁶¹ It was also a chapter in the growing movement toward “Corporate Social Responsibility,” which found its start in the mid-20th century⁶² and was eventually acknowledged within more purely capitalistic worldviews as being potentially beneficial to firms’ self interest⁶³ or even a form of social contract itself.⁶⁴

⁵⁸ Freeman, R. Edward. *Strategic Management: A Stakeholder Approach*. Boston: Pitman, 1984. 41.

⁵⁹ Freeman, 1984. 39.

⁶⁰ Notable examples include: books by Alkhafaji (1989), Anderson (1989), and Brummer (1991); and articles by Brenner and Cochran (1991), Clarkson (1991), Goodpaster (1991), and Wood (1991), as well as numerous papers and collaborations by Freeman himself.

⁶¹ Donaldson, Thomas and Preston, Lee E. “The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications.” *The Academy of Management Review* 20.1 (January 1995), 65-91.

⁶² See Bowen, Howard. *Social Responsibilities of the Businessman*. New York: Harper, 1953.

⁶³ See Friedman, Milton. “The Social Responsibility of Business is to Increase its Profits” *New York Times Magazine* (September 13, 1970).

⁶⁴ Sacconi, Lorenzo. “A Social Contract Account for CSR as an Extended Model of Corporate Governance: Compliance, Reputation, and Reciprocity.” *Journal of Business Ethics* 75.1 (September 2007), 77-96.

A recurring criticism of Stakeholder theory concerned its ties to management theory, and the corresponding hierarchical positioning of managers as the “master of their stakeholder interaction”⁶⁵ or a “vehicle for coordinating stakeholder interests.”⁶⁶ Despite the presence of a Kantian categorical imperative that people be treated as ends rather than means, the “hub-and-spoke” arrangement was posited as lacking ethical safeguards.⁶⁷ Introduced by Calton and Kurland, the theory of “stakeholder enabling” introduced a postmodern praxis in seeking to “decenter organizational discourse by replacing privileged managerial monologues with multilateral stakeholder dialogues.”⁶⁸ The authors continue:

We distinguish the term *enabling* from past conceptualizations of stakeholder theory, which emphasize the term *managing*. Where managing implies that agents exercise control within an institutionalized hierarchy over stakeholders, enabling implies that stakeholders, together with agents, jointly exercise control over shared concerns. ... It draws attention to the processes of sense making, ethical rule building, and trust formation within an emerging system of collaborative network governance.⁶⁹

Thus emerged the term “multistakeholder,” which by the late 1990s had permeated institutional vocabularies and transnational policy domains, coming to be associated with efforts of private regulation such as standard setting or reporting.⁷⁰

⁶⁵ Roloff, Julia. “Learning from Multi-stakeholder Networks: Issue-focused Stakeholder Management.” *Journal of Business Ethics* 81.1 (2008), 233-50.

⁶⁶ Evan, W. M. and Freeman, R. E. “A Stakeholder Theory of the Modern Corporation: Kantian Capitalism.” Edited by T. Beauchamp and N. Bowie. *Ethical Theory and Business*. Englewood, NJ: Prentice Hall, 1988. 103.

⁶⁷ Jones, Thomas. “Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics.” *Academy of Management Review* 20 (Apr 1995), 404-437.

⁶⁸ Calton, Jerry and Nancy Kurland. “A Theory of Stakeholder Enabling: Giving Voice to an Emerging Postmodern Praxis of Organizational Discourse.” Edited by David Boje, Robert Gephart, and Tojo Thatchenkery. *Postmodern Management and Organization Theory*. Thousand Oaks, CA: SAGE, 1996. 170.

⁶⁹ Calton and Kurland, 1996. 172.

⁷⁰ Hofmann, 2016.

Minimizing the role of “agents,” or managers, in favor of the joint exercise of control by “stakeholders” is a key distinction between Stakeholder theory and Multistakeholderism. Whereas corporate governance is evaluated based on efficiency and profits, the notion of legitimacy—that is, acceptance of its authority and need to obey its commands⁷¹—become a critical concern when multistakeholderism is applied as a governance model beyond the ambit of individual firms or organizations. Preserving the autonomy of stakeholders is crucial for the legitimacy of multistakeholderism, but coordination is required for collaboration and collective action. *Thus, the second measure of multistakeholderism is evaluating the level of coordination among actors and defining agents, if any.*

2.3. Deliberative Democracy

Deliberation is an important ingredient of participatory governance models and collaborations in general as a means to establish the viewpoints and preferences of stakeholders and work toward consensus. While deliberation can be loosely defined as the contemplation of reasons for or against choosing a particular course of action as opposed to another, “deliberative processes” typically refer to a group of actors who receive and exchange information, evaluate an issue, and come to an agreement that informs decision-making.⁷²

To a certain extent, democratic legitimacy warrants such deliberation among citizens as an expression of public reason through which the consent to be governed may

⁷¹ Peter, Fabienne. “[Political Legitimacy](#).” Edited by Edward N. Zalta. *The Stanford Encyclopedia of Philosophy* (Summer 2016 Edition).

⁷² Fearon, John D. “Deliberation as Discussion.” Edited by J. Elster. *Deliberative Democracy*. Cambridge: Cambridge UP, 1998. 44-68.

be conferred. Deliberative democracy strikes a balance between legitimacy and efficiency through processes of policy development that incorporate the inputs of relevant actors in the dialogue or consultation process, but not necessarily in the final decision-making process itself.⁷³ In this model, the act of deliberation is a legitimizing force in itself.

Joshua Cohen elaborates:

The notion of a deliberative democracy is rooted in the intuitive ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens. Citizens in such an order share a commitment to the resolution of problems of collective choice through public reasoning, and regard their basic institutions as legitimate in so far as they establish the framework for free public deliberation.⁷⁴

In this way, deliberation serves as a legitimizing force for both institutions and agreed-upon courses of action. Deliberative democracy also imposes upon the populace the duty to make impartial and informed judgments, thereby strengthening democratic legitimacy.⁷⁵ Cohen goes on to suggest four criteria for evaluating democratic governance systems against the deliberative democratic ideal:

- It should be free—participants should not be constrained either in considering proposals, or in implementing them once agreed, by external claims of authority;
- It should be reasoned—arguments should not be based upon force or unexamined preferences;
- It should be equal—parties to the deliberation should be identically placed both in procedural terms, and their status outside the forum should not impinge upon consideration of their substantive contributions;

⁷³ Malcolm, Jeremy. *Multi-stakeholder Governance and the Internet Governance Forum*. Perth: Terminus Press, 2008. 243.

⁷⁴ Cohen, Joshua. *The Good Polity: Normative Analysis of the State*. New York: Basil Blackwell, 1989.

⁷⁵ McBride, Cillian. “Consensus, Legitimacy, and the Exercise of Judgment in Political Deliberation.” *Critical Review of International Social and Political Philosophy* 6.3 (2003).

- It should aim to achieve rational consensus.⁷⁶

The focus on consensus building is a clear link between deliberative democracy and multistakeholderism, and internet governance more specifically. Critics of deliberative democracy argue that this focus glosses over important conflicts, sacrificing diversity of opinion or conviction of beliefs in seeking compromise. Some go so far as to deem social and ethical differences irreconcilable altogether, reflecting deep divides and core disagreements that will not be overcome through democratic institutions. The concept of agonistic pluralism falls within this school of thought, citing flawed presuppositions in the deliberative democratic model.⁷⁷ Eva Erman summarizes:

The deliberative universalistic understanding of the political overlooks important ontological aspects; most importantly, that the political is constituted through power, that antagonism is inevitable, and that every agreement is an expression of hegemonic power and thus unstable. These are the reasons why the deliberative notion of consensus must be rejected. Deliberative democracy denies ‘the political’ by defining it as a space of (deliberative) freedom rather than a space of power and conflict.⁷⁸

Indeed, the conditions Cohen sets forth for evaluating democratic systems, that deliberations be free, reasoned, and equal, represent an ideal speech situation. In the real world, knowledge is power, information is a bargaining chip, and resources are unevenly distributed among actors in these kinds of exchanges. Powerful actors are incentivized to control information in order to mask schemes or shortcomings and participants, each with their own incentives, would never frame issues as solely beneficial to their own self-interest, as this tactic is unlikely to be successful in convincing others to pursue their

⁷⁶ McBride, 2003. 22-23.

⁷⁷ Mouffe, Chantal. *The Democratic Paradox*. London: Verso, 2000.

⁷⁸ Erman, Eva. “What is wrong with agonistic pluralism? Reflections on conflict in democratic theory.” *Philosophy & Social Criticism* 35.9 (October 19, 2009), 1042.

preferred course of action. In this way, deliberations could end up being campaigns rather than reasonable exchanges. That democratic deliberation or indeed multistakeholderism ultimately endeavors toward the common good is also a dubious claim, though the coherent approximation of stakeholders' preferences could ultimately represent a benefit to all by facilitating coordination and cooperation.

Like any ideals, the specifications for ideal speech situations are grails to be sought rather than metrics to be tallied. Deliberation remains a justified means of collectively assessing and selecting policy preferences, in spite of ontological discrepancies. After all, a union that prides agonism above cooperation and plurality above unity will cease to be a union. While valid and indeed valuable in democratic governance structures, agonistic behavior is to be subsumed—if only for the practical reason of safeguarding the ability to overcome stalemates and achieve something approximating popular sovereignty. *In continuation, the third measure of multistakeholderism is the handling of opposition in consensus-building processes.*

2.4. Public Sphere

Per the Habermasian definition, the public sphere denotes the arena in which domain in which individuals come together to form a public body and produce something approaching public opinion.⁷⁹ The value of such is not simply in the crystallization of preferences evident in the consensus behind the singular term “public opinion,” but also in its function as a dialogue space for the formation and deliberation of opinions.

⁷⁹ The summary that follows is sourced from Habermas, Jürgen, translated by Sara Lennox and Frank Lennox. “The Public Sphere: An Encyclopedia Article (1964).” *New German Critique* 3 (Autumn 1974), 49-55.

To give a historical context, the concepts of public sphere and public opinion as they exist in modern democracies grew out of French bourgeois salon society in the 18th century, where educated individuals would come together to espouse opinions on the economics, governance, and society. The advent of the exchange economy increased the capital and power of bourgeois classes across Europe in the 17th century. As a result, the delineation between the ruling nobility and wealthy private individuals waned. The divide between state and society remained clearly defined, yet the source of the state's legitimacy to govern began to shift as select citizens gained power and influence.

The divine right of kings had previously guaranteed unquestioning deference to the unilateral decisions of kings and noblemen. In the 18th century, the “public” (non-noble upper class) sought to influence politics through the collective exertion of “public reason.” A critical development at this time was the demand that information about governmental procedures be made public, effectively subordinating the exercise of political control to democratic demand, however limited. As the “public” has ostensibly grown to include people of all classes, races, and genders, so too have the number of governmental procedures.

If the myriad dimensions and sectors of modern policymaking are complex and multifaceted for experts, they are largely intenable for members of the general public. Moreover, governments are no longer the only relevant policymakers to monitor, as international organizations or transnational corporations have as much or even more political sway than nation-states in some arenas. Finally, recent events such as Brexit or the election of Donald Trump indicate that misinformation is no longer blighting for news outlets, spurring doubt and cognitive dissonance.

The result of these trends is the cleaving of the public into weakened, parrying sections, which diminishes rational dialogue and threatens the concept of public reason altogether. Jürgen Habermas furthers:

At one time the process of making proceedings public was intended to subject persons or affairs to public reason, and to make political decisions subject to appeal before the court of public opinion. But often enough today the process of making public simply serves the arcane policies of special interests... a public sphere must be arduously constructed case by case, a public sphere which earlier grew out of the social structure.⁸⁰

Perhaps the erosion of the public sphere as it existed in simpler, Westphalian times isn't necessarily a negative trend in the context of globalization. Habermas seemed to approximate this opinion in later writings, claiming that policy fields, thematic foci, and functional specifications can provide a "point of reference for a substantive differentiation of public spheres" with the potential to span "overlapping international, national, regional, local, and subcultural arenas."⁸¹

Multistakeholder governance networks embrace and magnify this concept, having the potential to span not only geographic areas but also sectorial divides. Habermas concluded that the success of deliberative processes in such "decentered societies" depends not on the collective opinion or action of the citizenry but on "proceduralized popular sovereignty and a political system tied in to the peripheral networks of the political public sphere."⁸²

While it's evident that a plurality of public spheres exist given the siloed nature of policy sectors, the previous statement highlights a division that goes beyond the thematic,

⁸⁰ Habermas, 1964. 55.

⁸¹ Habermas, Jürgen. *Between Facts and Norms*. Cambridge, MA: MIT Press, 1996. 373.

⁸² Habermas, Jürgen. "Three Normative Models of Democracy." *Democratic and Constitutional Theory Today* 1.1 (1994), 7.

differentiating between spheres that are deliberative (i.e., where popular sovereignty is decided) and empowered (i.e., where sovereignty is exerted). A multistakeholder network that easily serves as a “context of discovery” for potential courses of action may be more challenged by the argumentative burden of providing a “context of justification.”⁸³ Certainly, some multistakeholder networks may lack an obligation toward collective action beyond discussions altogether, but such bodies would exist for purposes of consultation, not governance. *On those premises, the last measure of multistakeholderism is the most simple, evaluating nothing more than its ability to effect results.*

Each of the four theories explained above—polyarchy, stakeholder theory, deliberative democracy, and the public sphere—exhibit a core tension between effectiveness and legitimacy, as indicated in Table 1:

Table 1. Tensions in Multistakeholder Governance.

Effectiveness	Legitimacy
Representative	Constituency
Agent	Stakeholders
Consensus	Plurality
Action	Deliberation

Based on these tensions, the corresponding criteria that I will use for evaluating the multistakeholder model in internet governance are: Representation, Coordination, Agreement, and Action.

⁸³ Flynn, Jeffrey. “Communicative Power in Habermas’s Theory of Democracy.” *European Journal of Political Theory* 3.4 (October 2004), 440.

CHAPTER III: MULTISTAKEHOLDER INTERNET GOVERNANCE

Laurence Lessig famously proclaimed that “code is law” in internet governance.⁸⁴ While there is truth in this statement—working code and successful connections between devices were and continue to be the markers of successful technological “governance”—modern dependence on internet technologies has illuminated the need for laws in cyberspace beyond those governing the successful transmission of packets.

The difference between code and policy speaks to the distinction drawn by some between the governance “of” the internet and governance “on” the internet, which refers to the division between the management of the technical architecture of the internet versus the related public policy questions concerning the management of activities on the network.⁸⁵ Whereas technical feasibility may serve to structure or simplify debates concerning the governance of protocols, standards, addresses, and other elements of the internet’s technical architecture, policy debates seeking to define and enforce rules related to online behavior lack the clear limitations of “either it works or it doesn’t,” a common Boolean benchmark for evaluating the viability of code. This is, perhaps, one of the reasons why the ecosystem of organizations dedicated to tackling governance “on” the internet is comparably underdeveloped in comparison to the institutions dedicated to the technical governance “of” the internet.

⁸⁴ Lessig, Lawrence. “Code is Law: On Liberty in Cyberspace.” *Harvard Magazine* (Jan 1, 2000). <http://harvardmagazine.com/2000/01/code-is-law-html>.

⁸⁵ de La Chapelle, Bertrand. “The Internet Governance Forum: How a United Nations Summit Produced a New Governance Paradigm for the Internet Age.” Edited by the OSCE. *Governing the Internet: Freedom and Regulation in the OSCE Region*. Vienna: OSCE, 2007. 27.

This is not to say that the distinction between the technical and political governance of the internet is a dichotomous one: in fact, social and cultural norms both affect and are affected by the technical architecture of the internet. The basic code of TCP/IP, for example, was designed to enable the exchange of data without networks necessarily being aware of the content or senders of said data, providing a fundamental inclination toward anonymity. According to Lessig, this is a manifestation of the US Constitution's First Amendment baked into the code itself, "because it makes it relatively hard for governments, or powerful institutions, to control who says what when."⁸⁶

This chapter is divided into three parts: the first part summarizes the historical evolution of the internet with an emphasis on its open and collaborative development; the second surveys the mechanisms, stakeholders, and dynamics of internet governance; and the third gives a brief of multistakeholder internet governance institutions associated with standards and protocols, names and numbers, and the United Nations.

3.1. The Evolution of the Internet

The origins of the modern internet can be traced back to the Advanced Research Projects Agency Network (ARPANET), a project developed under the auspices of the United States Department of Defense (DARPA). ARPANET was an early packet switching network developed to replace end-to-end circuit switching, thereby allowing data systems to communicate with more than one machine via a single communication link. The network originally comprised just four small computers called Interface Message Processors (IMPs), antecedents to modern routers. The first permanent link between ARPANET devices was established between IMPs at UCLA and the Stanford

⁸⁶ Lessig, 2000.

Research Institute in September 1969. By the end of the year, IMPs at the University of California, Santa Barbara and the University of Utah were also incorporated to complete the four-node network.⁸⁷

The researchers maintaining each of the ARPANET nodes had arranged themselves into “Network Working Groups” to better exchange information in anticipation of the network’s launch. Because email hadn’t yet been invented, they communicated with each other via printed memos called “Requests for Comment.” Initial leanings toward bottom-up, inclusive policymaking can be identified in one of the first RFCs, sent by Steve Crocker in April 1969⁸⁸ (see Appendix A). Referencing the composition of working groups in the first part of the RFC, it is clearly stated that “Membership is not closed” and that “Notes may be produced at any site by anybody.” In terms of content, unpolished and timely contributions were valued in order to ease inhibitions, encourage participation, and “promote the exchange and discussion of considerably less than authoritative ideas.”

This free flow of ideas and lack of regulatory barriers has been credited as a contributing factor to the flourishing of innovation and entrepreneurship in the early stages of the internet’s development. As Vinton Cerf, the co-inventor of TCP/IP, explained: “The Net prospered precisely because governments—for the most part—allowed the Internet to grow organically, with civil society, academia, private sector and voluntary standards bodies collaborating on development, operation, and governance.”⁸⁹ Here again the early successes of the internet are clearly ascribed to multistakeholder

⁸⁷ Sutton, Chris. “Internet began 35 years ago at UCLA with first message ever sent between two computers.” *UCLA* (2 Sept 2004). Archived from [the original](#) on 8 March 2008.

⁸⁸ Crocker, Steve. “[RFC-3: Document Conventions](#).” *IETF* (April 1969).

⁸⁹ Cerf, Vinton. “[Keep the Internet Open](#).” *New York Times* (24 May 2012).

collaboration and the ability of actors to exchange freely, with the notable absence of governmental regulation or intervention beyond funding.

In time, the ARPANET came to connect several research institutions across the United States, and by the end of 1972 the network had grown to 29 nodes. As ARPANET was being refined in the United States, other pioneering networks were being developed elsewhere, such as the CYCLADES computer network in France and a single node network at the National Physical Laboratory in England. In October 1972, the people responsible for these and other similar networks came together in Washington, DC for the first International Conference on Computer Communication (ICCC). At the conference, communication professionals, government employees, and academics were able to interact with the ARPANET terminal interface processor for a series of demonstrations that included instantaneous exchanges with devices in California and Michigan.

The ICCC generated much excitement about the prospect of real-time communication across vast distances. Just days later, the International Packet Network Working Group (INWG) was formed with the goal of reconciling technical standards between packet-switching networks around the world. A year later in September 1973, Bob Kahn and Vint Cerf, DARPA researchers heading the ARPANET project, gave their first paper on the Transmission Control Protocol (TCP) at an INWG meeting in Sussex, England. The Institute of Electrical and Electronics Engineers (IEEE) published their seminal publication, “A Protocol for Packet Network Interconnection” May 1974, in which the authors reiterated that “the principal reason for developing such networks has been to facilitate the sharing of computer resources.”⁹⁰ Soon after, DARPA funded three

⁹⁰ Cerf, Vint and Kahn, Robert. “[A Protocol for Packet Network Intercommunication](#).” *IEEE Communications Society* 22.5 (5 Nov 1973).

contracts for the implementation of TCP, at Stanford University in California, BBN in Cambridge, Massachusetts, and University College London in England.⁹¹

At the end of the 1970s, internet governance was almost entirely based on functionality. Although the internet is distributed by nature, the need for harmonization and governance through technical standards became evident as connections increased between disparate networks around the world. To that end, protocols such as TCP/IP were established to ensure interoperability when data packets were being transmitted through various paths on the network. One of the first internet governance bodies, the Internet Configuration Control Board (later known as the IAB) was founded in 1979 to oversee the development and coordination of these new technical standards. Within five years, the US Department of Defense had made TCP/IP the standard for all of its computers and dozens of vendors were incorporating the protocols into their products, frequently as an add-on to their own propriety network solutions.

In 1985, members of the Internet Architecture Board (IAB) convened a three-day workshop for the computer science industry, providing an opportunity for commercial vendors to gather alongside the inventors and experimenters of the internet. The casual cross-pollination of ideas among actors from different backgrounds and sectors was a hallmark of the internet community from the onset, particularly within the technical community. As recalled by several of the workshop's key participants years later,

The results were surprises on both sides: the vendors were amazed to find that the inventors were so open about the way things worked (and what still did not work) and the inventors were pleased to listen to new problems they had not considered, but were being discovered by the

⁹¹ Wang, Shuangbao Paul and Ledley, Robert S. *Computer Architecture and Security: Fundamentals of Designing Secure Computer Systems*. Hoboken, New Jersey: John Wiley & Sons, 2012.

vendors in the field. Thus a two-way discussion was formed that has lasted for over a decade.⁹²

Managing the technical architecture of the internet became more complicated and required more operable and scalable institutions as the internet grew past its research roots and the development of the World Wide Web in the early 90s allowed for widespread adoption of the commercial internet. Different standard-setting bodies and other institutions emerged to coordinate the technical evolution of the internet, such as the IAB, ISOC, ICANN, and the W3C. Many of these organizations sought to preserve the casual, open atmosphere that computer scientists fostered in early RFCs, summarized as “rough consensus and running code.”⁹³

As the ecosystem of organizations dedicated to the technical governance “of” the internet was being established and expanded, a corresponding growth of institutions addressing governance “on” the internet failed to take off. The perceived difference between “cyberspace” and the “real world” could be a factor. Tackling harassment, hate speech, and other abuses online has only appeared on policy agendas in recent years, not because the bad behavior wasn’t happening before but because it wasn’t recognized as a social problem. However, even after certain online activities have been identified as undesirable or even criminal, establishing the rule of law online and governing behavior in cyberspace has proven elusive.

⁹² Leiner, Barry M. et al. “[Brief History of the Internet.](#)” *Internet Society* (October 2009).

⁹³ Alvestrand, H. “RFC-3935: [IETF Mission Statement.](#)” *IETF* (October 2004).

3.2. Governing in Cyberspace

The internet is a moving target for governance, constantly evolving and incorporating new capabilities that offer possibilities never before imagined. From the Internet of Things to bringing the next billion users online, it is difficult to imagine the internet of tomorrow. By extension, it is nearly impossible to preempt the destructive use of new technologies or anticipate the consequences that present-day policies may have on the internet's growth and development. As Laura DeNardis put it, "the only constant in internet governance is the condition of constant change, creating the omnipresent uncertainty of rivalrous alternative futures."⁹⁴

Correspondingly, there are many and often conflicting forces at work shaping the evolution of the internet and the behaviors of its users. Jeremy Malcolm has identified five typologies of control at play in Internet governance: rules, norms, markets, architecture, and networks.⁹⁵ Each of these elements can be expanded as follows:

1. **Rules.** Simply put, rules refer to binding and enforceable obligations that must be obeyed.⁹⁶ The element of enforceability makes domestic regulation and "hard law" more relevant to this category than supra-legal moral rules and "soft law." Rules may also refer to the community guidelines or terms of service of certain platforms, which are enforceable under penalty of deletion, suspension, or banning.

⁹⁴ DeNardis, 2014. 242.

⁹⁵ Malcolm, Jeremy. *Multistakeholder Governance and the Internet Governance Forum*. Perth: Terminus P, 2008. 21-7.

⁹⁶ Clark Arend, Anthony. *Legal Rules and International Society*. New York: Oxford University Press, 1999. 22.

2. **Norms.** Whereas rules are prescriptions for or against specific actions, norms refer to general standards of behavior. In the early stages of the internet, principles of “netiquette” discouraged hijacking discussions, starting flamewars, spamming other users, and TYPING IN ALL CAPITALS (as it is akin to shouting and therefore rude).⁹⁷ Netiquette aside, the joint elaboration of norms or standards can serve as effective starting points for transnational governance by providing baselines for emerging policies and regulations and contributing to “legal interoperability.”⁹⁸
3. **Markets.** This refers to the behavior of consumers as dictated by the economic laws of supply and demand. Market forces and consumer behaviors are especially relevant given internet governance trends toward private ordering and rule making by private companies instead of governments: in theory, users would simply stop using Facebook, Google, or any other platform if the company acted egregiously. While this may prove true at some point, neither company seems slated for a slump any time soon despite negative press concerning fake news or algorithmic accountability.⁹⁹
4. **Architecture.** Technical specifications can be very powerful in defining what internet users can and cannot do online. As seen in the First Amendment example, the architecture of the internet can have certain legal or cultural values baked into

⁹⁷ Hambridge, S. “[RFC 1855: Netiquette Guidelines](#).” *IETF* (October 1995).

⁹⁸ de La Chapelle, Bertrand and Fehlinger, Paul. “[Jurisdiction on the Internet: From Legal Arms Race to Transnational Cooperation](#).” *Internet & Jurisdiction* (2016).

⁹⁹ As a side note, notions of corporate social responsibility only factor in here to the extent that such campaigns affect consumer behavior.

the code itself. Similarly, the absence of certain scripts in domain names may categorically limit or exclude language communities from accessing the internet.

5. **Networks.** According to Malcolm, networks can be understood as an “amalgam of the other methods of governance,” able to be employed within single stakeholder groups or across multiple groups, sectors, or countries.¹⁰⁰ These include government networks formed between national regulators, public-private partnerships between governments and private companies, as well as multistakeholder groups.

Using each of the typologies of control listed in the toolbox above, multistakeholderism—the “internet model” of governance—constitutes a constantly shifting and ever-evolving balance of power between stakeholder groups. As developed by internet governance-related United Nations processes¹⁰¹ (explained in greater detail below), the most commonly cited categories of stakeholders involved in internet governance are: states, firms and industries in the private sector, civil society, intergovernmental organizations, international organizations, members of the technical community, and academics.

Table 2. Categories of Stakeholders in Internet Governance.

<p>Individuals, organizations, and institutions with an interest or stake in particular internet governance issues can include:</p> <ul style="list-style-type: none"> • States, which have a policy authority for sovereign nations and are responsible for international internet-related public policy issues; • Private Sector, with particular importance in technical and economic fields; • Civil Society, especially at the community level; • Intergovernmental Organizations, particularly in facilitating the coordination of
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¹⁰⁰ Malcolm, 2008. 25.

¹⁰¹ See the [Tunis Agenda for the Information Society](#). *World Summit on the Information Society* (November 18, 2005).

- internet-related policy issues;
- International Organizations, with important roles in the development of internet-related technical standards and relevant policies;
 - Technical Communities, such as the members of technical standards-setting bodies and other experts in computer science and engineering;
 - Academics, with a focus on and involvement with internet governance.

Source: Dutton, William H. “Multistakeholder Internet Governance?” World Bank, 2015.¹⁰²

These stakeholder groups are sometimes condensed into broader categories. Consider the following definition of internet governance, crafted by the Working Group on Internet Governance (WGIG), a multistakeholder group established during the 2003 World Summit on the Information Society in Geneva:

Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet.¹⁰³

There is little doubt that much consideration went into this formulation, which demonstrates the nuance required to successfully balance potentially competing interests. Upon inspection, two elements of this definition stand out. First, the inclusion of the phrase “in their respective roles,” which yields a vagueness that easily lends itself to a multitude of interpretations. Is it the role of platforms to monitor user content for possible offenses? Or does that responsibility fall to governments, or civil society? The role is in the eye of the reader.

¹⁰² Dutton, William H. “[Multistakeholder Internet Governance?](#)” *World Development Report 2016 Digital Dividends*. The World Bank: 2015. 21.

¹⁰³ “[Report of the Working Group on Internet Governance](#).” Delivered by the Working Group for Internet Governance at the World Summit of Information Societies in Tunis (18 Nov 2005).

The second part that stands out is the capitalization of the G in “Governments” (which, because it is not referring to a specific entity, should not be a proper noun). Governments are the most powerful stakeholders in their role as rule-makers and enforcers, and implementing the outcomes developed through multistakeholder initiatives normally requires their voluntary and sustained participation in such processes. At the same time, courses of action prescribed by multistakeholder governance mechanisms that certain governments find undesirable may be interpreted as a challenge to their authority, as global governance can be seen as rivaling national sovereignty.

An observable similarity between the information presented in Table 2, the WGIG definition of internet governance, and the descriptions of numerous multistakeholder internet governance networks is that states (or rather, “States”) are usually listed first among stakeholders, with subsequent stakeholder groups ordered by perceived level of influence. The semantics of list-making speak to one of the thorniest challenges in internet governance and multistakeholderism in general: checking power at the door and placing stakeholders on equal footing when convening multistakeholder processes. Other difficulties include encouraging sustained cooperation without diminishing stakeholders’ incentives to participate in ongoing processes, and balancing the obligations, roles, and responsibilities of stakeholders in a way that is palatable to all.

There is no silver bullet for such a configuration. As Laura DeNardis explains,

It is important to view multistakeholderism not as a value in itself applied universally but as a question of what form of administration is necessary in any particular context. Certain areas of internet governance should jurisdictionally be overseen by national governments or via international treaties. Other areas are effectively administered by the private sector or non-profit institutions. ... Still other areas require the direct involvement of many stakeholders. In these cases, the question often reduces to the

appropriate balance between national regulation and private governance.¹⁰⁴

Though tricky, this balancing act has proven unavoidable. The internet is distributed, interconnected, and transnational, and no stakeholder group can solve the challenges of internet governance acting alone. Moreover, given both the speed of technological development and the absolute indispensability of the internet—which is often considered to be infrastructure of national importance at this point, uncoordinated actions threaten serious consequences in terms of human rights, security, finance, and the global economy.

Myriad stakeholders came together, perhaps serendipitously, to build the global internet that we benefit from today. Being able to access the largest collection of human knowledge known ever amassed by man via a handheld gadget was the stuff of science fiction mere decades ago. (How quickly the astonishing becomes commonplace.) Yet the internet is not a cloud, and its continued existence is neither perpetual nor self-sustaining. On the contrary, a host of organizations enable its functioning. The most established of these are reviewed below.

3.3. Internet Governance Organizations

Despite efforts to safeguard the supposed neutrality of the technical layers of the internet (debatable on the grounds that code and technical standards are influenced by the culture and values of their creators), policy discussions are becoming increasingly present in the technical community. At the same time, policy-makers must engage with platforms and technical operators if they want to craft implementable policies for the digital age.

¹⁰⁴ DeNardis, 2014. 227.

The lines between the technical and political governance of the internet may be blurring as more actors enter the space of internet governance, but the institutional landscape for managing the technical governance “of” the internet remains better established than that of the regulation of behavior “on” the internet. Organizations from the former category can be loosely split into two categories: those dealing with standards and protocols, and those dealing with names and numbers. At present, the most well-known international institutions addressing governance “on” the internet exist within the United Nations, which will therefore serve as a third category for internet governance institutions.

Standards and Protocols

The internet is “a loosely-organized international collaboration of autonomous, interconnected networks” dependent on “voluntary adherence to open protocols and procedures defined by Internet Standards”¹⁰⁵ for sustained technical interoperability.

One of the original bodies charged with overseeing internet standards processes was the Internet Activities Board (IAB). The IAB evolved from the Internet Configuration Control Board (ICCB), a small standards body that was created by Vint Cerf in 1979 under the auspices of the US Department of Defense’s Defense Advanced Research Projects Agency (DARPA). It was reorganized in 1983 around technical task forces, namely the Internet Engineering Task Force (IETF), Internet Research Task Force (IRTF), and Internet Engineering Steering Group (IESG). As Cerf described,

In 1990, it appeared that long-term support for the standards-making activity of the IETF which had come primarily from research supporting agencies of the US government (notably ARPA, NSF [National Science Foundation], NASA and DOE [Department of Energy]) might need to be

¹⁰⁵ Bradner, S. “[RFC 2026: The Internet Standards Process—Revision 3.](#)” *IETF* (October 1996).

supplemented in the future, either because such support would diminish or that requirements would exceed the limits of available support.¹⁰⁶

As an additional complication, the IAB, IETF, and other standards-setting bodies of the internet had been operating informally as self-run bodies with no legal standing up to that point.

To solve these problems, Vint Cerf and Bob Kahn founded the Internet Society (ISOC) in 1992. The Internet Society is a non-profit, non-governmental organization that serves as an umbrella institution to several standards-setting bodies, providing legal, financial, and organizational support. ISOC also serves as the institutional home for the aforementioned bodies, depicted in Figure 1.

Figure 1: ISOC and Related Organizations.

Source: TCP/IP Guide¹⁰⁷

¹⁰⁶ Cerf, Vint. “[IETF and the Internet Society](#).” *Internet Society* (July 18, 1995).

As described on their website, ISOC is broken down into local and regional chapters, which work to include all members of the “internet society” through:

- Educational events - educating members or the general public about Internet-related issues such as security, broadband access, IPV6, child safety, network neutrality, and much more.
- Community programmes - ensuring Internet access for economically disadvantaged people or those with disabilities, covering areas such as hardware, software, distribution, and best practices.
- Public policy programmes - informing policy and decision makers about Internet issues such as net neutrality, copyright protection, censorship, or human rights.
- Networking events - helping members connect with like-minded people who share an interest in bringing the benefits of the Internet to everyone.¹⁰⁸

In addition to ISOC Chapters, the Internet Society also allows stakeholders to get involved in special interest groups and compiles calendars of internet governance events to facilitate awareness of and participation in related processes and activities.

While the categories in Figure 1 may seem clearly separated, in reality there are many points of intersection and overlap among them, and it’s quite common for people to be members of multiple related institutions or participate in several working groups. However, a broad distinction can be made between the Internet Society, which is generally concerned with “promoting the open development, evolution, and use of the internet for the benefit of all people throughout the world”¹⁰⁹ and the more technically oriented bodies listed below it. Responsibilities of the IRTF include “organizing groups to investigate research topics related to the Internet’s protocols, applications, and

¹⁰⁷ “Internet Standards Organizations (ISOC, IAB, IESG, IETF, IRSG, IRTF).” *TCP/IP Guide*. <http://www.tcpipguide.com/free/diagrams/funinternetstandards.png>.

¹⁰⁸ “Chapters.” *Internet Society*, <http://www.internetsociety.org/who-we-are/chapters>.

¹⁰⁹ “History of the Internet Society.” *Internet Society*, <http://www.internetsociety.org/history>.

technology” on a focused and long-term basis,¹¹⁰ and the IETF is a “large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the internet architecture and the smooth operation of the internet.”¹¹¹

The IETF in particular has largely maintained the informal culture of its predecessor, the Network Working Group (see Appendix A), and still cites an early quote from David Clark as one of its founding principles: “We reject kings, presidents, and voting. We believe in rough consensus and running code”¹¹² The IETF rejects voting in particular for several reasons. One is because of its open participation: without a membership structure, it is difficult to clearly delineate who would or should be given a vote for any particular situation. Another is the very principle of majority rule: consensus is sought from participants instead through rituals of humming or other means of “taking the temperature of the room” rather than tallying majorities.¹¹³

Existing outside of the Internet Society family, the World Wide Web Consortium (W3C) is a different standards-setting body that handles consensus a bit differently. Sir Tim Berners-Lee, inventor of the World Wide Web, heads the organization as its director and has considerable influence on all of the organization’s activities, including “assessing consensus within W3C for architectural choices, publication of technical reports, and chartering of new Groups; appointing group Chairs; ‘tie-breaker’ for appeal of a Working

¹¹⁰ Weinrib, A. “RFC 2013: [IRTF Research Group Guidelines and Procedures](#).” *IETF* (October 1996).

¹¹¹ “About the IETF.” *IETF*, <https://www.ietf.org/about/>.

¹¹² “The Tao of IETF: A Novice’s Guide to the Internet Engineering Task Force.” *IETF* (2012), <https://www.ietf.org/tao.html>.

¹¹³ Resnick, P. “RFC 7282: [On Consensus and Humming in the IETF](#).” *IETF* (June 2014).

Group decision, and deciding on the outcome of formal objections.”¹¹⁴ W3C members are permitted to join and follow Working Groups, and non-members may comment on working drafts and recommendations at specific times, subscribe to certain mailing lists, or attend select public workshops. Other parts of the organization include the Advisory Board and Technical Architecture Group. As a whole, the W3C’s processes are somewhat opaque and more top-down than its standard-setting counterparts. In essence, the W3C is like the constitutional monarchy of the internet governance organizations.

Names and Numbers

In addition to the standards and protocols that govern how devices send and receive information, “critical internet resources,” or unique identifiers for all entities connected to the internet, are mandatory for its sustained functioning. These internet number resources consist of IPv4 and IPv6 addresses for devices and autonomous system numbers (ASNs) for networks. Because each identifier is assigned to only one entity, they must be coordinated on a global level to prevent duplication. This function is carried out by the Internet Assigned Numbers Authority (IANA), which maintains ultimate responsibility for all unique internet number resources.

In the early days when the internet was still a project under the US Department of Defense, a single person, Dr. Jon Postel of the University of Southern California, maintained the list of number-to-name internet identifiers. As the commercial internet spread around the world, overseeing the IANA functions grew more essential and also more complicated. The need for delegation became clear. Beginning with the

¹¹⁴ “World Wide Web Consortium Process Document.” *W3C* (September 1, 2015). <https://www.w3.org/2015/Process-20150901/#Organization>.

establishment of RIPE NCC in the Netherlands in 1992, Regional Internet Registries (RIRs) were established to facilitate the distribution of internet number resources. Blocks of IP and ASN addresses were delegated on an increasingly formalized basis to these RIRs for them to distribute, register, and manage within their respective regions.

Each of the five RIRs in existence today is a non-profit, member-based association that operates in accordance of the laws of the country where it is headquartered. They are:

- AFRINIC: Serving Africa; established in Mauritius in 2005
- APNIC: Serving the Asia Pacific region; established in Australia in 1993
- ARIN: Serving the US and Canada; established in the US in 1997
- LACNIC: Serving Latin America and the Caribbean; established in Uruguay in 2002
- RIPE NCC: Serving Europe, Central Asia, and the Middle East; established in The Netherlands in 1992.

According to the Number Resource Organization (NRO), the coordinating body for the RIRs, “the evolution of the RIR system was a result of the internet community’s desire for the administration of internet number resources in accordance with practices and policies established cooperatively by those using the resources.”¹¹⁵ The RIRs are each governed by a member-elected Board, operate autonomously, and are funded by membership fees paid by participating organizations.

Despite this distribution, the IANA maintains ultimate responsibility for all distributed and undistributed unique internet number resources, namely domain names and IP addresses, as well as protocol parameters.¹¹⁶ An explanation of the IANA functions and the historic role of the US Government is key to understand the

¹¹⁵ “Regional Internet Registries Overview.” *NRO*, <https://www.nro.net/wp-content/uploads/Regional-Internet-Registries-Overview.pdf>.

¹¹⁶ Reynolds, J. and Postel, J. “RFC 1060: Assigned Numbers.” *IETF* (March 1990).

development of ICANN, one of the largest and most bureaucratic multistakeholder organizations in existence today.

As the internet became and increasingly important global resource, historic ties between the US government and critical internet resources such as the DNS root zone came under fire, both within and beyond the embryotic internet governance community. Based on efforts by IANA and other organizations, a memorandum of understanding was proposed in 1996 stipulating the transfer of the Domain Name System from the US Government to a private, international body.¹¹⁷

The next year, President Clinton's administration determined that the Department of Commerce (DoC) would lead the efforts, and in 1998 the DoC's National Telecommunications and Information Administration released a policy statement titled "Management of Internet Names and Addresses" (see Appendix B). Frequently referred to as the NTIA "white paper," the document outlined the government's relationship to IANA functions and proposed an agreement with a new non-profit corporation for the administration of DNS policy. As a result, the Internet Corporation for Assigned Names and Numbers (ICANN) was incorporated in California in 1998. The contract established between ICANN and the NTIA concerning IANA functions officially expired on October 1, 2016, finally completing what became known as the IANA stewardship transition nearly 20 years after the process was initiated.

Of all the internet governance organizations, ICANN is one of the strongest supporters of the multistakeholder model. Purporting to follow a "decentralized governance model" that "places individuals, industry, non-commercial interests, and

¹¹⁷ "IANA – Background Document." *APNIC* (January 2017). <https://www.apnic.net/wp-content/uploads/2017/01/iana-background-document.pdf>.

government on an equal level,” ICANN claims to allow for “community-based consensus-driven policy-making.”¹¹⁸

Despite laudable efforts to facilitate inclusion and diversity, holding tri-annual meetings on a rotational basis around the world, making special provisions for remote participation in proceedings, and devoting countless resources to defining and refining mechanisms for increased accountability and transparency, ICANN is a frequent target for criticism. Many stakeholders have cited the need for more internationalized control over the DNS and other critical internet functions, by the UN or a comparable body. Such demands peaked in the years after the Snowden revelations of US governmental spying. Notable events at this time was the two-day Global Multistakeholder Meeting on the Future of Internet Governance and the NetMundial initiative, both in Brazil. Concerning ICANN and the IANA functions, participants cited the need for “an open process with the participation of all stakeholders extending beyond the ICANN community.”¹¹⁹ (Ultimately, the NetMundial initiative failed to launch as an alternate platform for internet governance dialogues following controversies surrounding permanent seats on the council and a perceived power tilt toward wealthy elites based on its ties to the World Economic Forum.¹²⁰)

Without going into additional detail about the specifics of ICANN’s complicated and serpentine structure, the argument that stakeholders *beyond* the ICANN community should be incorporated into bottom-up policymaking for the DNS and other processes

¹¹⁸ “Beginner’s Guide to Participating in ICANN.” *ICANN* (November 8, 2013). <https://www.icann.org/en/system/files/files/participating-08nov13-en.pdf>.

¹¹⁹ Ribeiro, John. “[Surveillance, ICANN transition dominate Internet governance meeting](#).” *PCWorld* (April 25, 2014).

¹²⁰ Pohle, Julia. “[Multistakeholderism unmasked: How the NetMundial Initiative shifts battlegrounds in internet governance](#).” *Global Policy Journal* (January 5, 2015).

warrants additional consideration. As mentioned, ICANN makes great efforts toward inclusion and accountability and practices “consensus policies” not unlike those of the IETF. However, it should be noted that ICANN also exists in somewhat of a vacuum. Despite the autonomy of the RIRs and their individual multistakeholder policy development processes, their memorandum of understanding with the Address Supporting Organization, a shell organization with ICANN, makes all policy proposals subject to review by the ICANN Board.

The buck stops both proverbially and literally with ICANN. When the program for introducing new generic top-level domains (gTLDs like .wine or .fun) was rolled out in 2011, the fee was set at \$185,000 per application. 1930 applications were received in the first round alone, bringing in at least \$357 million without counting the additional income from gTLDs that were auctioned for prices ten times the application cost or more.¹²¹ Yet these sums seem paltry considering the amount of power that ICANN wields as the gatekeeper for the DNS and other critical internet resources. As more and more countries become involved in generating internet policies and attempting to exert influence over the technical and political governance of the internet, ICANN’s bottom-up consensus-based policy-making may prove insufficient to justify their monopoly in the field of names and numbers. Whether the technical coordination of the internet could survive such a balkanization is yet to be seen.

¹²¹ Hariharan, Geetha. “[Where does ICANN’s Money Come From? We Asked; They Don’t Know.](#)” *Centre for Internet and Society* (February 9, 2015).

United Nations

Compared to the aforementioned institutions, internet-related bodies of the United Nations lean more toward political than technical governance. One such body is the ITU, a UN agency dedicated to coordinating the global use of information and communications technologies. Founded in 1865 with the goal of harmonizing technical standards and tariffs for telegraphy, the ITU's activities presently revolve around three main activities: managing the radio-frequency spectrum, improving ICT infrastructure as a means of stimulating development, and developing and recommending global technical standards.¹²²

In terms of its structure, the ITU counts members from 193 countries and more than 700 academic institutions and private-sector entities such as carriers, operators, and manufacturers.¹²³ This membership is two-tiered: the "Sector Members" from non-governmental organizations may contribute to policymaking processes but are not afforded voting rights, which are reserved for representatives from UN Member States. Because each of the 193 UN Member States represented in the ITU carries equal weight, the system could be viewed as a democratic means of determining the evolution of the global internet, one that promotes equal roles and shared responsibilities among countries and is potentially more resistant to capture. Yet the ITU's multilateral decision-making processes, combined with its labyrinthine bureaucratic structure, have been widely

¹²² "About ITU." *ITU*, <http://www.itu.int/en/about/Pages/default.aspx>.

¹²³ "ITU Membership Overview." *ITU*, <http://www.itu.int/en/membership/Pages/overview.aspx>.

criticized by members of civil society as lacking “transparency, openness of process, and inclusiveness of all relevant stakeholders.”¹²⁴

In 1998, the ITU approved a resolution instructing the United Nations Secretary-General to hold a World Summit on the Information Society (WSIS) with the intention of:

- Establishing an overall framework identifying, with the contribution of all partners, a joint and harmonized understanding of the information society
- Drawing up a strategic plan of action for concerted development of the information society by defining an agenda covering the objectives to be achieved and the resources to be mobilized
- Identifying the roles of the various partners to ensure smooth coordination of the establishment in practice of the information society in all Member States.¹²⁵

The Summit was held in two phases, the first in Geneva, Switzerland in 2003 and the second in Tunis, Tunisia in 2005, and marked the first time that non-state actors were invited to participate in such intergovernmental processes led by the UN.¹²⁶ This development speaks to the complications of regulating the internet, and the fundamental need for cooperation among actors from many different sectors to successfully create and implement internet policy.

An important outcome of the first WSIS in 2003 was the creation of the previously mentioned Working Group on Internet Governance (WGIG), a multistakeholder group established “to investigate and make proposals for action, as

¹²⁴ Kushtuev, Alexander. “[Letter to Dr. Hamadoun Touré, Secretary General of the International Telecommunication Union \(ITU\) on the World Conference on International Telecommunications \(WCIT\)](#).” *Human Rights Watch* (May 17, 2012).

¹²⁵ “Resolution 73 of the ITU Plenipotentiary Conference.” *ITU* (1998).
<https://www.itu.int/net/wsis/docs/background/resolutions/73.html>.

¹²⁶ Böhling, Kathrin. “Multistakeholder Involvement in UN Conferences.” Edited by Thomas Hale and David Held. *Handbook of Transnational Governance*. Malden, MA: Polity, 2011. 199.

appropriate, on the governance of Internet by 2005.”¹²⁷ In addition to creating a working definition of “internet governance” and identifying the respective roles of stakeholders involved, the group was charged with identifying relevant public policy issues related to internet governance. These were identified as follows in the 2005 Report of the WGIG:

- Addressing the United States government’s unilateral control of the administration of the internet’s root zone files
- Promoting a more even distribution of interconnection costs
- Developing more efficient tools and mechanisms to safeguard internet stability and security while minimizing cybercrime on a global scale
- Generating a unified, coordinated approach to eliminating spam
- Reducing barriers to meaningful multistakeholder participation in global policy development
- Devoting adequate resources to capacity-building, particularly for developing countries
- Further development of policies and procedures for the allocation of domain names
- Ensuring balanced access to IP address resources on a geographical basis
- Applying intellectual property rights to cyberspace
- Avoiding restrictions on the freedom of expression
- Minimizing the lack of or inconsistent application of privacy and data-protection rights
- Developing global standards for consumer rights on the internet
- Making progress toward multilingual representation in top-level domain names (TLDs), email addresses, and web content¹²⁸

Ultimately, the WGIG gave way to the Internet Governance Forum (IGF), a temporary UN body that is now in its twelfth year of bringing delegates from governments, businesses, NGOs, technical groups, and academia together on an annual basis to deliberate these and other topics related to internet governance. Though the IGF and other UN conferences don’t usually produce binding treaties or laws, they can foster

¹²⁷ “[WSIS: Declaration of Principles](#).” *International Telecommunication Union* (December 12, 2003).

¹²⁸ “Report of the WGIG,” 2005.

the creation of norms around which actors converge.¹²⁹ Even so, frustrations have been expressed in the internet governance community in recent years that the IGF (now more than ten years old) has become more of a talk shop and networking event than a solutions-orientated convening.

