

Who Governs?

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Transatlantic economic relations are characterized by increasing interdependence, increasing complexity, and increasing numbers of stakeholders demanding to be heard at the negotiating table. With the rise of transatlantic trade and investment, developments on one side of the Atlantic increasingly affect business enterprises, citizens, and interest groups on the other and, in turn, these groups' demands on their respective government representatives. The past decade has witnessed the rise of new forms of transatlantic governance—epitomized by, but not limited to, the New Transatlantic Agenda—designed to manage interdependence between the US and the EU by forging new transatlantic networks of interaction among the highest government representatives, lower-level government officials, business enterprises, labor organizations, and other civil society groups. Analyzing and explaining these new and evolving mechanisms of governance has been the common aim of all the contributors represented in this volume.

In the introduction to this book, we posed series of questions concerning developments in transatlantic governance in an increasingly global economy. The term “governance,” we noted, is used increasingly by both analysts and practitioners to denote the intentional pursuit of shared goals by any group of actors, which may or may not include governments, whereas “international” or “global” governance is used to describe the pursuit of such shared goals by actors across national boundaries. To this basic definition, Rod Rhodes and other students of comparative politics have added the notion of governance by *networks*, as distinct from either hierarchies (in which governance takes the form of authoritative commands from governments) or markets (in which outcomes result from

the uncoordinated aggregation of individual decisions). By contrast with these two models, Rhodes paints a picture of governance by "self-organizing, interorganizational networks" composed of both state and nonstate actors, blurring the traditional categories between public and private.

Similarly, in the field of international relations, a number of theorists have embraced the concept of "governance without government," arguing that governmental and/or nongovernmental actors might cooperate to achieve shared goals despite the anarchic nature of the international system. Beyond this common acceptance of the possibility of international governance, however, we found the international relations literature divided roughly into three distinct models—which we have labeled the intergovernmental, transgovernmental, and transnational models, respectively—each with a distinct set of predictions about the nature of, and the most important participants in, international governance. The empirical chapters of this volume have been organized in terms of these three models, and one of the primary aims of each chapter has been to assess the empirical evidence for each of the three models in specific issue areas of transatlantic relations. More specifically, we have asked the following questions: Are transatlantic relations still predominantly governed by states led, and sometimes manipulated, by chiefs of government, per an *intergovernmental* model? Are they increasingly dominated by networks of technocratic bureaucrats, constituting a "Real New World Order," per a *transgovernmental* model? Or do business interests and other nongovernmental organizations play an increasingly direct causal role in global governance, per a *transnational* or civil society model? More generally, we inquire into the question of which actors, and which networks, matter most in the process of transatlantic governance—or, to borrow Robert Dahl's famous (1961) question: *Who governs?*

In this chapter, we attempt to provide some answers, on the basis of the empirical evidence presented in the preceding chapters, to the two sets of questions posed in the introduction to this volume. In the first section of this chapter, we attempt to explain the rise of new forms of transatlantic governance during the 1990s, addressing three core questions: What's new about these transatlantic governance mechanisms? Why are they developing now? And why have the various actors in the new governance networks chosen to organize at the transatlantic level, rather than in some other international forums? In the second section, we examine the evidence of transatlantic governance across a wide range of issue areas, ranging from trade and standard setting to food safety, consumer protection, labor, and the environment, and we assess the relative explanatory power of the intergovernmental, transgovernmental, and transnational models of governance laid out in the introduction. In the third section, we conclude that transatlantic governance is increasingly governance by mixed networks of all three types of actors, albeit with a leading role for the Clinton administration and the European Commission, which emerge as the primary architects of the New Transatlantic Agenda. Finally, returning to Rhodes's model

of governance by mixed networks of public and private actors brought together by resource interdependencies, we examine the relative power of various actors within these transatlantic networks as a function of their respective resource endowments, and we speculate about the development of those networks in the coming years.

WHAT'S NEW? WHY NOW? WHY TRANSATLANTIC?

What's New?

The past half century has witnessed a sustained trend toward greater and more rapid cross-border exchange of goods, services, and capital, at the global level and in particular between the United States and the countries of the European Union (see Peterson, chap. 2). Global and transatlantic exchanges of goods and services have consistently outpaced the growth of gross domestic product on each side of the Atlantic. And transatlantic investment has not only outpaced transatlantic trade but accounted for much of it. This liberalization of transatlantic economic relations has generally been welcomed by government authorities in both Washington and Brussels—but it has also, and simultaneously, created new and ever increasing possibilities for transatlantic conflict, as well as mobilizing new demands and protests from both commercial and noncommercial interests on both sides of the Atlantic.

Transatlantic conflicts over behind-the-border issues—from “hush kits” to genetically modified foods and a wide range of other environmental, consumer, and labor policies—have multiplied in recent years and show no signs of abating. Across a wide range of areas, the impact of domestic regulations on transatlantic businesses' bottom lines has spurred private demands for deployment of the WTO trade litigation system, public and private bargaining in its shadow, threatened and actual economic retaliation, and popular protest and unrest. Because of their perceived impact on the lives and livelihoods of both companies and citizens, transatlantic disputes over regulatory policy have generated widespread media coverage and more frequent discussion and strategizing over the Internet and airwaves. As affected constituencies politicize traditionally intergovernmental trade issues, government and business elites fear a popular backlash against transatlantic and global economic exchange leading to economic retrenchment. They fear that the stalemate and demonstrations in Seattle at the WTO's third ministerial meeting could be a precursor of more serious political conflicts to come.

