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Résumé de l'article

Trois types de critiques ont été formulés à l'endroit des ententes internationales « néolibérales » comme l'ALENA et le Single European Act. Une première critique porte sur le fait que les institutions chargées de l'application des règles nouvelles seraient insuffisamment démocratiques. Cet article se penche sur ce type de critique. À cet égard, les allégations selon lesquelles l'Union européenne souffrirait de ces lacunes démocratiques semblent mal fondées. Cependant, les critiques visant le manque de transparence de ces ententes économiques soulèvent un problème, bien réel. Dans cette perspective, l'auteur considère que les arguments en faveur de la tenue de référendums en vue de la ratification de traités internationaux sont pertinents.

# Democratic Critiques of the Institutions and Processes of Neoliberal International Economic Integration: An Assessment

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Ian ROBINSON

## Introduction<sup>1</sup>

From the mid-1980s, North American and West European governments began to promote a new model of international economic integration. This “neoliberal”<sup>2</sup> model subordinates democratic national and subnational governments to international market forces to an unprecedented degree. The principal instruments of this subordination in Europe were the Single Europe Act (1986), and the Maastricht Treaty (1993). In North America, they were the Canada-U.S. Free Trade Agreement or CUSFTA (1988), and the North American Free Trade Agreement or NAFTA (1993). If all goes according to plan, many of the innovations found in CUSFTA and NAFTA, and some that go beyond them, will be projected to the global level with the implementation of the Uruguay Round of the General Agreement on Trade and Tariffs (GATT) in 1995.

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<sup>1</sup> An earlier version of this paper was presented to the International Conference on Economic Integration and Public Policy: “NAFTA, the EU and Beyond”, York University, Toronto, May 27-29, 1994. Thanks to Ricardo Grinspun for inviting me to participate and encouraging me to write on this topic. Thanks to Robert O’Brien for detailed comments on an earlier version of this paper, and to Peter Dorman, Allen Hunter, and Richard Simeon for conversations on the issues raised here.

<sup>2</sup> “Neoliberalism,” as the term is employed here, is a political ideology deriving academic legitimacy primarily from the discipline of neoclassical economics. Neoliberals hold that government “intervention” in the allocative decisions of the private economic actors that collectively constitute “the market” is generally counterproductive from an efficiency standpoint. While acknowledging that, in principle, efficiency may not be the highest value governing economic policy, in practice, neoliberals tend to claim it is necessary to the realization of other worthy goals. Hence, they press for maximum feasible deregulation, privatization, international capital mobility, strengthened private property rights, and other policies that will narrow the economic role of the state by a combination of legal restrictions and competitive market constraints.

The details of these agreements and their many novel features have been identified elsewhere, and need not be restated at length here.<sup>3</sup> By weakening the control that democratic national governments formerly exercised over economic and social policy and its outcomes, without creating supranational institutions to which that control might be transferred, neoliberal integration creates a new kind of domestic and international market economy. The emergence of this “new world order” has provoked an unprecedented mobilization of social movements and organizations arguing that these agreements are incompatible with democratic principles.<sup>4</sup>

Three strands of this democratic critique can be distinguished. The first focuses on the ways in which the *scope* of democratic control over economic and social policy decision-making is narrowed by these agreements. This critique objects to the transfer of control over, say, the conditions under which firms may be bought, sold, or closed by foreign investors, from democratically accountable governments to the transnational corporations that increasingly determine domestic and international market outcomes.<sup>5</sup>

The second strand focuses on neoliberal integration’s likely impacts on the balance of economic and political power, both within and among nations, and, closely related, its impacts on economic inequality. It is argued that international economic integration under neoliberal rules and institutions will tend to concentrate power and wealth in the hands of those who already have it, and that this reduces the quality — and, ultimately, the stability — of democracy.<sup>6</sup>

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<sup>3</sup> For a good overview of recent developments in the European Union, see L. Tsoukalis, *The European Economy: The Politics and Economics of Integration*, Oxford, Oxford University Press, 1993. For details on the novel features of NAFTA, see I. Robinson, “The NAFTA, the Side-Deals, and Canadian Federalism: Constitutional Reform by Other Means?”, in D. Brown and R. Watts (eds.), *The State of the Federation, 1992-1993*, Kingston, Institute for Intergovernmental Relations, Queen’s University, p. 193-227. For an overview of the evolution of the GATT, putting the innovations of the Uruguay GATT in context, see G. Winham, *The Evolution of International Trade Agreements*, Toronto, University of Toronto Press, 1992.

<sup>4</sup> For an overview of the coalitions mobilized against NAFTA in Canada and the United States, and a brief assessment of their political significance, see I. Robinson, “NAFTA, Social Unionism, and Labor Movement Power in Canada and the United States,” *Relations industrielles / Industrial Relations*, vol. 49, no. 4, Forthcoming.

