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## **Rawls, Fraser, redistribution, recognition and The World Summit on the Information Society**

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The author frames an account of the 2005/6 World Summit on the Information Society (WSIS) and the Working Group on Internet Governance (WGIG) in the framework of John Rawls' arguments for redistribution using the "difference principle" and Nancy Fraser's arguments for recognition as constituents of justice. He argues that the intensity and character of debates in the WSIS/WGIG can better be understood in terms of Fraser's notion of recognition rather than Rawls' notion of redistribution. He argues that the dynamics of WSIS/WGIG can be understood in terms of conflicting recognition claims from states and civil society focused on the legitimacy of "trilateralism", including civil society, as a principle of participation in these Internet governance fora.

"The 'struggle for recognition' is fast becoming the paradigmatic form of political conflict in the late twentieth century..... Cultural domination supplants exploitation as the fundamental injustice" (Fraser 1997: 11).

"Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are equally shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and differences in authority would make everyone better off than in this hypothetical starting situation, then they accord with the general conception" (Rawls 1999: 54-5).

### **Introduction**

The 2003-2005 World Summit on the Information Society (WSIS) was the first formal UN summit on communications and addressed three chief issues:

- Internet governance.

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- the “political chapeau”/Tunis Commitment.<sup>2</sup>
- use of Information and Communication Technology for Development (ICT4D).

Internet governance, (notably the role of the US based Internet Corporation for Assigned Names and Numbers, ICANN, in governing the global Internet addressing system – the domain name system, DNS), was an intensely contested issue at the WSIS and its discussion dominated much of the proceedings of the Summit and its pendant Working Group on Internet Governance (WGIG). These disagreements, and their intensity, may seem surprising because the Internet is a global infrastructure which generally works well and also because this rather abstract issue took at least rhetorical precedence over the concrete question of access to and distribution of resources: Internet governance rather than ICT4D took centre stage at WSIS.

Why should this be so? Can contemporary political philosophy resolve this puzzle? And, in particular, how far can John Rawls' *A Theory of Justice* (a work whose widely acknowledged influence on contemporary political philosophy has run alongside some scepticism as to how far Rawls' system, and his “difference principle” in particular, can help with real world political problems) illuminate the events of the WSIS and WGIG? Further, how far can Nancy Fraser's arguments for the importance of “recognition”, a concern neglected by Rawls, clarify the WSIS/WGIG conflicts?

### **Rawls, Fraser, re-distribution and recognition**

The late John Rawls' *A Theory of Justice* (Rawls 1971 and 1999) is widely regarded as the most important work in political philosophy to appear in recent years and to offer powerful and innovative arguments for the importance re-distribution in securing justice and fairness. Rawls' academic home, Harvard University, plausibly stated in its obituary notice after Rawls' death in 2002 that “Rawls is considered by many to be the most important political philosopher of the second half of the 20th century” (<http://www.policylibrary.com/rawls/> on 18.10.2006). Wikipedia, with similar plausibility, claims that “Many academic philosophers believe that Rawls made an important and lasting contribution to political philosophy. There is general agreement that the publication of *A Theory of Justice* in 1971 led to a revival in the academic study of political philosophy. Rawls's work has crossed disciplinary lines, receiving serious attention from economists, legal scholars, political scientists, sociologists, and theologians. Rawls has the unique distinction among contemporary political philosophers of being frequently cited by the courts of law in the United States and referred to by practicing politicians in the United Kingdom” ([http://en.wikipedia.org/wiki/John\\_Rawls](http://en.wikipedia.org/wiki/John_Rawls) on 18.10.2006). And Sandel (1982: 13) comments “revisionist' deontology captures the spirit of much contemporary liberalism and finds its fullest expression in the work of John Rawls” and acknowledges “the voluminous critical literature” (Sandel 1982: 15) which Rawls' work has attracted. Martin (1985: vii) remarks that “*A Theory of Justice* (1971) is already something of a classic”.

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<sup>2</sup> A political declaration on development of a pervasive global information society linking a variety of national initiatives. For examples see: <http://www.itu.int/wsis/docs2/pc2/off6.html> on 3.2.2006

Rawls' influential theory of justice rests on an imagined agreement between people whereby they, we, would spontaneously choose to distribute social primary goods as if we were doing so from behind a "veil of ignorance" (Rawls 1999: 119). The distribution that emerges from behind the veil of ignorance is, for Rawls, the "original position" an 'initial status quo which insures that the fundamental agreements reached in it are fair" (Rawls 1999: 15). And from the original position Rawls derives two principles of justice: a principle of liberty where "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" and a principle of difference whereby 'social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all" (Rawls 1999: 53).

The re-distributive implications of Rawls' difference principle and the practical consequences of Rawls' proposition that "the social order is not to establish and secure the more attractive prospects of the better off unless doing so is to the advantage of the less fortunate" (Rawls 1999: 65)<sup>3</sup> have attracted much attention. A measure of the celebrity of Rawls' "*A Theory of Justice*" (1999)<sup>4</sup> is the extent to which his arguments have been the subject of extension and qualification. Robert Nozick's "*Anarchy, State and Utopia*" (1974) is perhaps the most celebrated instance of an engagement with Rawls' arguments (see also Honderich 1975, Sandel 1997) but latterly Nancy Fraser's arguments for the importance of "the struggle for recognition" (Fraser 1997: 11) have proven influential.

Fraser's themes are partly foreshadowed in Rawls' own development of his arguments. Rawls (1999: 386) stated that "perhaps the most important primary good is that of self-respect" and observed that one of the revisions he would make, were he further to revise *A Theory of Justice* (after his reworking of the 1971 text in the 1999 text), would be to rework his discussion of property owning democracy and a welfare state in the light of the idea of citizens being able to "take part in social cooperation on a footing of mutual respect" (Rawls 1999: xv). Respect and recognition are closely intertwined and Rawls' revisionary intentions perhaps suggest an acknowledgement of the substance of such criticisms.

But Rawls' possibly insufficient consideration of the matters of respect and recognition is not the only qualification which has been entered about his work. Others have argued that he constructs the problem of justice at an individual, rather than social or political level and that, in spite of the celebrity of *A Theory of Justice*, Rawls' system cannot readily be applied to real world political problems. Honderich, for example, in one of several robust engagements with Rawls beginning with his review of *A Theory of Justice* in *Mind* (Honderich 1975), contended that the imagined contract "behind the veil of ignorance" which Rawls placed at the centre of his system was asocial (and thus apolitical) because the contracting parties imagined by Rawls were "*identical* with each other" and that consequently their imagined distribution of endowments using the difference principle was only an instance of the "binding sort of agreement that occurs when you agree with yourself" (Honderich 2001: 212). Sandel, less truculently,

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<sup>3</sup> Or as Rawls put it in the first version of "*A Theory of Justice*", "Social and economic inequalities are to be arranged so that: a) they are to be of the greatest benefit to the least-advantaged members of society (the difference principle). b) offices and positions must be open to everyone under conditions of fair equality of opportunity (Rawls 1971: 303).

