

## NOTE ȘI REFLECȚII

### THE UNBEARABLE INCOMPLETENESS OF THE OUTPUT LEGITIMACY

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**Abstract.** James Rosenau (1992: 7) defines global governance as “an order that lacks a centralized authority with the capacity to enforce decisions on a global scale”, meaning that governance achieves compliance through intentionality. Hence, at the global level, within this ‘governance without government’ schema, steering is not sourced in political legitimacy, but rather effectiveness-oriented (Offe 2009). I will argue that a needs-centred account of governance will either fail to provide equal liberties for all global citizens, or it will eventually succumb into a masked form of global government, while lacking proper representativity. Thus, I will conclude by arguing for Benjamin Constant’s reminder that being “absorbed in the enjoyment of our private independence and in the pursuit of our particular interests we shall surrender too easily our right of participation in the political power” (1988:327).

**Key words:** governance, equal liberties, Rosenau, Offe, output legitimacy, anthropological richness, Amartya Sen, economic ethics, intentionality, globalisation.

#### Introduction

Starting with the last half of the 20<sup>th</sup> Century, the subject matters proper to the domains of Social and Political Philosophy and Economic Ethics were largely influenced by the rise of a spin-concept: *governance*. We have witnessed the increasing intellectual success of this all-encompassing and generous approach ever since, to the point where it managed to escape the well-tempered environment of the university labs and to proliferate in almost all institutional and corporate areas. Normative prescriptions and regulatory principles regarding fair or good governance became mandatory even among volunteer organizations.

So, what made this ethical by-product<sup>1</sup> so desirable for our social purposes? Because one thing is for sure; its academic rise does not match its birth. The

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<sup>1</sup> The aim of this paper is not to offer an introduction to the history of governance, which I consider a task proper to historians, especially to Constitutional historians. I did indicate, though, Charles Plummer’s translation as a kind of formal birth certificate for the English usage of this term. Just a brief survey of relevant literature reveals that, nowadays, we are

discovery of governance was not something that shook the ground of our morals, instantly. We can trace back the actual conceptual form of governance to the 1885 English translation of the 15<sup>th</sup> century John Fortescue's *De laudibus legum Angliae* (The Governance of England).

Despite its foundation as more of a practice than a theory, the great 'Governance Turn' could not take place, could not become viral, could not reach its applied vocation to shape our institutional and organizational everyday life relations before merging with the globalisation logarithmic trends. James Rosenau (1992: 7) defined global governance as "an order that lacks a centralized authority with the capacity to enforce decisions on a global scale". This means that governance achieves compliance through intentionality. On the global level, under this 'governance without government' schema, steering is not sourced in political legitimacy, but rather effectiveness-oriented, and, therefore, the obtained compliance is voluntary or goal-oriented, based on quasi-market incentives (Offe 2009). Starting from this critical definition, further questions addressing representativeness, efficiency and justness of this model are to be asked. The purpose of this paper is to uncover an inherent moral dilemma facing a needs-oriented model. I will argue that a needs-centred account of global steering, together with the concern for plurality incumbent by such an account, will either fail to provide equal liberties for all global citizens, or it will eventually succumb into a masked form of global government, while lacking, though, proper representativity.

To this aim, I will first introduce Fritz Scharpf's (1997; 1999) distinction between input legitimacy – as proper to traditional representative institutions – and output, efficiency oriented, legitimacy, which defines global governance. Further on, I will inquire into the extent to which the ideal of equal liberties can be achieved through the latter form of representation. While outcome legitimacy can be thought to be an appropriate model of providing positive liberties, the ideal of equal negative freedom remains at risk under such needs-oriented framework. Thus, I will conclude by arguing for Benjamin Constant's reminder that being "absorbed in the enjoyment of our private independence and in the pursuit of our particular interests we shall surrender too easily our right of participation in the political power" (1988: 327).

## 2. Input and Output Legitimacy

Starting, most notably, with James Rosneau (1992), recent literature purports to show that, since there are steering mechanisms in the global order but no world government, what we have is a working system of steering identifiable as 'governance without government'. Although still in lack of clear-cut conceptualization, this model describes the complex of formal and informal practices that embrace states, international institutions, transnational networks, agencies, non-state actors and so on, that function with variable effect, to promote, regulate or intervene in the common affairs of humanity (Held and McGrew 2002).