While the ITU would potentially have more power to enact international policy changes, there are perennial debates about whether or not internet governance issues should even be included within its mandate. Such arguments notably manifested ahead of the 2012 World Conference on Information Technology (WCIT), where ITU members were intended to meet and renegotiate the terms of International Telecommunications Regulations (ITR) treaties. The core argument of the United States and several of its allies revolved around the notion that internet governance (technical or otherwise) falls beyond the ITU's mandate and should therefore not be included in the internationally binding International Telecommunications Regulations treaties. The US's formal position was as follows:

The United States [notes] that the Internet has evolved to operate in a separate and distinct environment that is beyond the scope or mandate of the ITRs or the International Telecommunication Union. Specifically, it emerged from multi-stakeholder organizations... [which] have played a major role in designing and operating the Internet and have succeeded by their very nature of openness and inclusiveness. The United States believes these existing institutions are most capable of addressing issues with the speed and flexibility required in this rapidly changing Internet environment. As a decentralized network of networks, the Internet has achieved global interconnection without the development of any international regulatory regime. The development of such a formal regulatory regime could risk undermining its growth.

¹²⁹ The 1992 UN Conference on Environment and Development (or "Earth Summit") and the subsequent evolution of dialogues in policymaking fora can be cited as an example. See Böhling, Kathrin. 2011. 196.

Therefore, the United States will not support proposals that would increase the exercise of control over Internet governance or content.

In addition to challenging the notion of expanding the ITU's mandate to include internet-related activities, the United States and several of its allies also contested specific provisions on the table. For example, a heated debate occurred between the US and Russia concerning the definition of unsolicited bulk electronic communication (commonly referred to as spam) as related to freedom of expression and governmental censorship.¹³⁰

In the end, 89 of the 144 eligible countries signed the International Telecommunication Regulations, producing what the Economist characterized as “a digital version of the cold war” between countries seeking to extend a claim to digital sovereignty and those seeking to defend the status quo.¹³¹ Yet the ideological conflicts that manifested at the WCIT were nothing new: countries such as China, Russia, or Saudi Arabia had already been pushing for increased digital sovereignty and control over the content and services available online in their respective jurisdictions. The eruption of conflict—such as the US walkout after ITU Secretary-General Hamadoun Touré called for a one-country, one-vote process rather than the previously agreed upon and US-favored “consensus model”¹³²—was merely an overt manifestation of latent, ongoing tensions.

¹³⁰ Pepper, Robert and Sharp, Chip. “[Summary report of the ITU-T World Conference on International Telecommunications.](#)” *The Internet Protocol Journal* 16.1 (March 2013).

¹³¹ “[A digital cold war?](#)” Babbage blog, *The Economist* (14 Dec 2012).

¹³² Mueller, Milton. “[ITU Phobia: Why WCIT was Derailed.](#)” *Internet Governance Project, Georgia Tech Public Policy* (December 18, 2012).

CHAPTER IV: ANALYSIS

Multistakeholderism has been a hallmark of the internet since its earliest days. Though the prospective benefits of multistakeholder governance certainly hold value when addressing the unresolved challenges of governance “of” and “on” the internet, applying the open, bottom-up, consensus-based policy-making processes of the internet’s technical community to global debates on how to manage cross-border commons has proven challenging, to say the least.

4.1. Participation

Particularly in the field of internet governance, multistakeholderism encourages actors with an interest or concern in the issue at hand to participate in discussions and, in many cases, decision-making processes. Equal and abundant participation provides a diversity of opinions and perspectives that enriches decision-making processes as well as serves as a key component of the model’s legitimacy. Participating stakeholders in such processes are ideally varied enough to constitute an accurate representation of the implicated actors from governments, companies, international organizations, or other groups.

One of the challenges of internet governance is that myriad actors around the world can make valid claims as stakeholders in the development of policies and determination of the internet’s future evolution. Beyond governments or companies, a stakeholder group that hasn’t yet been elaborated is that of internet users. If the internet is a vital part of one’s education, job, social life, civic participation, economic activities, or

any combination of the above, it seems that s/he would indeed have a viable claim as a stakeholder. Most people on earth are now internet users, meaning that the constituency of internet users in 2017 constitutes more than 3 billion people from all corners of the planet, and growing. The pragmatism of a polyarchic division of decision-making power is useful here, but certain ideals should not be lost when seeking to optimize empirical realities. At the point where processes are limited to the most elite or powerful actors, the open and bottom-up nature of multistakeholderism is negated, and the overarching goal of generating policies that contribute to a greater good for all becomes less clear.

Multistakeholder initiatives usually target very specialized fields or complex issues, which is especially true in internet governance. Corresponding activities related to granular and specific topics often take place in “policy silos” which don’t necessarily pool knowledge and capacities between them, even within individual governmental or organizational structures. This means that a lack of topical knowledge or even general awareness is a stumbling block for potential participants in ongoing processes, especially for laypersons. This further restricts the ability of individual citizens or actors with no stake beyond being internet users to be included in multistakeholder internet governance processes.

Cost is an additional barrier to participation in multistakeholder internet governance processes. While subject experts or financially interested parties may be capable of dedicating the time and resources necessary to become actively involved in decision-making processes, such narrow thematic spheres are rarely breached by true laypeople because of the high threshold of knowledge required to access them. Just staying abreast of the technical, political, or corporate developments related to internet

governance can easily constitute a full-time job, and the volume and complexity of information relayed in open mailing lists and other tools of remote participation are overwhelming even for active members of the internet governance community. Similarly, while conferences like the IGF are generally open to anyone who may claim a stake in internet governance, they are usually held in far-flung locations, may cost several hundred dollars to attend, and are often circulated only within the internet governance community.

Finally, the overwhelming majority of internet governance proceedings are carried out in English. The United Nations' Internet Governance Forum offers live interpretation of sessions and workshops in each of its six official languages and ISOC provides materials in several languages, but regional or topical internet governance initiatives usually don't have the capacity and/or push to interpret or transcribe activities in multiple languages. Even the word "multistakeholderism," born in the United States as a fusion of academic and management theories, is very difficult to translate into other languages. "Multilateralism" is often employed as the closest approximation, but that term conveys neither the balance nor accessibility that multistakeholderism is predicated upon.

Returning to the notion of consent, Habermas writes that "just those norms deserve to be valid that could meet with the approval of those potentially affected, insofar as the latter participate in rational discourses."¹³³ But what happens when potentially affected actors willfully abstain from decision-making processes that they see as flawed, unfair, or insufficient? David Edmunds and Eva Wollenberg elaborate:

¹³³ Habermas, Jürgen. *Between Facts and Norms*, 1996. 227.

The focus on involving all stakeholders in a process, especially in a process with a goal of achieving agreement, encourages us to regard all those who refuse to participate as having relinquished their moral authority to speak on the issues.¹³⁴

Considering that voter turnout rates are very low for democratic elections in many countries, this is not necessarily an insurmountable obstacle, but given that multistakeholderism is built on the basis of involvement and participation, the model largely disregards willful abstention. Moreover, if a group or individual perceives a multistakeholder process as being skewed, biased, or unreceptive and therefore elects not to participate in the process, they may be labeled as uncooperative or uninterested in generating solutions and shut out of processes, or multistakeholders may stage a walkout and take their roundtables elsewhere. Either situation ultimately undermines multistakeholderism by decreasing incentives for participation by those who are wary of multistakeholder processes going in.

4.2. Coordination

In business management, *neutral conveners* are employed to “guide, motivate, build a bridge, bring peace, listen, elicit information, and lead discussion to a desired outcome” based on prescribed methodologies or the defined goals of the project leader.¹³⁵ Like the theory of stakeholder enabling put forth in Chapter Two, the role of the convener is therefore facilitation rather than management. Similarities can be seen in the way that the Chairs or leaders of working groups in ICANN, the IETF, and other technical

¹³⁴ Edmunds, David and Eva Wollenberg, 2001. “A Strategic Approach to Multistakeholder Negotiations.” *Development and Change* 32(2), 231-253.

¹³⁵ Erzah, Linda. “[Business Analyst: The Neutral Convener](#).” *Modern Analyst* (January 26, 2009).

governance organizations are similarly charged with keeping participants on task and guiding discussions toward solutions during their open, bottom-up policy-development processes. However, this role is greatly facilitated when participants speak the same language (English, or the even more niche language of computer engineering) and can readily understand the challenge at hand (content delivery networks interconnection, for example; or improving internet video codecs).

Technical knowledge aside, participants who freely contribute to multistakeholder processes without understanding the “rules of the game” or even the topic at hand can easily hamper processes and frustrate other members of the group. Recently, a call for a temporary substitute for an open leadership position was made in ICANN’s Non-Commercial Stakeholder Group mailing list. The request solicited volunteers both in- and off-list, as well as a haphazard stream of +1’s and unrelated comments from various members, a subsequent attempt at wrangling from the initial poster, and finally several appeals to subscribers that they “not comment on issues of procedure until [they] have read the charter in question.”¹³⁶ In this way, solicitations for diverse participation in open processes can sometimes undermine the procedural norms that enable constructive dialogues and bottom-up decision-making in the first place.

As previously touched upon, the threshold for participation in multistakeholder internet governance processes has been high in the past, especially in the examples of technical policy development just mentioned. Yet as more and more people claim their stake in internet governance, the homogeneity of the group erodes in terms of both experience in the field and pre-existing knowledge and coordination among participants

¹³⁶ Gannon, James. “re: Call for Volunteers: alternate councilor.” ICANN’s NCSG Discuss list, February 29, 2017.

becomes more of a challenge. Moreover, a truly polyarchic division of decision-making power (whether real or perceived) is much less likely to spur collective action or produce results if there is no overriding authority to ensure that rules are abided by and commitments adhered to.