<sup>4</sup> First published in 1971 and revised and republished in 1999.

makes an analogous point when proposing that "Political philosophy seems often to reside at a distance from the world" (Sandel 2005: 156) and goes on to substantiate his general contention through a discussion of Rawlsian liberalism and its antecedents.

However, Fraser treats the politics of Rawls' arguments more generously (and, as I shall try and show below, the difference principle can illuminate at least one very concrete socio-political issue) in arguing that something important is left out by Rawls – notably the claims of recognition. Her arguments are framed to extend and complement Rawls (rather than, as did Rawls' most celebrated interlocutor Robert Nozick, to open up a radically different frame of reference) and she argues that although the struggle for recognition deserves more salience its importance but does not extinguish the question of distributive justice, and the struggles for re-distribution, which were Rawls' primary focus. Rather she states "Cultural domination supplants exploitation as the fundamental injustice" (Fraser 1997: 11).

How far can Rawls' and Fraser's notions of redistribution and recognition inform our understanding of telecommunication and Internet policy and of the WSIS and WGIG in particular? What was taken to be the "fundamental injustice" and what, in these domains, would count as the "social primary goods"? And how, if at all, would Rawls' difference principle, the proposition that inequality is justified only when all benefit (albeit unequally) from such inequalities, and Fraser's notion of "recognition" apply to telecommunications and Internet policy?

### **The digital divide and re-distribution**

There is now an abundant scholarly literature on the "digital divide" – a term which is now pervasive<sup>5</sup> - (notable instances include Compaine 2001, Golding and Murdock 2001, Hargittai 1999, Hargittai nd, Norris 2001, 6 and Judd 2001) and in the light of this literature we might plausibly claim that connectivity, the ability to communicate, is the relevant "primary good".<sup>6</sup> If so, a Rawlsian might ask whether the manifest inequalities in global capacities and competencies in connectivity and communication can be justified on the grounds that these inequalities co-exist with improvements to the communicative capacity of the worst off.

It seems there is a potential (albeit as yet not fully realised) to do so. Average and marginal costs tend to fall rapidly as electronic communication infrastructures are built out and network utility for all users rises as networks become extended. This suggests that, although the digital divide<sup>7</sup> seems to be

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<sup>5</sup> Google Scholar identified about 164,000 results for "Digital Divide" on 25.10.2006.

<sup>6</sup> Telephone, cellular and internet access are among the indices used by the United Nations in monitoring the achievement of its Millennium Development Goals. See Goal 8 "Target 18 "In cooperation with the private sector, make available the benefits of new technologies, especially information and communications" at <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm> on 18.10.2006.

<sup>7</sup> The term "digital divide" may mask as much as it reveals: the importance of factors such as literacy, access to reliable electricity supplies and so on bear differently on different digital communication technologies such as cellular telephony and Internet access and use.

best explained as a manifestation of a general divide between rich and poor (see Hargittai 1999, Norris 2001<sup>8</sup>), there may be more promising opportunities to reduce the divide in communications than in other domains of significant wealth disparities such as health, housing and education. There is both theoretical and empirical evidence which suggests that this is so.

In a hypothetical electronic communication network (costing, let us say, 2 cost units) of two users the costs of the network must be born by these two who are connected and if the costs are shared equally then each user pays one cost unit. If a third user joins the network there may, depending on network architecture, be no additional costs (eg if wireless propagation of signals is used) and in most scenarios the cost of supplying the third user is less than the one cost unit born by the first pair of users, the "early adopters". Moreover, the potential utility of the network for all users rises as new users join the network<sup>9</sup>.

Clearly "early adopters" in the scenario sketched are advantaged relative to those who lack connectivity and are left behind, "digitally divided" from the connected. But in Rawlsian terms there need be nothing necessarily offensive about the advantages enjoyed by the early adopters. For, by bearing the costs of initially establishing the network, early adopters make possible the later connection of others at lower costs and prices. Of course, for this potential to be realised, much depends on variables such as the speed of network rollout, the pricing and cost allocation policies of network operators, access to electricity, attainment of literacy and numeracy and so on. It is not difficult to imagine, or identify real world examples, scenarios where the relatively disadvantaged do not enjoy in timely fashion and at reasonable and affordable prices the potential benefits which under different policies they might enjoy.

But surely a potential to satisfy Rawls' difference principle exists. Much depends on the judgement taken on what is an acceptable time scale for the disadvantaged to have access to the benefits enjoyed earlier by others. And, once an acceptable time period is identified, there are many intervening empirical variables to affect and constrain the realisation of such potentiality. As indicated above, factors which are strictly exogenous to the domain of telecommunications and Internet policy (such as attainment of literacy and access to reliable supplies of electrical power) can be decisive. But there are also important endogenous factors, Paltridge (OECD 2006: 14) has testified to the power of incumbent telcos "to exercise monopoly power over domestic or international facilities" and thus make "broadband pricing.... A source of criticism from users and regulators". He observed that "The greatest cost barriers to any country

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<sup>8</sup> In late 2006 the World Institute for Development Economics Research of the United Nations University published (UNU-WIDER 2006) a report on world distribution of household wealth which showed great inequalities in wealth both between states and within states. The press release launching the study was titled "Pioneering Study Shows Richest Two Percent Own Half World Wealth" see <http://www.wider.unu.edu/research/2006-2007/2006-2007-1/wider-wdhw-launch-5-12-2006/wider-wdhw-press-release-5-12-2006.pdf> on 5.12.2006.

<sup>9</sup> See Collins 2005 for a fuller account of this relationship.

connecting to global networks is not traffic exchange relationships in competitive environments, but monopolists charging high prices in the absence of such competition" (OECD 2006: 31)<sup>10</sup>.

Nonetheless, there are not a few real world examples where initially unequal access to social primary goods in electronic communications has made possible widespread sharing of benefits: the strikingly rapid dissemination of mobile telephony in South Africa is one example personally known to the author. <sup>11</sup>Mobile telephony rapidly developed from being a rich (white) man's toy to a socially pervasive and by now indispensable medium<sup>12</sup>. And the spectacular global growth of Internet traffic and connectivity provides another case in point. The growth of access to the Internet has been, and continues to be, remarkable. As Paltridge (OECD 2006: 4) observes "the Internet has become a critical and integral part of economic and social life. This has been made possible by the phenomenally successful growth of the Internet, as a network of networks. In 2005 more than 20,000 networks with independent routing policies provided connectivity..... supporting close to a billion users around the world".

In September 2006 World Internet Statistics<sup>13</sup> estimated that 16.7% of the world's population had Internet access. Access grew across the world although regional disparities were striking (access in 2006 ranged from 69.1% in North America to 3.6% in Africa) there was a pervasive overall growth in global Internet access: access in Africa grew from 4,514,400 in 2000 to 32,765,700 in 2006 (a growth of 625.8%) whereas in the same period in North America growth (of course, from a higher initial base) amounted to 112%. Quality of service (QoS) is less easy to compare regionally – a leading source,

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<sup>10</sup> Paltridge catalogues a heart breaking list of African countries (see OECD 2006: 36) where the power of incumbents has led to perverse underutilization of established capacity and consequentially higher prices to users – he states (of the SAT-3 cable) that 'a valuable resource for Africa's development.... Has been chronically underutilized. For the main part this has been because of monopolies charging excessive process (OECD 2006: 36). Similarly, Hargittai (1999) argued, using data from OECD countries, that Internet connectivity was positively related to competition in telecommunications provision.

<sup>11</sup> GrameenPhone in Bangladesh appears to be another notable case in point (the GrameenPhone model has also been exported to Rwanda and Uganda). See <http://www.grameenphone.com/modules.php?name=Content&pa=showpage&pid=3:11:1> on 26.10.2006.

<sup>12</sup> Mobile telephony in South Africa is not simply a device for voice communication but is a gateway to banking and other services. Phone ownership and use is high, the Financial Times (FT 2006), drawing on ITU data (see [http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/CellularSubscribersPublic&RP\\_intYear=2005&RP\\_intLanguageID=1](http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/CellularSubscribersPublic&RP_intYear=2005&RP_intLanguageID=1) on 30.11.2006), estimates that in 2005 72% of South Africans had a mobile/cell 'phone, and has far outpaced wireline provision by the state monopoly Telkom. In this South Africa is representative of Africa where 83% of African telephone subscribers are mobile subscribers (FT 2006). Moreover "spaza", informal, 'phone shops provide access to many unable to afford a personal cell 'phone. See *inter alia* Reck and Wood 2003. In comparison, the ITU (*ibid*) estimates that in 2005 the USA had a mobile penetration of only 68%.

<sup>13</sup> Data summarized from Internet World Statistics at <http://www.internetworldstats.com/stats.htm> on 23.10.2006. See also Cybergeography at <http://www.cybergeography.org/statistics.html> and the Cooperative Association for Internet Data Analysis (CAIDA) at <http://www.caida.org/data/>

Internet Traffic Report<sup>14</sup>, does not report on response time or packet loss ratios (two significant QoS indices) for Africa (North America has the best QoS rating at 88 and Asia the worst at 58 (against a global average rating of 81)).<sup>15</sup> In respect of other significant indices, Paltridge (OECD 2006: 4) notes the fall in costs of connectivity, from an average of \$1,000US per month in 1995 for a permanent 56/64kbs connection to a monthly cost in 2005 of less than \$30US for a connection of vastly greater bandwidth<sup>16</sup>. Paltridge (OECD 2006 at Figure 8 p 41) also identifies a growth in Internet Exchange Points (IXPs) between 1994 to 2004 rising, for OECD members, from fewer than 10 to more than 140 whereas for the rest of the world the number rises from 0 to more than 40.

Data of this kind may be less than completely persuasive in respect of the benefits which accrue to the least advantaged in consequence of the financing of infrastructures by, and building of facilities for, the better off. OECD members are very different to sub-Saharan Africa. But reliable data is both less readily available and less complete for Africa than it is for other parts of the world. Nonetheless, there seem few reasons to doubt that the fall in prices of connectivity, thus opening up Internet access, which has arisen primarily in consequence of demand from relatively wealthy users offers benefits to the relatively poor – even the illiterate and those without access to mains electricity can (and do) benefit from VoIP<sup>17</sup> cellular telephony services. A Rawlsian, who was prepared to accept a reasonable (and there is much room for discussion about what constitutes “reasonable” in this context) delay in the realisation of the potential for the worst off to benefit from access to electronic communication networks, might see the established rate of closure of the “digital divide” as consistent with the “difference principle” and compatible with a Rawlsian notion of justice. Certainly, the faster the divide closes the better, and there is much to impede or prevent its closure, but the existence of a digital divide and differences in the rate of diffusion of new communication technologies and practices (such as mobile telephony and Internet connectivity) are not in themselves necessarily unjust.

### **Justice, recognition, redistribution and the WSIS/WGIG**

The novel salience of the Internet (albeit after nearly 40 years of Internet history!), the high, but uneven, levels of growth in Internet access and the influence of the Internet on established structures and relationships in telephony (eg the substitution of VoIP for conventional voice telephony and the rebalancing of financial transfers between states through changes to international telecommunication

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<sup>14</sup> Internet Traffic Report at <http://www.internettrafficreport.com/main.htm> on 23.10.2006.

<sup>15</sup> I have been unable to identify data on trends in the volume of global Internet traffic. However there seem few reasons to doubt that this continues to grow very rapidly. As Cukier (nd para 2.1) states “Hard data on international Internet traffic volume are difficult to come by”. See OECD 2006 for an abundant collection of data and testimony to some of the problems of data collection and analysis. However, this source has much more comprehensive data for OECD member states than it does for the rest of the world – in this it is representative of other studies.

<sup>16</sup> Paltridge also notes (OECD 2006: 13) that wholesale access prices have fallen and that “What might have cost USD 1000 per Mbps per month in 1995 may cost USD 15 per Mbps per month in 2005” and that “transit prices well below USD 10 per Mbps were available in major cities around the world”.

<sup>17</sup> Voice over Internet Protocol.



settlements regimes – see OECD 2006) all informed discussion in the United Nations' first summit on communications, the World Summit on the Information Society (WSIS) which took place in Geneva and Tunis between 2002-2005. The WSIS was notable both as the first formal UN summit on a communications issue and as the first UN summit in which civil society<sup>18</sup> enjoyed a formal status as participant.

The WSIS focussed on two major themes<sup>19</sup>:

- Internet governance
- ICT (Information and Communication Technology) for Development.

Of the two potentially controversial issues ICT4D (see Maitland 1984 and Weigel and Waldburger 2004), corresponded most closely to the Rawlsian issue of redistribution. In the context of the Summit, it was taken forward by a Task Force on Financial Mechanisms (TFFM), set up by the UN Secretary-General, which reported to the WSIS (WSIS 2005) which in turn, in the Tunis Agenda for the Information Society at Clause 28 (see <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html> on 18.10.2006), established a Digital Solidarity Fund to reduce inequality and diminish the digital divide. Though concerned with access to resources and thus closely linked to global inequalities, ICT4D was, in comparison to Internet governance, uncontroversial. On ICT4D matters, the Tunis Agenda, the principal formal outcome of the WSIS, specifically recommended promotion of wider access to, and use of the Internet. Clause 27 of the Agreement identified several "improvements and innovations in existing financing mechanisms" including "Enhancing regional cooperation and creating multi-stakeholder partnerships, especially by creating incentives for building regional backbone infrastructure" and "Providing affordable access to ICTs, by the following measures **including** (my emphasis) reducing international Internet costs charged by backbone providers, supporting, inter alia, the creation and development of regional ICT backbones and Internet Exchange Points to reduce interconnection cost and broaden network access"<sup>20</sup> (at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html> on 25.10.2006).