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more accustomed to the English understanding of governance, than to its German or French alternatives, *Führung*, respectively, *Gouvernementalité*.

What immediately comes to mind is the question of the legitimacy of this steering mechanism, as governance seems, at first glance, to be nothing more than an ad-hoc exercise of illegitimate power beyond proper democratic representativity.

However, defenders of the model argue that one can distinguish between two forms of legitimacy. According to Fritz Scharpf (1997; 1999) democratic legitimacy is a two-dimensional concept, which refers to both the inputs as well as the outputs of a political system. In modern democracies, input-oriented legitimacy mechanisms are reflected in representative institutions, linking citizen's preferences with political decisions, while political decision-makers can be held accountable through elections. Scharpf argues, democracy would be an "empty ritual" if the democratic procedure was not able to produce effective outcomes, that is: "achieving the goals that citizens collectively care about" (1997: 19). According to Scharpf, legitimacy on the output side exists to the extent that government performance is effective, that is, the extent to which the system is able to achieve "the goals citizens collectively care about" (1997: 19). Thus, output-oriented legitimacy tends to have an inherent subjective component, inasmuch as it refers to the extent to which the needs of citizens are satisfied by the outcome of the policies.

It is precisely this latter type of legitimacy which is claimed by the supporters of the 'governance without government' model. Governance gets things done, it is argued, and due to its lacking the inherent rigidity of the traditional model of democratic representation, it does so in a more effective and flexible way. Claus Offe (2009), for instance, distinguishes the voluntary or goal-oriented compliance, through quasi-market incentives, characterizing governance, from the legally binding and enforceable command-based decisions of the traditional hierarchical mode of steering. Thus, in the virtue of the open participation of diverse factors in the process of decision making, as well as due to the essentially horizontal, non-hierarchical mode of steering, governance is highly praised for being more suited to account for plurality deserved respect, which should constitute itself in the corner stone of any global order. In remaining true to the purpose of providing equal respect for all individuals, an output-oriented legitimacy account is thought to succeed in taking into account different individual needs as a reference point.

### 3. Needs and Liberties

One cannot stop but wonder what place is there left for individual liberties under such a needs-oriented ruling schema. That is because, somewhat on the face of it, inasmuch as such output-oriented legitimacy seems to have an inherent subjective component, this does not leave much room for an objective – or, at least, inter-subjective – account with regard to the just 'amount' of liberties to be allocated to the global citizen.

Traditionally<sup>2</sup>, the models of a just society put forth in the literature have offered higher ground to the allocation of liberties vis-à-vis responding to individual needs

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<sup>2</sup> I choose here to leave aside the utilitarian accounts, for their notable weakness in allowing the sacrifice of a scapegoat minority for the wellbeing of the majority. I take it that such view is far from meeting our expectations in what the ideal of global justice is concerned.

regarding further goods and properties. Under the most radical, libertarian account, for instance, wide individual liberties are placed at the core of any just political arrangement, irrespective of the effect this might have on the satisfaction of all other needs. In this model, put forth most notably by Robert Nozick (1974), any form of taxation imposed on the earnings of the most gifted individuals in society, for the sake of the worst off needs is thought to constitute itself in a form of slavery. A less radical account is the one proposed by John Rawls in his *Theory of Justice* (1999). Rawls argues that the needs of the citizens should be maximally attended to, but only inasmuch as this is also compatible with an 'equal liberties for all' schema. Thus, Rawls's account maintains an equal liberties proviso to needs satisfaction. So far, it is hard to see how any of these accounts could be satisfied by a solely needs-oriented form of steering and of legitimacy thereof. At the other extreme of the spectrum stands Amartya Sen's (2000) 'development as freedom' account. His definition of freedom is, indeed, in terms of needs satisfaction: "the expansion of the 'capabilities' of people to lead the kind of lives they value" is what freedom is, in fact, argues Sen.

The given impression is that Senian formula allows for the possibility of proper individual liberties allocation in a governance-ruled global environment. It should turn out to offer a satisfactory account of individual liberties in an exclusively needs-oriented framework, our concern in this respect regarding output-oriented policies will also prove void.

In Sen's view, most available theories of justice miss to take into account relevant information about human capabilities. Sen does not unilaterally reject mainstream theories, but he 'reminds' them about the subject identity as being crucial for ethical efforts. In this respect, individual differences are taken to involve different needs. Here, Sen appeals to Isaiah Berlin's distinction between negative freedom and positive freedom or "freedom from", respectively "freedom to" (Berlin, 1969). Positive freedom is defined in terms of an absence of barriers on an individual level, while negative freedom is, straightforwardly, defined as the absence of external restriction.

Sen stresses that most available theories of justice fail to offer a satisfactory recipe for ensuring positive freedom, as inherently related to different individual needs:

"[...] a person who is disabled may have a larger basket of primary goods and yet have less chance to lead a normal life (or to pursue her objectives) than an able-bodied person with a smaller basket of primary goods. Similarly, an older person, or a person more prone to illness can be more disadvantaged in a generally accepted sense even with a larger bundle of primary goods." (Sen 2000: 74)

Sen understands "freedom from" as a necessary antecedent for "freedom to". In other words, negative liberties, that is, freedom from external restrictions, are the very conditions of possibility of positive freedom in the first place. As such, Sen's theory of justice, while indeed accounting for the inherent global "anthropological richness" (Giovanola 2009), remains under the Rawlsian equal liberties proviso in what negative freedom is concerned.

#### 4. Freedom between Governance and Government

Returning now to the core question that motivated this incursion into the relation between providing for people's needs and ensuring their proper liberties; it looks that output-oriented legitimacy can, at best, be trusted to insure proper positive freedom to the global citizen. But, what about the ideal of equal "freedom from"? Sadly, this great ideal seems out of reach under such a steering formula.

Insofar as global governance remains centred on satisfying the needs of its subjects, individual liberties will only be allocated to the extent to which the needs of citizens are satisfied in this respect.

Is this steering model also likely to lead to a satisfactory schema in what negative freedom is concerned? Not if we trust Sen's stress on human richness. People tend to have very different needs. Different cultural backgrounds feature different conceptions of a worthwhile life, and hence different restrictions on personal liberties are likely to seem more acceptable than others. Furthermore, in a world characterized by wide-spread extreme poverty, one can justifiably be concerned with the fact that many would voluntarily give up on their claims to freedom for the sake of putting bread on the table.

Hence, at this point, it looks like the defender of a global 'governance without government' arrangement has two escape routes he can follow out of this ethical conundrum. One way to go would be to argue that, in fact, providing equal liberties for all global citizens, inasmuch as they are not required by their intended recipients, has no objective ethical value. However, this account cannot be easy to defend, as the step from people not needing, to people not deserving equal liberties looks like a dangerous bridge to pass.

The fastest way to avoid the above difficulties would be to distinguish between short-term and long-term needs of people, and thus to argue that there is nothing impeding global governance from watching for the satisfaction of the latter, too. As such, equal liberties, while not featured amongst the stringent requirements, would fall into the second category. Furthermore, the global governance defender might turn the Senian account to his advantage and argue that, insofar as for the proper satisfaction of immediate needs, a proper equal liberties schema is needed in the first place, it does fall within the scope of global governance to instate this kind of proviso.

This would amount to an acknowledgement of an objective – or, again, at least inter-subjective – need for a specific amount of liberties. It is hard to see, thus, how it could be positively defined on such a heterogeneous base as the needs of the very diverse global citizens. Not to mention that, if the needs-centred base should be put aside in order to secure a minimum, commonsensical amount of liberties, what would then be left to legitimize its enforcement?

Thus, in praising the output-oriented account of legitimacy characteristic for global governance, its defender is faced with a serious dilemma: either he renounces advocating equal liberties for all global citizens, or else, he builds upon

an account of governance which eventually succumbs into a masked form of global government, while lacking, though, proper representativity.

I have argued here that, in spite of being *prima facie* appealing, the idea of global steering based on exclusively output-oriented legitimacy encounters serious difficulties in accounting for the moral ideal of equal liberties for all. Trusting global justice with a mechanism exclusively animated by quasi-market incentives might lead to morally questionable results. As Benjamin Constant (1988) early noticed, in the pursuit of our particular interests, we should still be reticent to surrender too easily our right of political participation.

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