Governing the Electronic Commons: Globalization, Legitimacy, Autonomy and the Internet

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There is a myth that the Internet is a "virtual frontier," an untamed cyber-wilderness where anything goes and where regulation or control is futile. But the ability to send data from one computer to another depends on some quite complicated rules. The rules have to be global, and so the regulation that makes it all work has to be global as well. This is the heart of the Internet governance debate — how to regulate and manage globally a system that resists regulation and management, often in the name of autonomy?

While the invention and development of the Internet in the 1960s depended on US (military) funding, it grew incrementally from the bottom up, through network interconnections, without any government oversight, and run largely by a handful of hippie-era physicists. By the late 1990s, it had become too important for this kind of informal and voluntary governance system, and so in 1998 the US government (on whose soil most of the key Internet infrastructure resides) coaxed the establishment of a new, international regulatory body called the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is highly unusual — unlike virtually every other global standard setting organization, it is a private, non-profit corporation (located in California), with minimal input from international organizations or governments. The United States deliberately designed it to have a flexible and supply governance structure, but also to ensure that the United States continued to have ultimate control. The United States also mandated ICANN to be an inclusive body, with grassroots participation from around the world. These conflicting demands — to be a technical regulatory and standards setting body, to be globally inclusive and democratic, to somehow include governmental input without being dominated by foreign governments or international organizations — bedeviled ICANN for its first seven years, and led a loose coalition of international organizations (e.g., the United Nations, the International Telecommunications Union or ITU), the European Union, and emerging countries like China, Brazil, and some Arab nations, to try to bring Internet governance under their control through the World Summit on the Information Society (WSIS), which met in 2003 in Geneva and again in November 2005 in Tunis.

My analysis of ICANN and WSIS was driven by two questions: "How do individuals and communities retain or gain influence and control over local and non-local decisions that affect them"? and "Under globalization, how or why do individuals and communities accept commands directed at them, or that affect them, as legitimate"? It arrived at three conclusions. First, people are increasingly connected through modern communications, and many wish to exercise their sense of connection and autonomy at the global level. People increasingly want to have a say, not merely at the local, regional, or national level, but at the international and global level. This was particularly evident in the emphasis that was placed on ICANN's inclusiveness, and the efforts it undertook (somewhat reluctantly) to hold global elections in 2000 for five seats on its board. ICANN eventually retreated from this experiment, but organizations have sprung up worldwide demanding more individual participation in ICANN's activities, and this became a major theme in the WSIS. The Tunis Agenda that emerged from the WSIS was somewhat disingenuous in calling repeatedly for "multi-stakeholder" participation (e.g., this

was backed by Arab states and China), but it is clear that ICANN's global legitimacy demands that it respect in some measure individual autonomy as expressed through civil society organizations.

Second, globalization's reduction of state influence and power is not unchallenged — community autonomy was expressed in the clamour of states to be engaged in Internet governance. ICANN presented several thorns in the side of the international community. It was evidently not merely a technical, regulatory agency, whatever its own rhetoric — it was also a policy-making body. Moreover, even though it had governmental representation through something called the Government Advisory Council (GAC), it still reported to only one government, that of the United States. Indeed, in June 2005, only months before the WSIS was to discuss Internet governance, the US government issued a terse statement saying that it refused to relinquish control over the foundations of the Internet (the root zone file, which is the basis of the addressing system that allows data to move from one computer to another, specified computer). Finally, in a post-Iraq war world, many countries were disgruntled at what they saw as yet another example of American unilateralism. In the end, since they lacked any leverage over the United States, the states represented at the WSIS grudgingly accepted the status quo and ICANN for the time being, but demanded the establishment, under UN auspices, of an Internet Governance Forum (IGF) to discuss public policy issues by bringing together governments, international organizations, and other stakeholders. As well, in its statement of principles, the WSIS left no doubt that Internet governance over policy issues was the domain of all states, not just one.

Finally, the saga of Internet governance demonstrates that globalization is stimulating experimental concepts in legitimacy and democracy — should Internet users be considered "Internet citizens" with rights to vote on its regulations; can a non-profit corporation take the place of international organizations of states; should interests be represented functionally within a global organization, and still be involved in a more traditional democratic process of one person, one vote? The WSIS was a shot across the bow of both ICANN and the US government, and while it eventually upheld the status quo, through the IGF it will stimulate a new, prolonged dialogue about Internet governance and the appropriate roles of different stakeholders, particularly governments. It is highly unlikely that the governance regime will evolve into a traditional, state and treaty-based organization like the ITU. More plausibly, the Internet will invite a more distributed form of international regulation and policy-making, one that responds to the realities of modern globalization as well as the dynamic quest for individual and community autonomy.