It remains to be seen how effectively these, and other, related provisions are implemented. Markus Kummer (Head of the Secretariat of the Working Group on Internet Governance and latterly the Executive Coordinator of the Internet Governance Forum Secretariat) described (on 31.8.2006 at a public session of a short conference, "Internet Governance for Development: Focusing on the Issues" held at the Oxford Internet Institute - OII)<sup>21</sup> the Tunis Agenda/Agreement as "full of creative ambiguity" and a "diplomatic compromise text". These are often the characteristics of similar documents arising from formal international diplomatic negotiations. For some members of the WSIS the Digital Solidarity Fund was the

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<sup>18</sup> The 40 member WGIG was constituted on 12.11.2004 with a strong civil society element (see membership of WGIG at <http://www.wgig.org/members.html> on 2.2.2006).

<sup>19</sup> A third issue, the "political chapeau", was relatively uncontroversial because recognised to be a matter for individual states, rather than the Summit, to determine.

<sup>20</sup> Paltridge (OECD 2006) suggests that Internet Exchange Points (IXP) are notably appropriate ways of facilitating Internet access in developing countries.

<sup>21</sup> See webcast of the first day's proceedings at [http://webcast.oii.ox.ac.uk/?view=Webcast&ID=20060831\\_157](http://webcast.oii.ox.ac.uk/?view=Webcast&ID=20060831_157) on 25.10.2006.

most important consideration<sup>22</sup> but it, and redistribution issues in general, were neither the most salient in discussions, nor most prominent in the text of the Tunis Agreement nor the issues discussed with most passion and intensity at WSIS and WGIG sessions. Although the section on "Financial mechanisms for meeting the challenges of ICT for development" received rhetorical salience in the Tunis Agenda (as the first section, clauses 3-28, following the preamble) Internet governance accounted for a higher proportion of the text of the Agreement and dominated, both in time and intensity, the WSIS/WGIG proceedings. Internet governance in the context of the WSIS is further notable because it is a matter which touches chiefly on issues of recognition (see Fraser 2000) rather than of re-distribution.

### **Internet governance, recognition and the WSIS/WGIG**

Internet governance proved to be an intractable issue at WSIS. So much so that, following the inability of the first session of the WSIS to make progress on Internet governance, the Secretary-General of the UN established a dedicated working group, the Working Group on Internet Governance (WGIG) on 12.11.2004 under UN General Assembly Resolution 59/220. Even defining "Internet governance" proved vexatious. However, Kleinwaechter (a member of the WGIG) provides a helpful working definition: "The term 'internet governance', while undefined, rather vague and partly confusing, stands mainly for the global technical management of the core resources of the internet: domain names, IP addresses, internet protocols and the root server system" (Kleinwaechter 2004: 233).

But why was Internet governance so controversial and intractable an issue at WSIS/WGIG? The Internet is a striking global success story with connections and use of the Internet both growing rapidly. To be sure there are several unresolved governance issues, such as how users can enjoy better security and greater freedom from unwanted communications (spam), how Internet based crime can be more effectively curtailed, how the Internet can better accommodate languages using non ASCII scripts and how potential threats, notably those posed by proprietary technologies and software, to the Internet's openness, easy connectivity and the established end to end principles can be countervailed. But almost none of these issues came under extensive and systematic consideration (see, *inter alia*, Klein 2004). Rather the focus of controversy was an aspect of Internet governance which, in comparison to spam, security, crime and the like, works tolerably well.

The focus of controversy in respect of Internet governance was control of key elements of the Internet, now an indispensable global infrastructure, by a single country, the USA. The high point of hierarchical authority for the global domain name system (DNS), that is the system for allocating names and addresses for Internet sites on which the flow of e-mail, access to web sites etc depends, rests with the Internet Corporation for Assigned Names and Numbers (ICANN) which is domiciled in California, established under US law and which at the time of the WSIS/WGIG was governed by a Memorandum of Understanding (latterly known as a Joint Project Agreement) of the US Department of Commerce<sup>23</sup>. The

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<sup>22</sup> On 14.2.2005 the author interviewed the national delegate from Togo to the WSIS who emphasised the importance of access and re-distribution issues and specifically mentioned the "digital solidarity fund".

<sup>23</sup> The terms under which ICANN is constituted and operates changed with the expiry of the MoU between ICANN and the US Department of Commerce on 30.9.2006. See:

exceptional importance of one country in Internet governance stands in contrast to the governance of other international communications infrastructures, notably posts and telecommunications, where governance is undertaken by treaty based organisations notably the Universal Postal Union and the International Telecommunications Union. The functional, output, legitimacy<sup>24</sup> of the status quo (the Internet works, traffic and connectivity increases) did not satisfy *a priori* expectations and stipulations that a key global communication resource should be governed under a regime formally agreed by the world's governments and that only such a regime could be legitimate.

The argument for the ICANN based *status quo* was eloquently made at the WGIG on April 18 2005 by the Internet Society (ISOC) which stated:

"we are concerned, though, that many of WGIG's premises seem to start with an assumption that the Internet needs hierarchical top-down governance model implying one organization and thereby ignoring the decentralized structure on which the Internet was so successfully built. Not only does this governance hierarchy model, as it was called in some of the papers, prevent an accurate understanding of the Internet's infrastructure and its development..... but it also will very likely lead to conclusions that will harm the Internet's development and growth. The Internet Society believes that the best way to support the WSIS plan of action and the Millennium Development Goals and to extend the reach of the Internet is to build on those aspects that have worked well; namely, the long established open, distributed, and consensus-based processes and many regional forums for the development and administration of the Internet infrastructure. Decision-making about issues such as the IP address allocation policy has always been in the hand of the Internet community in order to be as close to those who require and use the resources as possible. It is this participative model close to the users that led to the phenomenal growth of the Internet".

In contrast, the claims of state governments for international authority over the Internet were representatively put forward by India and Syria. India said, at the same date and place WGIG, "we are here because countries felt excluded from a system controlled by private companies operating under laws of one country". And Syria noted: "the internationalization of the Internet is a natural process. We cannot accept the Internet being merely an American body subject to another American body, which I won't mention. We already said this at the summit. So the situation is clear, and our position is clear. And we don't need to repeat ourselves here. The Internet today is governed by American law and managed by an

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<http://www.icann.org/general/agreements.htm> , <http://www.icann.org/general/JPA-29sep06.pdf> ,  
<http://www.icann.org/general/icann-mou-25nov98.htm> , <http://www.icann.org/general/amend2-jpamou-07sep00.htm> on 20.10.2006.

<sup>24</sup> But see criticism of ICANN on grounds of lack of functional, or output, legitimacy by Mueller who claims that "ICANN can take anywhere from 3 – 5 years to come up with a policy" (Mueller 2005). Mueller has also (eg in an oral statement at WGIG on 14.2.2005) identified ICANN as dominated by business. See also Marlin-Bennett 2001, Mueller 1999 and 2002, Weinberg 2000.

American business. It's no secret. We all know it, and we cannot accept it". However, not all representatives of states concurred with the position put forward by India and Syria (or by other critical states such as Brazil, China and South Africa). Australia argued that "if internationalization means reducing the Internet to a governance process between nations alone, then we've lost one of the very things that we've been talking so actively about for a long time; that is, the multi-stakeholder approach involving all actors"<sup>25</sup>.

Different non-exclusive explanations can be offered for the high profile of Internet governance issues at the WSIS. These include the institutional interest of the International Telecommunication Union (ITU), the body which organised the WSIS and WGIG, which, as telecommunications systems metamorphose from circuit switched architectures to IP based packet switched architectures, stands to lose importance as more and more of the world's telecommunication traffic and infrastructure escapes its jurisdiction; the importance of the Internet for achievement of the goals of the UN Millennium Summit; the importance of the problems which beset the Internet such as eg spam, crime, viruses, the solution of which requires international co-ordination and so on.

But more important than these, at least in generating the intensity of the conflicts which took place at WSIS and WGIG, seems to have been issues of recognition of the kind to which Fraser referred. What seemed most important was resentment and anger about the putative offence to democracy, to the dignity of governments and the communities they represent posed by the control of an indispensable global infrastructure, the Internet, by a single country rather than by the international community.<sup>26</sup>

### **Trilateralism**

However, there was also an important procedural matter at the WSIS/WGIG which provided an additional point of conflict. This concerned "trilateralism", that is the extent to which representatives of civil society should be able to participate in the WSIS/WGIG deliberations alongside representatives of UN Member States and business.<sup>27</sup> WSIS was the first UN Summit formally to embody trilateralism. Following the Cardoso Panel's report on United Nations-Civil Society Relations (UN 2004), which recommended the UN to adopt "multi-stakeholder partnerships to pioneer solutions and empower a range of global policy networks (UN 2004: 32) and that "The Secretariat should innovate with networked governance" (UN 2004: 34), civil society was given the formal status of a participant in the WSIS (together with UN Member states and representatives of business). However, though numerically, civil society outweighed

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<sup>25</sup> Citations from author's contemporaneous notes, documents distributed at the WGIG and the WGIG simultaneously transcribed meeting record.

<sup>26</sup> Doubtless the matter of Internet governance also provided a lightning rod on which a generalised anti-Americanism rooted in quite other matters was discharged.

<sup>27</sup> Business has been formally recognised as a participant in UN meetings and was particularly strongly represented at the WSIS/WGIG because of the high level of business membership in the ITU, the UN agency under whose auspices the WSIS/WGIG was organised, which has more business members than state members.

the other two groups combined<sup>28</sup> in terms of power, states outweighed business and civil society and, in spite of its formal status, throughout the WSIS/WGIG, the presence of civil society was controversial.

China argued particularly strongly and consistently against civil society participation in WSIS/WGIG proceedings. China's argument was consistent with its advocacy of the exclusive rights of states to undertake Internet governance (and thus against the historically established and looser, multi-stakeholder, arrangements apparent in the ICANN regime).<sup>29</sup> Instead of ICANN, China proposed an intergovernmental organization under the UN framework to undertake Internet governance and made clear its position that: "policy-making should not surpass international law and national sovereignty, as pointed out in article 49 of the Declaration of Principles. The policy authority for Internet-related public policy issues is the sovereign right of states. They have rights and responsibilities for international Internet-related public policy issues" (statement at the WGIG, Geneva 18.4.2005). China further opposed "the so-called trilateralism" which denies "the due responsibility and role of governments in internet policy-making" and "ignores the fact that the private sector and civil society between the developed and developing countries is different development levels which may aggravate the imbalance and developing and developed countries and broaden the digital divide". Previously, at the second WGIG meeting (14.2.2005) Brazil argued that "Governments not corporations represent the interests of their citizens" and was echoed by Syria which stated "public policy is the business of governments".

The challenge by China and its allies to the legitimacy of business and civil society, in favour of state based "unilateralism" was, not surprisingly, itself challenged within the WSIS and WGIG. Unilateralism was under challenge both because of the positive claims which business and civil society were able to make (notably on the grounds of their relevant expertise, business' control of key assets and civil society's ability to represent communities otherwise imperfectly represented) and the negative effect of some states' undemocratic practices and disrespect for human rights<sup>30</sup>. Moreover, critics of unilateralism were able to point to flaws in the system of representation of the world's populations by states: notably to some gross disparities in the size of populations represented by single states and the consequential inequalities in population's voting powers<sup>31</sup>.

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<sup>28</sup> The WSIS Executive Secretariat estimated that 175 states were represented, 481 NGOs and 98 business entities (see <http://www.itu.int/wsis/geneva/newsroom/index.html> on 20.3.2006).

<sup>29</sup> ICANN refers, in the statement of the operating principles of its (tellingly titled) Governmental Advisory Committee (GAC), to ICANN's purposes including "lessening the burdens of government" see clause 3 at [http://gac.icann.org/web/home/GAC\\_Operating\\_Principles.doc](http://gac.icann.org/web/home/GAC_Operating_Principles.doc) on 24.10.2006.

<sup>30</sup> Reporters without Borders for Press Freedom publishes an annual list of "Internet Enemies". The 2006 list of 13 states is at [http://www.rsf.org/article.php3?id\\_article=19603](http://www.rsf.org/article.php3?id_article=19603) on 7.11.2006. The list includes some, but far from all, the states which argued at WGIG/WSIS for "unilateralist" approaches to Internet governance.

<sup>31</sup> A striking case in point is the disparity between the UN Member States of Tuvalu, which in 2005 had an estimated population of 11,636, and China, which in 2005 had an estimated population of 1,306,313,812 (both estimates from <http://www.cia.gov/cia/publications/factbook/rankorder/2119rank.html> on 1.2.2006). Moreover, at least one democratic state, Taiwan, is excluded from UN membership.

China demanded expulsion of civil society and business participants from small group negotiating sessions at the second, Tunis, WSIS and a member of the WGIG, William Drake (at a conference at the Oxford Internet Institute on 12.1.2004) claimed that much the same had taken place at the first, Geneva, WSIS where civil society organisations were, he said, “kicked out” of several working groups” and where “there was total chaos, there were no rules”<sup>32</sup>. Drake’s contention is congruent with that in a posting on the WSIS related website hosted by the Heinrich Boell Stiftung which stated “After the observers were able to participate in most of the working groups yesterday, a number of countries like China and Egypt complained that this was against the rules of procedure. They asked for the observers to be locked out of the working groups. This met fierce resistance by the EU, the US and others” (at <http://www.worldsummit2003.de/de/web/446.htm> on 4.2.2006).

Anecdotal evidence also suggests that (interview by author with a member of a western national delegation to the Tunis WSIS on November 28 2005) that civil society was the subject of vigorous and intrusive policing at the Tunis summit. My source stated that there was extensive photographing of participants, aggressive challenges in and followed up outside meetings by intimidatory groups of Tunisians and that some civil society organisations represented at the WSIS were front organisations created by Member States. These contentions are supported by the formal complaint to the Government of Tunisia by the European Union following a number of incidents in Tunis including police obstruction of civil society organisations from entering the Goethe Institut to plan a response to the cancellation of a previously arranged meeting at the Summit itself. Padovani commented that “The road to the final phase of the Summit – being held in Tunis in mid-November 2005 – is witnessing a step back in governments’ commitment to participatory processes” (Padovani 2005: 21).

Nonetheless, despite the clear commitment of the UN, following the Cardoso Report<sup>33</sup> (UN 2004), to a fuller representation of civil society in UN activities, the benefits that civil society experts are able to bring to proceedings (there is much testimony to the positive contribution which civil society made to the WGIG), the offensiveness of some attempts to exclude civil society from the WSIS/WGIG, and the contradictions and disparities in state representation in United Nations business, there were some legitimate grounds for concern about the accreditation of civil society organizations.

There is a uncertain boundary between civil society and non-governmental organisations (NGOs) to which the UN Secretary-General referred, perhaps inadvertently, in his response (UN 2004a) to the Cardoso Report where he stated that “I welcome the emphasis placed by the Panel on all branches of the United Nations system engaging with **civil society** (my emphasis) at the country level..... **NGOs** (my emphasis) now act as fully fledged partners.... ” (UN 2004a: 10). Moreover, the Secretary-General commented, underlining the uncertainties about the legitimacy of some civil society organisations, that

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<sup>32</sup> Source: contemporaneous notes taken by the author.

<sup>33</sup> The Cardoso report is correctly, but not usually, known as the *Report of the Panel of Eminent Persons on United Nations-Civil Society Relations* (UN 2004). The Cardoso panel acknowledged the problems of “loading” decision making process by Government-organized NGOs (UN 2004: 540 and also expressed concern about the preponderance of NGO speakers who were “male, Northern and Anglo-Saxon” (UN 2004: 59) with “unclear accountability to the grass roots” (UN 2004: 65).

"there are currently large numbers of NGO's in consultative status with the United Nations that are not complying with the requirement to submit quadrennial reports on their activities" (UN 2004a: 9). Academic commentators, such as Benner and Witte, have noted the porous boundaries between civil society and other organisations and referred, in a pleasing neologism, to NGOs as "gongos, bongos and dongos (NGOs organised by government, business and donors)" (Benner and Witte 2004: 40). Castells (2004: 5) makes a similar point proposing that "NGOs.... are..... for the most part..... subsidized or sponsored by some kind of public agency".

My own participation in the WSIS/WGIG exemplifies some reasonable grounds for concern about the representativeness of civil society participation. The rules of accreditation prohibited accreditation of individuals and I applied for accreditation as a representative of a small UK university research centre and supplied to the organisers, as required, a completed hard copy application form with a copy of annual report of the research centre and its constitution. I received no acknowledgement of this request for accreditation and no response to subsequent e-mail enquiries. I asked a UK Civil Servant, known to me to be expert in the field, for advice. At his instigation the UK Foreign and Commonwealth Office took up the matter with UN officials. I then received an e-mail from a UN organiser stating that the WSIS accreditation site had received c 8,000 spam messages and, in consequence, my e-mails had possibly been deleted. I finally secured accreditation and participated in the WSIS/WGIG as a formally accredited civil society representative. My "experiment" in legitimacy suggests that there are reasonable grounds for concern about the representativeness and accountability of civil society participation in the WSIS/WGIG.

Moreover, Cammaerts and Carpentier (2004: 9) state that of the 102 civil society organisations which participated in PrepCom 1<sup>34</sup> only about half did so in PrepCom 2 where 176 civil society organisations were represented. Of these, about 100 attended PrepCom 3. Though civil society obviously participated strongly in the first phase of the WSIS there seems to have been some lack of continuity in participation and therefore in effective contribution to the WSIS. Only 7% of active civil society organisations attended all PrepComs and the WSIS itself (Cammaerts and Carpentier 2004: 10). Cammaerts and Carpentier also noted that two civil society organisations committed to freedom of expression, Reporters without Borders and Human Rights in China, were excluded from PrepCom 3 (Cammaerts and Carpentier 2004: 17).<sup>35</sup>

There is room for more than one view as to whether these processes and practices of participation and accreditation satisfied what the Cardoso Panel described as a reasonable expectation of UN Member States that "actors engaging in their deliberative processes meet at least some basic standards of governance and demonstrate their credentials" (UN 2004: 26). However, it seems clear that the WGIG did emphatically satisfy the Cardoso recommendation that the UN "should emphasize the inclusion of all constituencies relevant to the issue, recognise that the key actors are different for different issues and foster multi-stakeholder partnerships to pioneer solutions and empower a range of global policy networks" (UN 2004: 32) and exemplified what the panel later described as "'networked governance" (UN 2004: 33). Though not, perhaps, what the panel identified as the "concerns raised by some Member states

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<sup>34</sup> The Summit proceedings included a number of formal preparatory meetings known as PrepComs.

<sup>35</sup> See also O'Siochru and Girard 2002.

about the number of civil society organizations seeking to take part in United Nations meetings.... And the perception that some interventions by civil society organizations are offensive" (UN 2004: 53).

### **Legitimacy**

Though analytically distinct, the two issues of, first, the extent to which civil society should be recognised as a legitimate participant in the WSIS/WGIG and, second, how far state governments, rather than an uncertainly constituted governance network (under the formal umbrella of US law and governmental jurisdiction), should be responsible for the duties undertaken by ICANN, often ran together in exchanges at the WSIS/WGIG. They both posed questions of "recognition". For example, the leader of the USA delegation to the WSIS/WGIG, Richard Baird of the State Department, stated at the WGIG on 14.2.2005 that the USA regarded the issue under discussion as one of "co-ordination" (rather than governance thus implying multiple stakeholders and a decentred authority structure). "Co-ordination" and multiple stakeholders, rhetorically at least, open the door to civil society recognition and close it to recognition of the claims for the exclusive governance prerogatives of state governments advanced by Brazil, China and other like minded governments at the WSIS/WGIG.

Legitimacy is a key component of a recognition claim and the rival recognition claims under consideration at the WSIS/WGIG, whether of civil society, ICANN or for the sovereignty of a collectivity of state governments (rather than either a single government or a multistakeholder network) all rested on different claims for legitimacy. The claim of ICANN and the status quo rested on putative 'output' legitimacy – the Internet works, access and connectivity are growing; if it ain't broke don't fix it. Civil society's recognition claim also rested on output legitimacy (the conspicuously productive contribution made by civil society experts to the WSIS and especially the WGIG) – expertise which Cardoso described as "the original purpose" of accreditation of civil society actors for their "expertise, competence and skills" (UN 2004: 54). But the claims to legitimacy of civil society and also, to some extent, the status quo based on ICANN, were also claims of representativeness.