Along with open participation, the legitimacy of multistakeholder governance processes is largely predicated on transparency and accountability, so a lack of coordination on a broader level could pose a threat to the organization's standing at large. Two extremes exist on this front: while some organizations decline to concretely elaborate how processes are carried out, others over-document activities and create opaqueness by virtue of a deluge of information that must be waded through. Even if an organization has entire departments dedicated to transparency and accountability, those in a position to "watch the watchers" are relatively few and far between (especially considering it is almost always a volunteer position without any kind of remuneration). As Dr. Olivier Crépin-Leblond put it, speaking about his extensive involvement with ICANN,

But we, all stakeholders of the multi-stakeholder model still need to keep watching it. ICANN is still an evolving experiment which needs to be closely monitored so as for it to succeed. ... My fears are that the model disqualifies itself. How? By being unaccountable; by being opaque; by being captured; by being manipulated like a pawn, thus not serving Internet Users.¹³⁷

More and more actors are flocking to the field of internet governance, and coordination among them will continue to be paramount to the sustained success of the multistakeholder "experiment."

¹³⁷ Crépin-Leblond, Olivier. "Letter of motivation re: ATRT application." *ICANN* (December 3, 2012). <https://www.icann.org/en/system/files/files/crepin-leblond-motivation-letter-03dec12-en.pdf>.

4.3. Agreement

Despite values of openness and receptivity, multistakeholder processes do not arrive at ideal speech situations: not all actors participate willing to evaluate the merits of each others' arguments and modify their own preferences accordingly, and neither participants nor conveners can profess to purport perfect knowledge of a topic as complex as the workings of the global internet. The fact that many participants engage in such processes on behalf of an organization further reduces willingness to compromise in many circumstances, and is an additional challenge when attempting to even out real-world power imbalances in round-table discussions.

In 1995, J.R. Saul lamented that “serious, important decisions are made not through democratic discussion or participation but through negotiation between relevant groups based upon experience, interest, and the ability to exercise power.”¹³⁸ Tazim Jamal and Marcus Eyre further commented on this dissolution of the public sphere, noting that:

Society is seen as a sum of all groups and while individuals may enter into any one or more of these units, their primary loyalty is not to the society but to their group. Moreover, it is now rare in public debate to hear from anyone who is not representing an organization. Multi-party, interest-based processes that are convened to obtain public input thus face the challenge of demonstrating that individual citizens and the general public interest are fairly and adequately included in the process and its outcomes.¹³⁹

¹³⁸ Saul, J.R. *The Unconscious Civilization*. Massey Lecture Series (Concord, ON, University of Toronto and CBC Radio, Anansi Press), 1995.

¹³⁹ Tazim and Eyre, 2010.

The mention of the “public interest” is especially relevant when considering the ongoing transition of multistakeholder internet governance from a largely technical community to a larger policy space. Recalling how many multistakeholder internet governance organizations are “consensus-driven,” consider the following hypothetical situations:

Situation 1:

A multistakeholder group of network designers, operators, and researchers are deliberating between two courses of action. Option A is longer battery life, while Option B is the installation of a fast new processor. The chair of the group, an expert engineer with extensive knowledge of both processors and batteries, assesses that there is more support for Option A than B. After this is announced, opponents are given the chance to voice their concerns, which are subsequently examined by the working group. In the end, a trade-off is reached, to which the opponents respond: “Option A sacrifices processor speed for power consumption, but it’s a solution I can live with.” Having reached consensus, the group moves to design and manufacture the new device for distribution around the world.

Situation 2:

A multistakeholder group of governments, companies, and civil society members are deliberating between two courses of action. Option A gives law enforcement increased access to data for criminal investigations, while Option B more strictly regulates personal data privacy online. The convener of the discussion, a seasoned participant in internet governance processes with knowledge of criminal investigations and privacy regulations in many countries, assesses that there is more support for Option A than B. After this is announced, opponents are given the chance to voice their concerns, which are subsequently examined by the group. In the end, a trade-off is reached, to which the opponents respond: “Option A sacrifices the right to privacy for the rule of law, but it’s a solution I can live with.” Having reached consensus, the group moves to draft and implement the new policy for adoption around the world.

Unfortunately, even casual observers of internet governance proceedings could say that Situation 2 is quite improbable. In internet governance and beyond, coming to, engineering, or even determining any form of consensus is significantly more

complicated when such processes are superimposed on questions of societal values, especially on an international level. Few make it their principal occupation to defend the protection and expansion of battery lives around the world, while the number of organizations that do so for human rights are innumerable. When such inalienable or universal values enter the situation, choices that might have been “lived with” can easily become “show stoppers,” to employ IETF language.¹⁴⁰ While “rough consensus and running code” may work for the technical governance of the internet, the parallel adage “rough consensus and successfully implemented policies” is farcically optimistic.

4.4. Action

Barring a strict corporate hierarchy, the monopoly of an industry, or the possibility for some other form of executive action, outcomes sought by multistakeholder internet governance processes rarely go beyond voluntary agreements. Such “soft law” standards work well in terms of ensuring technical interoperability and managing critical internet resources, but the range of internet governance issues at play now extends far beyond the confines of the technical domain. The result of participatory policy processes such as WSIS and NetMundial have been questionable, and even the IGF has been rendered a talk shop in recent years, more valuable as a networking event or for incubating offshoot initiatives rather than developing policy solutions as originally intended. Similar observations have led some to claim that in the internet governance

¹⁴⁰ To use IETF language. Resnick, P. “RFC 7282: [On Consensus and Humming in the IETF](#).” *IETF* (June 2014).

space “multistakeholderism has become a mantra, void of its progressive potential and outcomes.”¹⁴¹

One of the reasons for the perceived lack of results could be a conflation of two separate stages of policy-making, particularly regarding complex topics like the internet. In order to take steps toward the development and implementation of successful, bottom-up policies, equal footing must first be established. For this reason, I distinguish between substantive and procedural developments in multistakeholder governance (or Phase 1 and Phase 2).

Table 3. Phases 1 and 2 in Multistakeholder Governance.

	Phase 1 – Substantive	Phase 2 – Procedural
Objectives	<ul style="list-style-type: none"> • Develop a mutual understanding of an issue • Foster dialogue and relationships between stakeholders • Mobilize resources 	<ul style="list-style-type: none"> • Elaborate concrete operational solutions • Distribute roles and responsibilities • Catalyze action from stakeholders
Outcomes	<ul style="list-style-type: none"> • Common vernacular • Knowledge sharing • Best practices • Generation of replicable frameworks 	<ul style="list-style-type: none"> • Adoption and implementation of policies, regulations, or standards

Many multistakeholder initiatives are established with the objectives of building an evidence base, framing issues, promoting common understanding, or fostering dialogue among stakeholders. Such “Phase 1” initiatives are necessary groundwork to coordinate actors, especially across fragmented sectors, and provide the “buy in” from stakeholders that will bolster the viability and sustainability of policies or standards

¹⁴¹ Hintz, Arne and Milan, Stefania. “In Multistakeholderism We Trust: On the Limits of the Multistakeholder Debate.” *The World Bank Blog* (September 30, 2014).

produced by multistakeholder processes. While such advancements may not be as easy to cite as concrete outcomes, they are successes nonetheless. If actors share a common vernacular or understanding of the problem at hand, be it battery life or the right to privacy, they will be more likely to honor and abide by prescriptive outcomes.

Even so, decisions and action beyond dialogue and deliberation are also necessary for the long-term success of multistakeholder initiatives and, indeed, the model itself. While there is value in creating fora for constructive dialogue, leveraging the framing of issues and the connecting of stakeholders toward collective action and tangible outcomes is both the potential and the purpose of multistakeholderism. Moreover, there is a risk of multistakeholder governance being rendered moot altogether if unilateral decision-making persists unabated in parallel, especially when carried out by entities simultaneously involved in multistakeholder processes.

CHAPTER V: CONCLUSIONS

Effectiveness and legitimacy can be mutually reinforcing, but pursuing one without the other can easily derail an initiative. Executive action is certainly an efficient means of bringing about action, but lacks the open participation, diversity of perspectives, and bottom-up nature that lend legitimacy to multistakeholderism as a governance model. At the same time, attempting to satisfy the preferences of myriad heterogeneous stakeholders can stop decision-making processes before they even get off the ground.

Even so, multistakeholderism is often required to some extent in order to successfully manage the complex challenges of today's world. From balancing ecological and industrial needs to controlling the spread of infectious disease or managing critical internet resources, multistakeholder initiatives present an opportunity to combine resources and expertise for a result that is more than the sum of its parts. This chapter concludes with a potentially replicable "success story" of multistakeholder policy development and four recommendations highlighting lessons learned from multistakeholderism in internet governance.

5.1. A Success Story

While only tangentially related to internet governance, an example of a concrete policy outcome developed through multistakeholder processes is the 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.¹⁴² The "Marrakesh VIP Treaty"¹⁴³ was intended to introduce a human rights perspective into copyright considerations. The treaty addresses the "global book famine" in which only 1-7 percent of the millions of books published worldwide are made available to the nearly 300 million people in the world who are blind or visually impaired, 90 percent of whom live in developing countries or low-income households.¹⁴⁴ The treaty was developed by the World Intellectual Property Organization (WIPO), a specialized self-funding UN agency that "actively involves a wide range of stakeholders" beyond its 189 member states, in collaboration with the international World

¹⁴² "Main Provisions and Benefits of the Marrakesh Treaty." *WIPO* (2016), http://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf.

¹⁴³ Not to be confused with the Marrakesh Agreement on tariffs and trade.

¹⁴⁴ "Visual Impairment and Blindness (Fact Sheet no. 282)." *World Health Organization* (August 2014), <http://www.who.int/mediacentre/factsheets/fs282/en/#>.

Blind Union (WBU). The treaty requires contracting parties to fulfill two main obligations:

1. Provide a limitation or exception to copyright in order to allow authorized entities to make a copy of the work in an accessible format for persons with a print disability;
2. Allow the exchange across borders of those accessible copies in accordance with the operation of law.¹⁴⁵

The stated benefits of such a collective action agreement included:

- Improved awareness of the challenges faced by the print-disabled community and persons with disabilities;
- Greater access to education;
- Enhanced social integration and cultural participation;
- Access to leisure materials such as books, newspapers, and magazines for print disabled persons;
- Poverty alleviation and increased contributions to the national economy.¹⁴⁶

As of January 2017, less than four years after its conception, the Marrakesh VIP Treaty has been signed by 87 countries and the European Union, and has entered force in 25 (see Appendix C).