To attempt to ward off this backlash, manage the inevitable conflicts that accompany interdependence, and respond to the demands of disaffected groups in civil society, the US and EU have established new, institutionalized mechanisms of transatlantic governance, including not only high-level meetings, declarations,

agendas, and action plans, but also more regular meetings of lower-level agency officials and formalized interactions with government-recognized civil society groups. Public-private exchanges proliferate domestically through trade advisory committees, hearings, and ad hoc gatherings, and bilaterally through the newfangled transatlantic dialogues with their shiny, off-putting acronyms—TABD, TACD, TAED, and TALD. To the extent that interest groups reflect or are able to unleash public pressure, these interactions not only shape the positions taken by US and EU political leaders but are respectively deployed by them to advance state goals in intergovernmental negotiations, with (overall) the EU harnessing transatlantic consumer and environmental groups' input to press its positions, and the US more likely capitalizing on transatlantic businesses' coordinated lobbying.

In short, what is new about the "New Transatlantic Agenda" is not the existence of transatlantic interdependence (which is a long-term development that simply continued and accelerated during the 1990s), nor the existence of close diplomatic ties among the United States and the countries of Western Europe, which were a staple of the Cold War. Rather, the two real innovations of the NTA have been (1) the creation of an overarching framework for ongoing bilateral efforts at transatlantic governance between the United States and the institutions of the European Union and (2) the systematic incorporation of both transgovernmental and transnational networks under the rubric of these new structures of governance. Although not without precedent in the earlier relations between the United States and Europe, the NTA is not simply old wine in a new bottle, but a laboratory for new forms of governance among the world's two largest economies.

Why Now?

The New Transatlantic Agenda, together with the recent Transatlantic Economic Partnership and the multiple transatlantic dialogues, are themselves the reflection and result of several interrelated developments that converged during the 1990s, including the end of the Cold War, the maturation of the European Union as an economic and political actor, and the relentless expansion of transatlantic economic exchange, which has risen in importance relative to security issues in the transatlantic relationship.

The end of the Cold War was clearly a precipitating cause for the upgrading of transatlantic relations, most notably in the press by the Bush administration to establish the Transatlantic Declaration of 1990 and thereby reaffirm US-European solidarity after the collapse of the Iron Curtain and the diminution of the former Soviet threat. Later in the decade, the transatlantic partners once again upgraded their cooperative efforts through the New Transatlantic Agenda, but the focus of the relationship throughout this period has shifted from security issues (which have been addressed primarily within the NATO alliance) toward an emphasis on the liberalization of trade and investment.

This economic focus has, in turn, been reinforced by the maturation of the European Union, which emerged during the late 1980s and early 1990s as the world's largest single internal market, with an increasingly concentrated and effective set of political institutions centered in Brussels. The United States may not have a single telephone line for national security matters, but for trade, competition, and other economic concerns (now including monetary policy), it largely does. The prospect of new EU food safety and environmental agencies furthers this shift to more centralized EU policy oversight in a broadening array of policy areas, which may ultimately extend to security issues as well if the Union continues its recent initiatives in the area of the Common Foreign and Security Policy and defense cooperation.

Beyond the collapse of the Soviet Union and the rise of the European Union, however, lies the relentless increase of transatlantic economic exchange. Increased transatlantic trade has spurred new demands and expectations from producer, consumer, labor, and environmental groups, has created new prospects for regulatory cooperation and trade conflict, and has resulted in what might be termed scuttle diplomacy—the scurrying of EU and US government authorities to cope with the incessant conflicts that, although they compose only a small fraction of US–EU exchange, threaten to poison a mutually advantageous economic relationship. By establishing transatlantic networks at multiple levels, US and EU authorities hope to expand transatlantic market access while assuaging (where possible) the concerns of labor, environmental, consumer, and other civil society groups worried about the negative impact of economic globalization on US and EU domestic regulations.

Why Transatlantic?

The primary reason for the focus on transatlantic relations, as opposed to trilateral relations with Japan or multilateral governance with OECD members or UN countries, is that the US and EU—notwithstanding the teeming literature of the 1980s and early 1990s on a fundamental shift of economic power to Asia—remain the world's most important economic powers and each other's primary economic partners. Because their markets matter to each other's commercial constituents, they face not only more intensive lobbying to harmonize or mutually recognize the adequacy of each other's standards but also more intensive challenges to each other's domestic regulations, from aircraft noise reduction requirements and bans of genetically modified seeds to subsidization of soybeans and oligopolistic aircraft manufacturers. No surprise, then, that more international trade disputes pit the US and EU against each other than any other countries (Petersmann, chap. 3).

In addition, both public and private actors are more likely to focus resources and energies on the transatlantic relationship because US and European views tend to coalesce more than those of other countries, as a result of the relatively

similar levels of development and values of US and European constituents (Peterson, chap. 2). Despite continuing US–EU differences in areas such as food safety, the policy goals of the United States and the European Union are sufficiently similar across a broad range of issue areas as to facilitate the creation of transatlantic networks among governmental officials and agencies, which would be more difficult between either the US or EU and a third country or countries. Similarly, civil society groups in the US and EU, whether targeting environmental, labor, or consumer issues, are generally better organized and funded than in other countries, facilitating interaction with each other and each other's government representatives. Such nongovernmental actors have learned, more or less quickly and effectively, to work the transatlantic relationship to advance their domestic and global goals. The transatlantic dialogues enable them to coordinate input to their respective government representatives to forge (where possible) preferred common positions and (where not) to use regulatory policy on one side of the Atlantic as leverage to seek change at home—whether over data privacy protection or the testing and labeling of genetically modified foods.

Despite these advantages, transatlantic governance is not an alternative but a complement to multilateral relationships for both the United States and the European Union. The US and EU remain the two most important players in the World Trade Organization and thus they need to collaborate if they wish to move an issue forward in that arena, be it further trade liberalization or greater respect for certain labor and environmental protection policies. In the Uruguay Round of trade negotiations (1986–1994), for example, global agreement proved elusive in the absence of a US–EU agreement on sensitive issues such as agriculture and audiovisual services. Once such a transatlantic agreement was reached, however, a global agreement was soon signed, completing the trade round and leading to the WTO's creation. By contrast, one of the central reasons that a new round of trade negotiations foundered in Seattle is that the US and EU, responding to conflicting pressures from domestic constituencies, failed to sufficiently coordinate their positions so as to produce a package deal. In short, transatlantic coordination appears to be a vital precondition to the continued liberalization of global as well as transatlantic trade and investment. But the US and EU both confront considerable obstacles to the formulation of such common positions, which are by no means guaranteed by forging networks under the aegis of the New Transatlantic Agenda.

TRANSATLANTIC GOVERNANCE: INTERGOVERNMENTAL, TRANSGOVERNMENTAL, OR TRANSNATIONAL?

Having explained—however tentatively—the development of new and complex networks of transatlantic governance in the 1990s, we turn to the more difficult task of characterizing these networks in terms of the intergovernmental, trans-

governmental, and transnational models of governance presented in the introduction. The reader will no doubt have concluded from the substantive chapters of this volume that the New Transatlantic Agenda does not fit neatly within any of the three ideal-type models. Rather, it is a composite, with transatlantic governance networks appearing at all three levels of analysis and the traditional distinction between the public and the private blurring at both the domestic and international levels. Nevertheless, the available evidence does permit us to assess the relative importance of intergovernmental, transgovernmental, and transnational actors in the process of transatlantic governance. Put simply, we argue that *intergovernmental networks*, consisting of high-level Clinton administration and European Commission officials, were the architects of the New Transatlantic Agenda and remain central to it; *transgovernmental networks* have emerged in certain areas such as competition policy but remain relatively immature or unimportant in many others; and *transnational networks* have played an important role in transatlantic governance but nevertheless fall far short of the ideal type predicted by the literature on global civil society. In the final section of this chapter, we examine the rise of mixed networks of public and private actors, and the role of resource endowments, resource interdependencies, and per capita stakes in determining which actors participate, and are influential, in the process of transatlantic governance.

US government

Intergovernmental Networks: A Two-Level Game?

For the most part, claims that global forces are spawning a new world order—an order in which heads of state are increasingly irrelevant, technocratic bureaucrats and “epistemic communities” dominate policy making, and transnational actors directly shape international outcomes—remain visions far from the reality we observe in the transatlantic relationship. To be sure, lower-level government actors and private interests *do* participate in the governance mechanisms of the New Transatlantic Agenda to varying degrees across issue areas, but they do so primarily under the terms established by official government actors in Washington and Brussels. The transatlantic business, consumer, environmental, and labor dialogues were all created under the direct sponsorship of the Clinton administration and the European Commission, with the express purpose of providing societal input to—and support for—the New Transatlantic Agenda. Similarly, the various transgovernmental networks established among US and EU actors were either established through direct agreement between high-level officials in Washington and Brussels, or else (as in the case of competition policy) can be held accountable by them. European and American COGs are *not*, of course, the only participants in transatlantic governance, and they no longer hold a monopoly on the representation of their respective polities abroad, if indeed they ever had. The presence of these transgovernmental and transnational actors in transatlantic governance creates new and difficult challenges for both

the US presidency and the EU Commission, to which we will return below. Nevertheless, the evidence presented in the previous chapters suggests clearly that Washington and Brussels are the primary architects and the key actors within the New Transatlantic Agenda and the panoply of trade agreements, regulatory cooperation, and civil society dialogues established under its aegis. Thus, while the transatlantic experience of the 1990s does not fit neatly within any of our three ideal types, it is the intergovernmental model that comes closest to capturing the key roles of the Clinton administration and the EU Commission in the process.

Asserting the primacy of Washington and Brussels does not, however, mean that the contemporary transatlantic relationship fits neatly within Putnam's two-level games model, most obviously because the European Commission is not, strictly speaking, a chief of government, but rather a supranational organization serving at the pleasure of its fifteen constituent member states. The Commission has nevertheless played the role of a European COG in the New Transatlantic Agenda, most notably in the area of trade, where the treaties grant the Commission exclusive negotiating authority vis-à-vis third countries such as the United States. Thus, as we have seen, it is the Commission, and not the member states, which negotiates international trade agreements with the United States, in the person of external trade commissioners such as Sir Leon Brittan and Pascal Lamy. The Commission alone investigates foreign trade barriers, determines settlement options, presents its views on the appropriateness of litigation before the World Trade Organization's Dispute Settlement Body, and conducts such litigation. In the details of implementation of EU trade policy, the member states more often than not simply rubber-stamp the Commission's decisions (Shaffer, chap. 4). Similarly, the Commission enjoys far-reaching executive powers in the area of competition policy and has therefore emerged as the primary interlocutor for US authorities in this area.

The treaties have not, of course, granted the Commission complete autonomy even in core areas such as trade and competition policy. Like any COG, the Commission is held accountable to its political masters in the EU Council of Ministers, who are in turn accountable to their own domestic constituencies. In other words, the Commission plays the role of COG in a complex, *three*-level game, in which it is constrained indirectly by European public opinion and directly by shifting coalitions in the intergovernmental Council of Ministers—witness, for example, the Council's decision to reject Sir Leon Brittan's ambitious plans for a New Transatlantic Marketplace in 1998. Despite these constraints and occasional setbacks, the Commission also enjoys a number of important resources, including its privileged access to information, its ability to exploit the Council's qualified majority voting rules, its ad hoc alliances with private actors in the member states, and above all the recognition by the member states of the need to speak with a common voice—the Commission's voice—on an ever growing array of international issues, including not only trade negotia-

played by

tions and disputes but also areas in which member states have retained legal competence, such as intellectual property issues, climate change, and biotechnology (Pollack and Shaffer, chap. 6).¹ In these and other areas, the Commission has emerged as a sophisticated, strategic actor and as the coarchitect, alongside the Clinton administration, of the New Transatlantic Agenda.

With a few exceptions such as defense and the liberalization of air traffic, where it prefers to negotiate individually with EU member governments, the US has welcomed this "federalization" of EU policy, not only because it is easier to negotiate with a single authority but more generally because it accurately views the Commission as having a more flexible, liberal bent on international trade issues and thus as being more inclined to negotiate outcomes satisfactory to US exporting interests. This is no surprise, given that within the United States itself, the executive branch is better able to balance and trade off diverse domestic economic interests in trade liberalizing deals than Congress, and within Congress, the Senate traditionally has a more trade liberal bent than the House of Representatives. Similarly, within the European Union, moving decision making to the European level has enhanced the autonomy of member governments from their domestic parliaments, while at the same time empowering a Commission that has, over the past decade and a half, demonstrated a clear preference for the liberalization of transatlantic and global trade and investment.

Indeed, in the language of Robert Putnam's two-level games, Peterson (chap. 2) has suggested—and we agree—that the New Transatlantic Agenda can be interpreted as a case of "COG collusion" between a Clinton administration and a European Commission, each of which has been arguably more sympathetic to the goal of market liberalization than their respective domestic constituencies. In this context, the NTA itself, as well as the subsequent Transatlantic Economic Partnership, can be read as an effort by the administration and the Commission to institutionalize their joint preference for the ongoing liberalization of transatlantic and global trade and investment, and expand their respective winsets by empowering and engaging key constituencies, as through the Transatlantic Business Dialogue. By harnessing political support for trade liberalization among powerful "new economy" constituencies (services and intellectual property-driven industries) through incorporating their concerns within the multilateral trading system, they were able to (relatively) more easily sacrifice (and buy off) the interests of agricultural, textile, and other more protectionist commercial constituencies. In the interest of preserving and, over time, expanding a more liberalized trading system, they have also been willing to cut each other slack, granting each other time and space to adapt current domestic policies. They have delayed legislation (as over aircraft hush kit requirements), softened its requirements (as over bans on furs caught with animal traps and congressional policies over Cuba), and forgone challenging particularly politically sensitive trade barriers (such as the de facto EU ban on approvals of genetically modified plant varieties).

The preferences of the administration and the Commission are not, however, identical. To further their separate goals, they seek allies among civil groups in the other's jurisdiction, attempting to manipulate the other's win-sets. In arguing for the formation of the Transatlantic Business Dialogue, the Clinton administration sought business coordination on both sides of the Atlantic to promote US export interests within the EU. Similarly, in pressing for the counterpart Transatlantic Consumer Dialogue, the European Commission sought support for its data privacy, food safety, and agricultural policies among civil groups in the United States. In short, again per a two-level game model, US and EU COGs have attempted to use civil society groups on the other side of the Atlantic, just as these groups have attempted to shape COG positions.

Ongoing differences between US and EU policy makers help explain the notable failure of transatlantic cooperation in the Seattle meetings of the World Trade Organization in December 1999. More importantly, however, the administration and the Commission, like any COG, remain constrained by the demands of their domestic constituents, which vary in their support for the liberalizing agenda of the New Transatlantic Agenda. While the Commission and the Clinton administration have been dovish in part because of the rising prominence of ideas that freer trade benefits the mass of their citizens and makes their commercial enterprises more competitive in a globalizing marketplace, they ~~are~~ ^{have also been} ~~also being~~ pressed by powerful interests that benefit from liberalized trade and increasingly expect and demand its implementation. In the case of the Clinton administration, these ~~powerful~~ ^{ed} interests support ~~it~~ ^{ed} domestically through campaign contributions and through lobbying for favorable votes in Congress in support of the administration's trade policies. ^{ed} In the case of the European Commission, these constituencies become allies in its goal for enhancing its own authority and reputation vis-à-vis member states. When the interests of public representatives and large and well-organized private associations coincide, they fashion public-private partnerships to advance their reciprocal (although not necessarily identical) agendas (Shaffer, chap. 4).

Many domestic regulations challenged as "trade barriers," however, are politically sensitive, and their importance to other societal actors operates as a significant brake on aggressive trade policy. Domestic environmental, consumer, and labor activists—and politicians concerned about their political impact—have been instrumental in denying the US executive "fast-track" negotiating authority, forestalling the negotiation of a New Transatlantic Marketplace, blocking attempts to negotiate a multilateral investment agreement through the OECD and undermining the launch of a new round of WTO trade liberalization negotiations in Seattle (Peterson, chap. 2; Trubek and Knauss, chap. 9). Their threats to executive agendas lead executives to support and attempt to forge transatlantic networks—such as the environmental, consumer, and labor dialogues—to allay and respond to these constituencies' concerns. Despite these efforts, polls show that COGs have been relatively unsuccessful in winning the war of ideas over the

They similarly have supported and will lobby the new administration of George W. Bush, which is likely to pursue similar trade policies.

benefits of trade and capital liberalization and that mass publics remain skeptical of the continued liberalization of transatlantic and global trade and investment (Peterson, chap. 2). When trade issues are politicized domestically, the Commission and the US administration have less room to maneuver. The relative immaturity of EU institutions and their frailer legitimacy, moreover, makes Commission initiatives more vulnerable to challenge.

In sum, the Clinton administration and the European Commission have been the primary architects of the New Transatlantic Agenda, and their joint and colusive preference for the liberalization of trade and investment explains much of both the form and the content of the New Transatlantic Agenda. Nevertheless, if the American and European COGs dominate the transatlantic stage, they do not and cannot monopolize that stage but share it with supporting transgovernmental and transnational actors, to which we now turn.

Transgovernmental Networks: A New World Order?

The potential importance of transgovernmental networks of lower-level government experts was pointed out by Keohane and Nye in the 1970s and was recently held up as a blueprint for international governance by Anne-Marie Slaughter in the 1990s. The chapters on regulatory cooperation in this volume, although limited to transatlantic forums and to specific issue areas, provide an opportunity to test Slaughter's prediction that transgovernmental networks are emerging as the *real* new world order, since they all address regulatory issues among advanced industrial democracies and therefore provide a particularly favorable arena for the development of technocratic, networked forms of governance.

Taken as a whole, the chapters by Devuyst, Pollack and Shaffer, and Egan offer at best patchy support for Slaughter's ideal-type image of a transgovernmental world order. In the area of competition policy, Devuyst finds a series of cooperative agreements between US and EU antitrust authorities, as well as a series of relatively harmonious cooperative practices that approximate as closely as one might hope Slaughter's image of fast, flexible, and effective cooperation among lower-level government regulators. Even within the sphere of competition policy, however, Devuyst finds that day-to-day cooperation among US and EU officials may be limited by persistent differences in the scope and focus of competition law, the divergent goals and procedures of competition policy, and the exigencies of confidentiality that limit information sharing among US and EU agencies.

Moving from competition to other issue areas such as food safety, these and other differences among US and EU regulators emerge as significant barriers to the development of transgovernmental governance networks. The area of food safety offers a starkly different picture, featuring sharp and persistent differences in the cultures and laws governing the regulation of food safety on either

side of the Atlantic, with the US consistently more willing to base its domestic regulations on scientific analysis by independent regulatory agencies, while the EU insists on taking a broader social perspective, with the responsibility for risk management retained by political bodies. As Pollack and Shaffer demonstrate in chapter 6, these differences have led to some of ~~(the)~~ most controversial trade conflicts of the past decade, and they have limited the ability of US and EU regulators to engage in the type of day-to-day cooperation that Devuyst finds in the area of competition policy. Working in part through the New Transatlantic Agenda and in part through the dispute resolution mechanism of the WTO, the US and the EU have struggled to resolve these issues—but they have done so primarily through traditional methods of intergovernmental diplomacy and dispute resolution, not through governance through technocratic networks of lower-level government experts.

no italics

Egan's chapter on transatlantic cooperation in standard setting, finally, presents an even more complex picture, in which transgovernmental networks of regulators coexist with private and quasi-private standardization bodies, and with governments that retain significant influence even when they choose to delegate power to standardization bodies like CEN, CENELEC, and ISO. Within the European Union, Egan argues, mutual recognition and standardization have arisen alongside the traditional harmonization method as complementary means of removing regulatory barriers to trade; yet, even in the EU context, these new methods have encountered numerous difficulties, including the slowness of the standardization process and the challenge of monitoring and enforcing member state compliance with mutual recognition agreements. Moving to the transatlantic level, Egan finds these difficulties magnified by the asymmetries in the philosophies and institutional organization of standard-setting bodies on either side of the Atlantic, which have set limits on efforts to develop common transatlantic standards. In the absence of such common standards, the US and EU have signed a number of mutual recognition agreements. But the implementation and enforcement of such agreements is likely to encounter additional difficulties, given the persistent differences in US and EU regulatory processes and the absence of an international arbitrator comparable to the European Court of Justice.

In sum, it appears that Slaughter's new world order of governance by transgovernmental networks is limited to specific issue areas, such as competition policy, in which regulators on each side of the Atlantic enjoy considerable de facto or de jure independence from their political masters and are guided by sufficiently similar regulatory laws and cultures. Under those particular circumstances, we may indeed witness the development of cooperative, technocratic networks that operate with considerable latitude vis-à-vis their home governments (e.g., through delegations of authority by COGs to mixed public-private standardization bodies). Where these conditions are not met, however, the obstacles to transgovernmental cooperation remain considerable, and COGs retain

the option of managing regulatory conflicts through interstate litigation and negotiation (as in the disputes over EU regulation of beef hormones and genetically modified foods).