<sup>5</sup> Examples include most of the criticisms advanced in the essays found in R. Grinspun and M. A. Cameron (eds.), *The Political Economy of North American Free Trade*, Montréal, McGill-Queen’s University Press, 1993.

<sup>6</sup> The “quality” critique lies at the core of I. Robinson, *North American Trade as if Democracy Mattered: What’s Wrong with NAFTA and What are the Alternatives?* Ottawa

The last strand examines the new supranational State institutions created — or omitted — by neoliberal economic integration agreements and the processes by which those institutions were negotiated and ratified. It is argued that these institutions and processes fall short of the requirements of democratic principles in a variety of ways. In the European context, such critics often speak of a “democratic deficit.”

Proponents of agreements promoting neoliberal economic integration have generally refused to respond to the democratic critiques on their own terms. They were unwilling or unable to acknowledge that profound changes in the rules and principles governing global and national markets ought to be evaluated in terms other than their impacts on aggregate economic efficiency and growth. Closely related, they were unwilling or unable to distinguish between those who opposed neoliberal agreements in the name of economic principles (e.g., the preservation of corporate profits or employment in sectors losing out to international competition, or Keynes’ concern to maintain national control over international capital mobility<sup>7</sup>), and those who opposed them in the name of political principles such as democracy or national sovereignty.

This failure to engage the arguments of their critics impoverished the political debates over these agreements. It also lent a surreal quality to the discourse of proponents, forcing them to portray environmentalists, consumers’ organizations, international development NGOs, religious organizations, and the many others who opposed these agreements on democratic grounds as traditional protectionists, even though neither their arguments nor their position in the economy lent much credibility to this portrayal of their goals and motives.

There is, however, good reason for this apparently perverse refusal to recognize and address the real nature of much of the opposition. To admit the importance of the political critiques would be to admit that the content of these deals is not just — or even primarily — a technical matter to be resolved by the appropriate technocratic elites, professional economists. To give up this, however, would be to lose their principal source of political authority. This, proponents are very reluctant to do.

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and Washington, D.C.: Canadian Centre for Policy Alternatives and International Labor Rights Education and Research Fund. See also Andrew Reding, “Chiapas is Mexico,” *World Policy Journal*, vol. 11, no. 1, p. 11-25.

<sup>7</sup> On Keynes’ rationale for this position — more pertinent today than ever — see E. Helleiner, “From Bretton Woods to Global Finance: A World Turned Upside Down,” in R. Stubbs and G.R.D. Underhill (eds.), *Political Economy and the Changing Global Order*, Toronto, McClelland and Stewart, 1994, p. 163-75.

The rules and principles governing continental and global market economies define — and in the case of the neoliberal initiatives of the last decade, dramatically extend — the legal rights and practical powers of transnational corporations. It is most unlikely that such rules and principles would survive the application of democratic criteria by a more democratic process. Accordingly, the corporations that press for these agreements will make no discursive concessions that leave them more exposed to this kind of criticism and scrutiny. Neither, it seems, will the politicians who rely on corporate PAC money, the academics paid by corporate-sponsored “think-tanks,” or mainstream journalists employed by a handful of billionaire media magnates.

The political arguments advanced by these critics deserve to be judged on their own merits, rather than dismissed on the basis of imputed intentions and dire predictions as to the economic consequences of failure to implement neoliberal prescriptions. They must also be subjected to greater critical scrutiny than fellow critics were inclined to undertake in the heat of political battle. However, for the reasons just outlined, we cannot expect the advocates of neoliberal economic integration to shoulder this task. No single paper can do justice to the full range of democratic critiques. The present one focuses exclusively on the institutional or “democratic deficit” critique — the last of the three types outlined above.

The institutional critique takes different forms on opposite sides of the Atlantic. In Western Europe, where the European Union has its own legislature, the chief criticism has been that the European Parliament lacks sufficient powers over taxation and legislation, while the European Council and Commission have too much power in these areas. In North America, where no such legislative mechanism has ever been seriously contemplated, criticism has centred on the powers, composition and procedures of quasi-judicial bodies such as NAFTA’s dispute resolution panels, and the political processes that created such institutions.

The legislative and quasi-judicial variants of the institutional critique are examined in turn. It is argued that the democratic deficit critique is a good deal more compelling when levelled against the quasi-judicial institutions of NAFTA and the Uruguay GATT than when it challenges the political institutions of the European Union. This does not imply that the European Union survives all forms of democratic critique unscathed. It is still subject to the “scope” and “quality” critiques outlined above, although to a lesser degree than its North American counterpart, given the more developed character of the European Union’s “social dimension.” However, the present analysis

does imply that democratic critics of the European Union process might be better off reformulating their concerns in these latter ways, rather than focusing on demands for a more powerful European Parliament.