Leveraging the legitimacy conferred by being housed by a UN agency, the WIPO team behind the Marrakesh VIP Treaty was able to successfully curate the participation of influential actors from the most relevant stakeholder groups, including governments. At the same time, partnering with a well-known international NGO in their targeted field gave the team access to knowledge, insight, expertise, and capacities that they might not have been able to assemble on their own, especially on a short timeframe. Despite this patronage (and funding), however, the initiative remained largely independent in their activities.

¹⁴⁵ “Main Provisions and Benefits of the Marrakesh Treaty,” 2016.

¹⁴⁶ Ibid.

In terms of coordination, the team practiced a hub-and-spoke rather than decentralized format, actively convening and moderating dialogues and never losing sight of their specific policy target. Initial momentum was capitalized upon with a galvanizing event in Marrakesh that brought stakeholders together, further established credibility for the initiative, and gave shape to the global policy dialogue on the concrete issue of access to public works for the visually impaired. A compelling narrative, “Bringing a human rights perspective to copyright,” garnered further agreement and support for the initiative, which had a limited scope and realistic goals.

Once the initiative was ripe for action, WIPO was able to capitalize on their existing base of member states for policy implementation. The treaty’s implementation was facilitated by its straightforward commitments and clear benefits for contracting parties and the “greater good” alike. The entire process, from conception to implementation, was carried out on a relatively short timeline with the endgame always in sight. Finally, as there are still many more countries that are considering or in the process of ratifying the agreement, the initiative’s successes did not extinguish its mandate.

5.2. Recommendations

Based on this survey of multistakeholderism, especially as it manifests in internet governance, four recommendations can be made for increasing the probability of successfully carrying out multistakeholder initiatives that develop and implement bottom-up policies.

Recommendation 1: Leverage existing institutions where possible

While bottom-up processes bring more perspectives and knowledge to the table, decision-making processes benefit from clear, coordinated, and consistent messages, especially when reporting on outcomes or assigning subsequent roles and responsibilities. In many cases, establishing a brand new multistakeholder initiative is like opening a restaurant in a big city: the field is crowded, people are fickle and may not acknowledge the quality of your product, and failure is likely. A potential work-around is implementing multistakeholder processes within pre-existing international organizations or other well-known institutions. Benefits from this approach may include:

- Pre-existing legitimacy, which can make it easier to attract stakeholders in the initiatives early stages of network development;
- Visibility, which reduces the risks of duplicating efforts made by other initiatives and provide the contacts for fruitful partnerships moving forward;
- Consistent funding, allowing the initiative to better weather possible delays or de-railings without compromising on its overarching goals;
- Organizational or administrative support, allowing initiative leaders to focus on advancing projects and reaching goals; and
- Global reach and a more established platform for reporting on outcomes and successes.

Recommendation 2: Balance institutionalization with responsiveness

Many participants in multistakeholder governance processes are pressed for time and, depending on their expertise and the competition in the field, may be approached to participate in many different multistakeholder processes. Apart from setting reasonable expectations for time and resource commitments from stakeholders, giving clear objectives, defined timelines, and an indication of desired (and minimum) contribution levels contribute to the success of an initiative.

However, the predictability of institutionalization must be balanced with responsiveness when steering multistakeholder initiatives, especially if they are based in rapidly changing policy spaces. If longevity is envisioned beyond the achievement of one particular goal, the initiative's mandate must be narrow enough to allow for targeted, solutions-orientated discussions and prevent it from becoming a proxy for larger power struggles (which may be unavoidable to an extent), but versatile enough to be capable of adjusting to changing landscapes and maintaining support without overburdening resources, risking internal fragmentation, or being perceived as inconsistent.

Recommendation 3: Know your audience and their incentives

Unfortunately, money and power are often more effective incentives to action than promoting unity or doing the right thing. Demonstrating the relevance of the initiative's goals to actors involved will not only increase the likelihood of their sustained participation, but increase their drive to ensure success. Especially for initiatives working to establish common vernacular among stakeholders, generate best practices, or draft frameworks for action, reminding stakeholders, funders, and the public of the specific benefits of the initiative's contribution is important in the absence of less tangible policy decisions.

Recommendation 4: Aspire toward action and concrete results

Be it a new transparency reporting regime, a voluntary agreement, an international treaty, the implementation of national policy, or changing a phrase in a company's terms of service, multistakeholder initiatives must be trained toward a well-

defined and objectively identifiable goal that can be externally monitored and evaluated.

If not, they risk drowning in rhetoric and becoming another talk shop.

Beyond these recommendations, future research can be carried out concerning:

- the long-term viability of bottom-up, consensus-based policies;
- the successful implementation of multistakeholder policies on a national basis;
- the outcomes of multistakeholder task forces in international organizations and multinational companies;
- the cross-pollination of mechanisms for bottom-up, multistakeholder policy development between including internet governance, environmental policy, world health, and other global policy fields; and
- the possibility of engineering a model of consensus-based decision-making more apt for policy discussions.

APPENDIX A:

Network Working Group RFC-3

Network Working Group
RFC-3 (<https://tools.ietf.org/rfc/rfc3.txt>)
April 1969
Steve Crocker
UCLA

DOCUMENTATION CONVENTIONS

The Network Working Group seems to consist of Steve Carr of Utah, Jeff Rulifson and Bill Duvall at SRI, and Steve Crocker and Gerard Deloche at UCLA. Membership is not closed. The Network Working Group (NWG) is concerned with the HOST software, the strategies for using the network, and initial experiments with the network. Documentation of the NWG's effort is through notes such as this. Notes may be produced at any site by anybody and included in this series.

CONTENT

The content of a NWG note may be any thought, suggestion, etc. related to the HOST software or other aspect of the network. Notes are encouraged to be timely rather than polished. Philosophical positions without examples or other specifics, specific suggestions or implementation techniques without introductory or background explication, and explicit questions without any attempted answers are all acceptable. The minimum length for a NWG note is one sentence. These standards (or lack of them) are stated explicitly for two reasons. First, there is a tendency to view a written statement as ipso facto authoritative, and we hope to promote the exchange and discussion of considerably less than authoritative ideas. Second, there is a natural hesitancy to publish something unpolished, and we hope to ease this inhibition.

FORM

Every NWG note should bear the following information:

1. "Network Working Group"
"Request for Comments:" x
where x is a serial number.
Serial numbers are assigned by Bill Duvall at SRI

2. Author and affiliation
3. Date
4. Title. The title need not be unique.

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4. Jeff Rulifson, UTAH
5. Ron Stoughton, UCSB
6. Steve Crocker, UCLA

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OTHER NOTES

Two notes (1 & 2) have been written so far. These are both titled HOST Software and are by Steve Crocker and Bill Duvall, separately.

Other notes planned are on

1. Network Timetable
2. The Philosophy of NIL
3. Specifications for NIL
4. Deeper Documentation of HOST Software.

APPENDIX B:

NTIA Statement of Policy

Excerpt from: Daley, William M. "Management of Internet Names and Addresses: Statement of Policy." *Federal Register* 63.111 (June 10, 1998). https://www.ntia.doc.gov/files/ntia/publications/6_5_98dns.pdf.

In recent years, commercial use of the Internet has expanded rapidly. As a legacy, however, major components of the domain name system are still performed by, or subject to, agreements with agencies of the U.S. Government.

(1) Assignment of numerical addresses to Internet users.

Every Internet computer has a unique IP number. IANA, headed by Dr. Jon Postel, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

(2) Management of the system of registering names for Internet users

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of gTLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org was for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by NSI, under a five-year cooperative agreement with NSF. This agreement expires on September 30, 1998.

(3) Operation of the root server system

The root server system is a set of thirteen file servers, which together contain authoritative databases listing all TLDs. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis. Different organizations, including NSI, operate the other 12 root servers. The U.S. Government plays a role in the operation of about half of the Internet's root servers. Universal name consistency on the Internet cannot be guaranteed without a set of authoritative and consistent roots. Without such consistency messages could not be routed with any certainty to the intended addresses.

(4) Protocol Assignment

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers,

autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

APPENDIX C:

Marrakesh VIP Treaty Parties

Table 4. Countries that have Implemented the Marrakesh VIP Treaty.

Country	Ratification/Accession	In Force
Argentina	April 1, 2015	September 30, 2016
Australia	June 23, 2014	September 30, 2016
Botswana	October 5, 2016	January 5, 2017
Brazil	December 11, 2015	September 30, 2016
Canada	June 30, 2016	September 30, 2016
Chile	May 10, 2016	September 30, 2016
Ecuador	June 29, 2016	September 30, 2016
El Salvador	October 1, 2014	September 30, 2016
Guatemala	June 29, 2016	September 30, 2016
India	June 24, 2014	September 30, 2016
Israel	March 21, 2016	September 30, 2016
Liberia	October 6, 2016	January 6, 2017
Mali	December 16, 2014	September 30, 2016
Mexico	July 29, 2015	September 30, 2016
Mongolia	September 23, 2015	September 30, 2016
North Korea	February 19, 2016	September 30, 2016
Paraguay	January 20, 2015	September 30, 2016
Peru	February 2, 2016	September 30, 2016
Republic of Korea	October 8, 2015	September 30, 2016
Saint Vincent and the Grenadines	September 5, 2016	December 5, 2016
Singapore	March 30, 2015	September 30, 2016
Sri Lanka	October 5, 2016	January 5, 2017
Tunisia	September 7, 2016	December 7, 2016
United Arab Emirates	October 15, 2014	September 30, 2016
Uruguay	December 1, 2014	September 30, 2016

Source: WIPO. “WIPO-administered Treaties.”

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