Transnational Networks: A Transatlantic Civil Society?

Private actors are implicated at all levels and in nearly all areas of the New Transatlantic Agenda. Indeed, several of the authors in this volume have found evidence of significant transnational activity under the rubric of the New Transatlantic Agenda (Egan, Cowles, and Bignami and Charnovitz), as well as outside of it (Shaffer). Chiefs of government in Washington and Brussels may be the primary architects of the New Transatlantic Agenda, but private interests are also active participants and are certainly *not* restricted to the domestic sphere, as a strict two-level games model would suggest. Indeed, the various transatlantic dialogues reviewed in this volume—taking in the areas of business, labor, consumers, and the environment—as well as other direct, people-to-people links, have been deliberately created and fostered by Washington and Brussels, which have sought to enlist representatives of civil society in furthering various aspects of the New Transatlantic Agenda.

By the same token, however, this volume's contributors find little evidence to support the notion of a transatlantic civil society participating directly in international governance, across national borders, and independent of governments, as in Wapner's model of global civil society. The emerging transnational civil society dialogues, we argue, differ from the traditional model of global civil society in at least three important ways. First, the Transatlantic Business Dialogue and other transnational dialogues have organized transnationally, not as an *alternative* to their own governments but rather *in partnership* with those governments. In the area of international trade, for example, Peterson and Shaffer show how private interests play an increasingly active role in trade negotiations and particularly in trade disputes, setting alarms and providing information for government agencies short on staff and expertise. Similarly, Maria Green Cowles's analysis of the Transatlantic Business Dialogue suggests that, in place of the traditional distinction between a public sphere of international relations and a private sphere of market transactions, we are witnessing a blurring of competence in which private businesses within the TABD sit alongside governmental actors, helping set the trade-liberalizing agenda of the transatlantic relationship and sometimes participating directly in what are, in effect, quadrilateral public-private negotiations. These public-private partnerships have the advantage of providing governments with information from the private sector, as well as helping identify the primary trade barriers between the US and the EU, but they also raise precisely the sorts of normative questions about democratic legitimacy identified by Rhodes in his discussion of domestic policy networks (Pollack and Shaffer, chap. 1).

A second striking difference between the transatlantic dialogues and the international civil society model is that the dialogues are segmented by sector, and their levels of activity and influence are extremely uneven. The Transatlantic Business Dialogue clearly emerged early on as the most active and influential of the dialogues, with considerable resources and a unique ability to set the agenda for government negotiations conducted under the NTA's rubric (Cowles, chap. 8). By contrast, Trubek and Knauss (chap. 9) demonstrate that the Transatlantic Labor Dialogue, organized after the Business Dialogue, has been far less active and far less successful in shaping the NTA's scope and agenda. Indeed, Trubek and Knauss suggest that the ability of European and American labor to influence the transatlantic agenda derives almost entirely from their ability to influence *domestic* politics, as per a two-level games model, rather than from their transnational activities in the transatlantic dialogue. On a more optimistic note, Bignami and Charnovitz suggest that the environmental and consumer dialogues, despite a relatively late start, show greater potential for transatlantic engagement, forging common positions, coordinating strategies, and attempting to influence the agenda of the transatlantic relationship.

Third and finally, beyond the obvious differences in influence among business, labor, and other sectoral dialogues lies a third critique of the New Transatlantic Agenda. As Bignami and Charnovitz point out, one of the central elements of any domestic civil society is the meeting and confrontation of different interests and ideas in a single public sphere, and a common acceptance by those different interests of a set of intersubjective understandings regarding the rules governing their participation and the nature of the issues to be decided (see also Pollack and Shaffer, chap. 1). By contrast with that ideal, the transatlantic public sphere is segmented into distinct sectoral dialogues, in which American and European business representatives share their views in one set of meetings, while consumers, environmentalists, and labor unionists meet and interact in others. Although a couple of meetings have been scheduled for a "dialogue among dialogues," we see no sign of an intensive exchange among the various interests in a transatlantic public forum. In fact, only five representatives from the four transatlantic civil society dialogues showed up for the first meeting, two being from business and none being from labor.²

The various dialogues clearly differ in terms of their basic aims for the New Transatlantic Agenda, as well as the rules governing their participation. The New Transatlantic Agenda remains, within the economic realm, primarily an instrument of economic liberalization, and the Transatlantic Business Dialogue enjoys a special status and unique access to governmental policy makers, which it is reluctant to share with labor, consumer, and other transnational dialogues (Cowles, chap. 8). By contrast, the environmental, consumer, and other dialogues have demanded a more equal footing vis-à-vis business, and a broader agenda for the NTA, but remain secondary actors in the transatlantic relationship. These "unaligned frames," in the language of Clark, Friedman, and Hochstetler (1998),

suggest that the nature and aims of the NTA remain, after five years, fundamentally disputed among core interest groups. For this reason, Trubek and Knauss argue that a genuine transatlantic civil society is unlikely, if not impossible, without a root-and-branch rethinking of the aims of the New Transatlantic Agenda.