## 1 Supranational Legislative Institutions

This version of the critique will be most familiar in the context of the European Union, but it can be stated more abstractly and universally. So framed, the essential premise is that decision-making powers transferred from national legislatures to the supranational institutions of the European Union or the GATT are choices over which democratic control has been reduced if not eliminated. This is so because the supranational level is characterized by a legislature possessing only very limited powers (i.e., the European Parliament or the United Nations). Put another way, these critics hold that any derogation from the sovereignty of democratic nation-States reduces the scope of democratic control unless those powers are transferred to directly elected supranational institutions with equivalent powers.

One response to this argument is that delegation by legislatures to non-democratic institutions (e.g., courts, government bureaucracies, commissions, or markets) does not necessarily constitute a derogation of democratic principles. That will depend in part upon whether these non-democratic institutions execute purposes endorsed by elected legislatures more effectively than the legislatures themselves could. All existing democracies practice such delegation. In some instances, where the legislature and its committees lack the time or expertise to explore an issue adequately, such delegation may be merely the lesser of evils. In other cases, however, undemocratic processes may be positively desirable from the standpoint of democratic principles. The constitutional protection of civil and political rights, interpreted by an unelected judiciary, is the classic example.

I wish to bracket such questions for the moment, however. Suppose that the decisions that need to be made are quintessentially political ones that should not be delegated to undemocratic institutions and processes. We do not want them made by legal or economic technocrats who claim to divine the "original intent" of "founding fathers" or treaty signers, or to possess unique mathematical insights into the one true path to economic efficiency. We want them made by politicians who will consider, among other things, what weight to attach to the values of founding fathers and economic efficiency, relative to social justice (variously construed) and an environmentally sustainable form of economic development. Surely, many of the decisions taken at the

European Union level are of this sort. In such cases, the basic claim of the democratic deficit critics appears *prima facie* plausible.

The argument so far is neutral with respect to decision-making by democratic national and supranational legislatures. There is nothing in what has been said so far to support the strong preference for strengthening the European Parliament — as opposed to weakening the European Commission and Council — characteristic of most European “democratic deficit” critics. David Held provides a rationale for the supranational preference in a global context.<sup>8</sup> If valid, it should hold *a fortiori* for the much more interdependent member States of the European Union. Held argues that globalization renders democratic national governments less and less capable of realizing effectively the goals desired by their citizens. At the same time, it implies that a small number of economic “great powers” make economic decisions that have profound impacts on people in all the other countries of the world. Held argues that both developments violate assumptions that have made nation-States and their governments the conventional focus of democratic institution-building in modern times:

[ ] the very idea of consent, and the particular notion that the relevant constituencies of voluntary agreement are the communities of a bounded territory or State, become deeply problematic as soon as the issue of national, regional and global interconnectedness is considered and the nature of the “relevant community” is contested. Whose consent is necessary, whose agreement is required, whose participation is justified in decisions concerning, for example, the location of an airport or a nuclear plant? ... What is the fate of the idea of legitimate rule when decisions, often with potentially life-and-death consequences, are taken in polities in which large numbers of affected individuals have no democratic stake?<sup>9</sup>

These are profound questions. Held’s response is that where supranational institutions are necessary to carry out public policy effectively, they must be accountable to the elected representatives of supranational majorities, not just national governments. Where national majorities are making decisions with important implications that extend far beyond national boundaries, democratic control over these decisions ought to be transferred from national legislatures to these newly

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<sup>8</sup> Held’s arguments are developed in two recent essays: “Democracy, the Nation-State and the Global System,” in D. Held (ed.), *Political Theory Today*, Stanford, Stanford University Press, 1991, p. 197-25; and “Democracy: From City-States to a Cosmopolitan Order?” in D. Held (ed.), *Prospects for Democracy*, Cambridge, Polity Press, 1993, p. 13-52.

<sup>9</sup> Held, *op. cit.*, 1991, p. 203-4.

democratized supranational institutions. To these ends, Held recommends five types of reform: 1) the creation of directly elected regional parliaments where they do not yet exist and increased powers to the one such body that already exists (i.e., the European Parliament); 2) supranational referendums in which all those directly affected by policy choices have a vote; 3) the democratization of international "functional" bodies such as the World Bank (perhaps by means of elected supervisory boards); 4) the entrenchment of international civil, political, economic, and social rights, enforced by international courts, to which individual citizens have the right to sue; and 5) the formation of an authoritative global legislature comprised of representatives of all democratic nations (and, in contrast to the UN, only those nations).<sup>10</sup>

Applied to the European Union, this response places Held among those who argue that the Union suffers from a "democratic deficit" because neither the Commission nor the Council — the Union's principal decision-making bodies — are sufficiently accountable to the European Parliament. A similar view has been advanced by the former British Labour Party cabinet minister, Shirley Williams.<sup>11</sup> