

An advice on whether the prerogative of mercy should be granted was then obtained from Robert Redlich QC and Trish Riddell in August 2000. The advice, which exceeds 100 pages, is comprehensive and clearly supports the exercise of executive mercy. It outlined why Heather Osland's special circumstances made her case exceptional. It states that:

Following an extensive examination of the voluminous material with which we have been provided we have concluded that circumstances exist which justify the exercise of executive mercy. In our view it would be appropriate for there to be a remission of the petitioner's sentence.

A year after receiving the Redlich advice, the government obtained further advice from Susan Crennan QC, Jack Rush QC and Paul Holdenson QC. This joint advice, which is under 30 pages, was dismissive of all of the grounds of the Petition of Mercy and advised that the prerogative of mercy not be exercised.

It is now apparent that the government could have taken the advice of Robert Redlich, a highly respected QC and now a judge at the Victorian Court of Appeal, which supported the remission of Heather Osland's sentence.

It is also apparent that the government sought to conceal the existence of this advice. It is not mentioned in the Attorney-General's press release when the Petition of Mercy was denied. It is not mentioned in the

letter from the Attorney-General to the Premier, or the letter from the Premier to the Governor of Victoria, in relation to denying the Petition. The government spent nine years in litigation to prevent disclosure of the advice. A considerable sum of taxpayers money must have been spent on the two VCAT hearings, two Court of Appeal hearings and two High Court hearings.

It remains unclear why the government sought further advice a year after already receiving advice on exactly the same aspects of the Petition of Mercy. And why they sought that further advice from a panel of three QCs? Was it to outnumber the advices they had already received, that were supportive of the petition?

Over the last 10 years, the government has undertaken significant reforms in response to family violence issues in Victoria, including as they relate to homicide laws. Yet there does not seem to be an explanation why the government could not show mercy to a woman who was clearly a victim of long-term family violence, who acted to protect herself, and for whom there was widespread community support.

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CITIZENSHIP

Global governance and the democratic deficit

JONATHAN KUYPER looks at both the feasibility and necessity of a global democracy

Global governance is a complex and multi-dimensional concept. By examining four key strands of global governance — human rights, the global economy, international relations/law and the environment — this Brief will seek to show why global governance should be geared towards greater democratisation.

These four key disciplines are now taking seriously the question of how we should institutionalise democracy and, importantly, what form democracy should take. Each strand of global governance is placing increased emphasis on democratisation — a situation offering hope to proponents of global democracy that the process is both feasible and desirable. However, it is also imperative that we have greater interdisciplinary analysis to help synthesise and extract ideas from each area in a productive way.

Terms such as 'global governance' and 'global democracy' are difficult to define because they are used slightly differently in each discipline. A useful broad definition is that global governance consists of the regulation of organisations, governments and actors in the global sphere.¹ Within global governance there exists a 'democratic deficit' because citizens have little

participation in global decision-making procedures. The concept of global democracy seeks to address this deficit by putting in place a system that guarantees social, civil, economic and political rights for all people; thereby increasing citizen participation at the global level.² The above four strands of global governance form the basis of this Brief, which will canvass the ways in which these disciplines have moved towards democratisation to ensure a type of legitimacy and accountability in the global system of governance.

Human rights

The United Nations' *Universal Declaration of Human Rights* ('UDHR') Article 29.1 states that:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law [...] in a democratic society.³

Since the UDHR was enacted in 1948, the concept of liberal democracy has sat alongside the notion of human rights. Philosopher Carol Gould has noted that the concept of human rights, in the past, has been tied to national conceptions of democracy and ingrained in national constitutions.⁴ Recently, the trend has been

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1. For a similar definition, see 'Introduction' in David Held and Mathias Koenig-Archibugi (eds), *Global Governance and Public Accountability* (2005) 1, 6.
2. David Held, 'Democracy: From City-States to a Cosmopolitan Order?' (1992) 40 *Political Studies* 34.
3. United Nations Declaration of Human Rights <un.org/en/documents/udhr/> at 24 July 2010.



towards developing frameworks (the Victorian Charter of Human Rights and Responsibilities is a good example at a State level) which facilitate a global application of democracy and human rights at an institutional level. Given the increase in development of human rights studies — and the fact that the UDHR refers explicitly to democracy as a cornerstone of human rights — it is arguable that more global protection of human rights will require a global extension of democratic practices. As academics, international institutions and civil society organisations seek to strengthen human rights practices and protection, the democratisation of global governance may become increasingly important.

The global economy

The majority of calls for the greater democratisation of global governance have come about due to the practices of international economic organisations such as the International Monetary Fund, World Bank and multinational corporations ('MNCs') that occupy the international system. The 'Battle in Seattle' at the 1999 World Trade Organization meeting marked a watershed moment in the international system, bringing together protestors from all levels and areas of society, and reflected increasing demands for 'a global citizen-based and citizen-driven democratic order'.⁵ Perhaps the most notable call for democratisation of global governance in the wake of neo-liberal economic policy has come from Joseph Stiglitz, former Chief Economist of the World Bank.⁶ Stiglitz identified ways in which global economic institutions have contributed to the 'democratic deficit'.⁷ Given that a reversal of economic globalisation is unlikely, to say the least, remedying the 'democratic deficit' may hinge on an extension of democratic practices beyond the level of the nation-state. This, in turn, may increase the accountability and transparency of economic organisations and MNCs.

International relations and law

International relations — once dominated by the notion that nation-states were the only players in the international system — has now begun to focus on global democratisation. For example, Robert Keohane, one of the foremost scholars of international relations and global institutional theory, has turned his attention to questions of global governance and accountability.⁸ Similarly, prominent international lawyers have begun

seeing global democratisation as a pressing issue.

Renowned human rights lawyer and academic Richard Falk, in conjunction with Andrew Strauss, proposed a series of ideas for restructuring the international system to include a global parliament.⁹ Although such ideas are embryonic, these proposals underline the desirability of global democratisation. The increased attention (in both quality and quantity of research) can also be seen as a pathway to increasing the feasibility of global democracy. As a wider range of people and disciplines formulate democratic institutional proposals that will shore up global governance, their collective weight may add merit to democratising both the current and future global institutional architecture.

The environment

As the environmental policy of each nation-state has wide global implications, environmental issues are increasingly being discussed in terms of democratic governance.¹⁰ Without transnational democratic institutions and practices, the lack of participation and representation of those affected by environmental policy will continue to undermine the legitimacy of the environmental policies of both nation-states and international organisations. In light of this, Evo Morales, the current President of Bolivia, recently proposed a global referendum on climate change as a way to reduce the democratic deficit, by democratising environmental governance.¹¹

Conclusion

Although global democracy is often thought of as either unfeasible or undesirable, increased attention highlights both the necessity and possibility of a global democracy. And as more work is undertaken to link global process with citizens through systematic democratic institutions, the global democracy project will become more feasible. Further interdisciplinary research can only add strength and rigour to calls for global democracy and will ultimately reinforce its necessity.

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4. Carol Gould, 'Negotiating the global and the local: situating transnational democracy and human rights' in Deen K Chatterjee (ed), *Democracy in a global world: Human rights and political participation in the 21st Century* (2008) 71.

5. Vandana Shiva, *The Historic Significance of Seattle*, <wrm.org.uk/actors/WTO/analysis.html> at 24 July 2010.

6. Joseph Stiglitz, *Making Globalization Work* (2006).

7. For a detailed discussion, see Patrizia Nanz and Jens Steffek, 'Assessing the democratic quality of deliberation in international governance: Criteria and research strategies' (2005) 40 *Acta Politica* 368.

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