MIXED NETWORKS, RESOURCE INTERDEPENDENCIES, AND TRANSATLANTIC GOVERNANCE

The empirical record of transatlantic governance, then, supports some aspects of each of the three ideal-type models: US and EU COGs do indeed aggregate the preferences of their constituents, attempt to manipulate their win-sets, and negotiate agreements in a collusive fashion, as the intergovernmental model predicts; governmental experts in the US executive branch and independent agencies do indeed engage in direct contacts with their counterparts on the other side of the Atlantic, to varying degrees across issue areas and over time, as the transgovernmental model suggests; and civil society actors do have an increasing stake in the transatlantic relationship, and have attempted (with varying degrees of success) to organize across borders to influence the process of transatlantic governance. Nevertheless, the overwhelming weight of evidence presented in this volume suggests the blurring of traditional boundaries between public and private, and the primacy of *mixed networks* of COGs, lower-level government officials, and private groups, not the primacy of any one model or any one type of network, which rarely if ever appear in their pure, ideal-type form.

This conclusion leads us back to our analytical point of departure, namely, Rhodes's depiction of governance by mixed networks of public and private actors, brought together by *resource interdependencies*. According to Rhodes, it is the diffusion of resources (constitutional-legal, organizational, financial, political, and informational) among various actors that explains both the *need* for new networked forms of governance—since neither central governments nor any other single actor possesses the resources necessary to govern without the cooperation of other actors—and the *relative power and influence* of the actors within such networks. That is to say, actors who possess vital resources enjoy a relatively favorable position vis-à-vis other actors, while those with fewer resources exist on the margins of governance networks and enjoy less influence over political outcomes. Rhodes and other network analysts have gone further, characterizing different types of networks, ranging from tight and relatively closed “policy communities” to looser “issue networks” with shifting memberships. But all of these types share the fundamental characteristics of mutual dependence and power distributed according to the possession of key resources (Rhodes 1997, 8–9, 36–39; see also the essays in Marsh and Rhodes 1992; Mayntz 2000).

International relations scholars, despite their familiarity with the concepts of power and influence among states, have been slow to take up Rhodes's

fundamental insight that mutual interdependence and the distribution of resources may also help explain the power and influence of various actors within mixed networks of COGs, lower-level government officials, and various nongovernmental actors. In conclusion, then, we suggest that Rhodes's network analysis—far from predicting a radical decentering of governance—provides a useful explanation for the continuing centrality of governments, the rise of the European Commission as a pivotal actor in some issue areas, and the variable influence of lower-level governmental and nongovernmental actors within the New Transatlantic Agenda.

Earlier in this chapter, we argued that the US executive and the European Commission have been and remain the dominant actors in transatlantic governance. Governance has not been radically decentered. Instead, the US executive and the European Commission were the primary architects of, and remain the key actors in, the New Transatlantic Agenda, setting the terms for much of the interaction that we observe among lower-level government officials and private transnational actors. The reasons for this COG dominance, in view of Rhodes's model, are not hard to find. As Egan points out, governments remain privileged actors with significant legal, regulatory, informational, and financial resources, even in areas such as standardization, in which the day-to-day determination and implementation of standards is delegated to private or quasi-private standards bodies (chap. 7). Similarly, as Petersmann and Shaffer note, for better or for worse, only states (or customs unions such as the EU) hold the legal right to bring trade claims over discriminatory standards or any other trade barriers affecting private firms and consumers (chaps. 3–4). And even in the area of competition policy, where Devuyt paints a picture of cooperation among legally independent regulatory agencies, these agencies have been compelled to operate within the framework of an intergovernmental agreement (chap. 5).

Once again, our picture of transatlantic governance is complicated by the multilevel nature of the US and the EU, and the differences in resources commanded by the US and EU COGs, respectively. In the US, the executive branch is of course limited by its constitutional powers and its domestic constituency, as well as by its federal relationship to the fifty states and to various independent regulatory agencies. Nevertheless, the US administration possesses all the resources of an established state, including legitimate authority to act in a wide range of areas (including security as well as economic affairs), a large information-gathering capacity, and substantial financial resources. The European Commission, we have argued, enjoys a comparable range of resources in certain issue areas such as trade and competition policy, where it clearly acts as a COG on behalf of the EU. However, in other issue areas such as common foreign and security policy, the Commission controls fewer constitutional and other resources and therefore plays a secondary role, with member state governments of the Union taking the lead. Thus, it is largely the constitutional distribution of powers and their oversight by European member

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states that determine the extent to which Commission officials meet as relative equals with their US counterparts (as in trade and competition policy) or as adjuncts to national officials (as in foreign and defense policies, at least for the moment).

Moving beyond COGs to lower-level governmental actors, we have found that different actors bring different resources to the transatlantic table and enjoy varying degrees of influence as a result. Independent agencies, such as US and EU competition authorities and the US Food and Drug Administration, may hold stronger positions within transatlantic governance networks than ordinary government ministries or departments by virtue of their expertise and legal autonomy. When the institutional structures and regulatory goals of the various agencies are symmetrical, this legal autonomy permits them to coordinate policy flexibly and effectively, with minimal day-to-day interference from their respective COGs (Devuyst, chap. 5). Alternatively, such legal independence may allow agencies like the Food and Drug Administration to block mutual recognition agreements that would decrease their ability to ensure the integrity of existing regulatory standards and procedures (Egan, chap. 7). These regulatory bodies retain their distinct interests and resources and may successfully resist being manipulated by COGs as part of the New Transatlantic Agenda.

Among civil society groups, finally, transnational business organizations bring an abundant set of resources to the table, including a willingness to make large economic investments, knowledge and expertise about their own demands and activities, and financial and political support for government actors who are attentive to their concerns. As Charles Lindblom has pointed out, business interests have long held a preferential position in policy making, as their importance for investment and employment in capitalist economies provides them with a privileged position in dealings with government (Lindblom 1977). Similarly, in the context of transatlantic trade, Shaffer points out how businesses not only know which trade barriers matter most but also understand the factual details necessary to bring a successful WTO legal case. Moreover, they hold the lobbying resources to work interagency and political processes. Cowles likewise demonstrates how businesses are able to identify regulatory barriers to trade that COGs need attend to, focus COGs on these issues, encourage greater coordination among government authorities through their contacts at the highest levels of government, and ultimately sit at the negotiating table with government representatives in what become quadrilateral negotiations, as in the Transatlantic Business Dialogue's successful push for the 1997 Mutual Recognition Agreement.

By contrast, other groups such as labor, consumers, and environmentalists have traditionally had fewer informational, financial, and other resources to offer governmental networks. Consequently, they either have been inactive across borders (e.g., labor) or have found it difficult to gain access to the highest levels of the transatlantic governance process (e.g., consumer and environmentalist advocacy

groups). The lack of resources controlled by these groups is, furthermore, exacerbated by the familiar collective action problems facing large numbers of actors attempting to influence government action in any political setting. As Bignami and Charnovitz point out in their contribution to this volume, interest groups with small numbers (such as international businesses) have lower organizational costs and higher per capita stakes in public policy than more diffuse interest groups (such as labor, consumers, and environmentalists). Therefore they possess an advantage in organizing for collective action (see also Olson 1971; Komesar 1994, 8). In the case of the NTA, large transatlantic firms have perhaps the greatest per capita stakes, given their relatively small number and the size of their trade and investment across the Atlantic; the superior ability of such firms to organize across borders within the TABD and influence governments is therefore unsurprising. By contrast, labor, environmentalists, consumers, and even small businesses are all characterized by larger numbers of actors with lower per capita stakes in the New Transatlantic Agenda, and hence weaker incentives to organize across borders to influence transatlantic policy making.

The obstacles to transatlantic collective action among labor, environmentalists, and consumers are not, however, insurmountable, for two reasons. First, as Trubek and Knauss (chap. 9) point out, organized labor and other groups have in recent years discovered that, despite the relative weakness of their respective dialogues, they retain a valuable resource in the form of their ability to block—at the *domestic* level—the liberalization agendas of the EU Commission and US executive. Similarly, US and EU environmental and consumer groups have enjoyed some success (in an indirect manner) in shaping transatlantic governance through the impact of their activities on domestic regulations and/or consumer behavior on either side of the Atlantic. In the case of genetically modified foods, for example, European activists successfully pressed EU and member state political authorities to block the approval of new genetically modified seed varieties and to compel the labeling of others, thereby affecting not only the US marketplace but potentially US consumer perceptions and demands as well. As a result of these domestic actions, both US and European COGs such as the Clinton administration and the European Commission are finding it difficult to “steer” the process of transatlantic governance without taking into account the concerns of labor, consumers, environmentalists, and other marginalized groups. As John Peterson points out (chap. 2), both of the transatlantic COGs are currently hamstrung by domestic opposition (from organized labor and environmental groups in the US, and from France and other reluctant member states in the EU) and by difficult ratification procedures for future trade agreements (the lack of a “fast track” in the US, and the Union’s partial competence on trade issues in the EU). Without an increase in domestic support for liberalization and a clear negotiating mandate for a Millennium Round of trade negotiations, the US and EU executives will face considerable domestic obstacles in future trade negotiations.

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Second, the development of new communications technologies and the creation of additional civil society dialogues by governments have lowered the costs of organization for labor, consumers, and environmental groups, with potential effects on the ability of these groups to participate in transatlantic governance. The spread of Internet technology, for example, has substantially lowered the cost of organizing internationally, and it is responsible in part for the success of antiglobalization activists in disrupting the Seattle meeting of the WTO in November of 1999. Similarly, the creation of the TALD, TAED, and TACD—even if initially intended by the Clinton administration and the European Commission to provide legitimation for their agenda of trade liberalization—has provided labor, environmentalists, and consumers with the resources and the international forums within which to articulate joint positions that are often at odds with the declared aims of the New Transatlantic Agenda.

Whether these groups can use their newly found domestic and international resources to press the US executive and the European Commission to reassess the goals and methods of the New Transatlantic Agenda—in effect, to listen to the voices of the organized labor, environmental, consumer, and other dialogues that have expressed reservations about the institutional mechanisms and the potential deregulatory implications of the NTA—remains an open question. To some extent, the failure of the Seattle meetings of the World Trade Organization may already have forced some such reassessment among American and European leaders. In the aftermath of that failure, President Clinton, British Prime Minister Tony Blair, and others have dubbed Seattle a “wake-up call” (Kahn 2000). They have suggested that governments must engage in a dialogue with labor, environmental, and other groups, and not just the dominant business–government partnerships analyzed in this volume, in order to devise a model of globalization and international governance that will win the support of elements of civil society that thus far have been heard primarily in protest.

NOTES

1. ECJ Opinion 1/94 (re WTO).
2. Gregory Shaffer spoke at the first meeting, which was held in Lisbon on June 7–8, 2000, following a US–EU biannual summit.
3. See also Shaffer 2000 for an analysis of the impact of EU data privacy protection policies on the US market and US politics.

3. See Shaffer 2001a and 2001b for an assessment of the domestic politics behind US positions on transnational trade–environment and trade–labor matters.

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