The Cardoso panel proposed that, because "the substance of politics is fast globalizing (in the areas of trade, economics, environment, pandemics, terrorism etc), the process of politics is not; its principal institutions (elections, political parties and parliaments) remain firmly rooted in the national or local level" (UN 2004: 8), new forms of political representation, notably those including civil society, should be espoused and that on "Global governance is no longer the sole domain of Governments" (UN 2004: 3). In consequence, Cardoso recommended, *inter alia* fostering "multi-stakeholder partnerships to pioneer solutions and empower a range of global policy networks..... Member States ..... should signal their preparedness to engage other actors in deliberative processes (UN 2004: 32) and strongly advocated knitting civil society into UN politics and procedures because of its power "to bring a new issue to global attention" and to ensure that action is taken through "multi-constituency coalitions of Governments, civil society and others" (UN 2004: 8).

Nonetheless, as my remarks above about accreditation to the WSIS suggest, the uncertain representativeness and weak accountability of civil society at the WSIS/WGIG raise questions about the legitimacy of civil society's claim for recognition. The Internet Governance Caucus' account of the process



of selection of its three nominees (Vittorio Bertola, Karen Banks, Avri Doria) for membership of the WGIG makes it clear that the selection was made by five members of the Caucus "a rather small number of caucus members was bold enough to select Avri, Karen and Vittorio as suggested candidates of the IG caucus" (Hofmann 2004: 2). Though this account is commendably transparent (giving an account of oneself is a necessary, but not sufficient, element of accountability) there is room for more than one view as to whether such a process satisfied what the Cardoso Panel described as a reasonable expectation of UN Member States that "actors engaging in their deliberative processes meet at least some basic standards of governance and demonstrate their credentials" (UN 2004: 26). However, it seems clear that the WGIG did emphatically satisfy the Cardoso recommendation that the UN "should emphasize the inclusion of all constituencies relevant to the issue, recognise that the key actors are different for different issues and foster multi-stakeholder partnerships to pioneer solutions and empower a range of global policy networks" (UN 2004: 32). Though not, perhaps, what the panel identified as the "concerns raised by some Member states about the number of civil society organizations seeking to take part in United Nations meetings... And the perception that some interventions by civil society organizations are offensive" (UN 2004: 53).

The legitimacy, and thus the claims to recognition of both civil society and the governance status quo, were explicitly challenged and qualified by Lyndall Shope-Mafole (a member of the WGIG and also a representative of the government of South Africa) in the WGIG on 18.4.2005. She said:

"On the one hand, you have governments that are elected that have public accountability in their countries. You have the private sector that could be owned by one person or a number of people that is accountable to its shareholders. And you have civil society, I'm not sure what the accountability to civil society is. It depends on which part of civil society. But there are some stakeholder accountabilities there. So I think that the intergovernmental nature of whatever mechanism we would have would need to take into account, of course, this multistakeholder element. But I think that for it to be legitimate, it has to be rooted in some intergovernmental mechanism. And this is why in the input within the World Summit on the Information Society, when making the input on behalf of South Africa, we had said that the only intergovernmental mechanism or legitimate mechanism that we know that represents the will of the peoples of the world is the UN system".

Of course the principle that Shope Mafole invoked is also open to challenge on grounds of legitimacy. Not all Governments are democratic, not all democratic governments are represented in the UN (Taiwan), and not all countries are the same size – compare the UN Member States of Niue (with, in 2005, an estimated population 2,166) and China (with, in 2005, an estimated population of 1,306,313,812)<sup>36</sup>. Can the claims and contributions to UN proceedings of China and Niue be sensibly regarded as equivalent?

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<sup>36</sup> Both estimates derived from <http://www.cia.gov/cia/publications/factbook/rankorder/2119rank.html> on 1.2.2006.

But whether or not governments are actually and effectively accountable to those whom they claim to represent, the assumed relationship between government and people is clear in a way the relationship between civil society and what Held calls "communities of fate" (Held 2004: 20) is not. One civil society member of the WGIG, Karen Banks (at the WGIG in Geneva on 14.2.2005), asked to whom "should these organisations [ie Internet governance organisations] be accountable?" She answered her question by naming "all users of the Internet in the world and all potential users" but, as she recognised, identifying so inclusive a community of fate, in the name of whom she and those like her might speak, hardly solves the problem.

### Conclusion

At the WSIS/WGIG the linked issues of the conduct and form of Internet governance on one hand, and the extent to which non-state actors should be formally represented in both the WSIS/WGIG proceedings and also in substantive Internet governance on the other, accounted for much more of the time spent in the course of the summit and its associated activities, and stimulated a striking intensity in debates and disagreements, than did consideration of issues of resources and distribution. The "Rawlsian" questions of re-distribution (ICT4D, the Digital Solidarity Fund etc) had a lower profile, sparked less public attention and was characterised by less indignation and outrage than were either of the "recognition" issues of Internet governance and of "trilateralism".

The WSIS/WGIG therefore lent empirical support to Nancy Fraser's claims for the importance of "recognition" issues in contemporary politics and contemporary political philosophy. It bears out her claim that there has been a "relative decline in claims for egalitarian distribution" (Fraser 2000: 107). Fraser deprecates the decline in salience of re-distribution issues but acknowledges the pertinence of a change in focus from a politics of redistribution to a politics of recognition at a time of "hugely increasing transcultural interaction and communication" (Fraser 2000: 108). She argues persuasively that recognition politics and claims concern "the status of individual group members as full partners in social interaction" (Fraser 2000: 113) and that recognition claims are directed to 'establishing the misrecognized party as a full member of society, capable of participating on a par with the rest' (Fraser 2000: 113). Fraser argues that the task of establishing a pervasive contemporary system of justice depends on progress in three distinct domains, that is:

- Redistribution
- Representation
- Recognition.

For Fraser, representational justice claims are to be realised in the political domain and redistributive claims in the economic domain and recognition claims in the cultural domain. She points to striking inequalities and inequities in representation – eg the disparity experienced by citizens of "failed" states and citizens of "predator" states. She might also have referred to the structural inequality built into the Westphalian system of representation of states in the United Nations whereby states with small populations enjoy equal status to that of states with large populations. Fraser also referred to the growth of a global civil society as a form of mitigation of the inequalities and inequities in representation deriving

from the disparity in the effectiveness of different states in the established international system of representation of states.

All three of Fraser's domains were loci of conflict at the WSIS/WGIG: redistribution in the ICT4D initiative and the digital solidarity fund, representation in the substantive conflicts over the preferred institutional architecture of global Internet governance (ITU v ICANN) and recognition in the visceral intensity of the conflicts manifested in discussion on the floor of WSIS/WGIG sessions – conflicts which involved the recognition claims **both** of states such as Brazil, China and South Africa (broadly congruent with the G21 group) **and** of civil society.

The WSIS/WGIG powerfully exemplified Fraser's contention that "as globalisation is accelerating flows of people and communication across borders, divergent value horizons are colliding with startling results. Everyone experiences a new proximity of "the other" and a new salience of identity and difference. The effect is to fracture all self-enclosed status orders and to unleash intensified struggles for recognition." (Fraser in Fraser and Honneth 2003: 222-223). Recognition struggles certainly had a higher degree of salience than did re-distribution struggles but such discussion as there was of re-distribution, resulting in agreement in Clause 27 of the Tunis Agreement on several "improvements and innovations in existing financing mechanisms", suggested that the Rawlsian difference principle can, and did (whether or not those who decided were aware of Rawls and his "difference" principle), serve as a principle of action in real world circumstances. The capacity to improve and extend global connectivity by extending access to telecommunication infrastructures, eg through improved access to backbone networks via local and regional IXPs, at marginal cost neatly exemplifies a specific implementation of Rawls' model.

Although the WSIS concluded with a formal agreement, the Tunis Agenda/Agreement, which incorporated concrete proposals for addressing distributional issues, notably in respect of ICT4D, Internet governance remained an intractable and unresolved problem. The Internet governance portfolio was remitted to a new body, an Internet Governance Forum (the initial meeting of which takes place in Athens from 30<sup>th</sup> October to 2<sup>nd</sup> November 2006). Remitting the unresolved issues of Internet governance from the WSIS/WGIG to the Athens Internet Governance Forum<sup>37</sup> (IGF) is likely to satisfy few. The Tunis Agenda (Clause 77) provides that the IGF should have "no oversight function and would not replace existing arrangements, mechanisms, institutions or organisations". But although the "constitution" of the IGF endows the IGF with only the softest of power, hardly a feather's touch, establishment of the IGF represents a partial acknowledgement of civil society's recognition claims.

Despite the IGF's absence of power, substantive issues of control (in so far as it can be controlled) of the Internet have been somewhat recontextualised by a new formal relationship between the US government and ICANN.<sup>38</sup> However, the increase in ICANN's autonomy figured by the new relationship is unlikely to satisfy either critical governments, such as China, or civil society. But the US decision to redraft the Memorandum of Understanding, on which ICANN stands, has been strongly supported by the European Union which welcomed the "very important step towards full private-sector

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<sup>37</sup> See <http://www.igfgreece2006.gr/> on 24.10.2006.

<sup>38</sup> See <http://www.icann.org/announcements/announcement-29sep06.htm> on 24.10.2006

management of the internet, on which the EU has been working with various US administrations since 1998. We in Europe trust ICANN's expertise and the unique multi-stakeholder model of consultation it represents" (European Union 2006).

Many reasons can be identified for the inability of the World Summit on the Information Society to reach agreement on Internet governance. Clearly, influence over the Internet is an important matter of both material and political interest for many parties whether business or governments and these material and political interests undoubtedly strongly shaped both the course the summit took and the summit's outcome. But neither these interests nor the "Rawlsian" matter of distributional justice can account for either, still less both, the amount of time spent in the course of the summit on Internet governance or the intensity of the exchanges on that issue.

Rather, one needs to invoke Fraser's notion of a struggle for recognition to understand why internet governance was on the summit agenda in the first place, why it proved so intractable an issue and why it triggered so much emotional intensity in the course of the WSIS/WGIG proceedings. Certainly, distributional justice was an issue but so too were recognition politics. And recognition politics at the WSIS/WGIG took a complicated form because there was more than one recognition claim at issue. There were the recognition claims of states, (the loose association of "Group 21" states and notably Brazil, China and South Africa), of an established multistakeholder form of quasi-network governance of the Internet centred on ICANN and, not least of all, of civil society.

Moreover, the exclusion of many substantive issues of relevance from the IGF's remit (eg management of the DNS and the vexed issue of "political oversight" of Internet Governance) together with the relative paucity of government contributions of papers and comments for consideration by the IGF<sup>39</sup> suggest that any substantive consideration of Internet governance is more likely to take place within the multistakeholder framework already established around ICANN than it is through the IGF. Although the conduct and outcomes of the IGF remain uncertain<sup>40</sup>, recognition issues are likely to remain prominent concerns. As Markus Kummer stated (at the Oxford Internet Institute on 31.8.2006), the challenge for the IGF is "to make everyone equally unhappy". His tongue in cheek comment could be re-versioned as an acknowledgement that there should be parity of recognition for everyone. And as an acknowledgement that justice, whether in distribution or recognition, may be difficult to secure when trust and respect

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<sup>39</sup> On 26.10.2006, that is 5 days before commencement of the IGF, the only government which had contributed a paper was that of Brazil. See

[http://intgovforum.org/Substantive\\_1st\\_IGF/Brazilian%20Position.doc](http://intgovforum.org/Substantive_1st_IGF/Brazilian%20Position.doc) on 26.10.2006.

<sup>40</sup> One account of the IGF, Darren Waters' (BBC News website Technology editor), suggests that there were few solid outcomes from IGF discussions. Waters stated, and asked, "The Internet Governance Forum will return in a year's time in Rio. Will the same old arguments still be traded back and forth? Quite probably". However Waters acknowledged that, if not in substance then in process, the IGF was productive: he reported "Overall the key success of the IGF emerging is in getting groups of people together who perhaps have never sat around a table together. To have Amnesty International talking to a Chinese government official is not something that would have happened at past meetings of this kind" See <http://news.bbc.co.uk/go/pr/fr/-/2/hi/technology/6105496.stm> on 2.11.2006.

between rival claimants (whether the distribution of recognition, rights or material goods is in question) is low or absent.

Rawls' reference, in the revised version of *A Theory of Justice* to "social co-operation on a footing of mutual respect" (Rawls 1999: xv) gestures towards the importance of the "recognition" which Fraser has eloquently advocated. But it also lends support to the critique, by Honderich and others, that Rawls' doctrines are difficult to apply to real world politics. Certainly, Rawls' "difference principle" may be said to be satisfied when access to (at least some forms) of connectivity is considered (though there may be room for debate about the pace of technological diffusion and access to different means of communication) and that, therefore, there is a real world political relevance and utility to a (the) central element of his theory of justice. But his vision of 'social co-operation on a footing of mutual respect', though comforting as a normative principle, offers scant grip on the struggles for recognition which took place at the WSIS/WGIG. For a dominant characteristic of these struggles was the desire by some claimants to recognition to deny recognition to others – far from the Rawlsian imagined state of "social co-operation on a footing of mutual respect" and closer to Fraser's vision of the assertion of recognition claims as a matter of struggle and conflict. Equality of unhappiness, in the vein of Markus Kummer's tongue in cheek remark, is unlikely to provide an enduring basis for the governance of the Internet - even if equal unhappiness satisfies the difference principle.

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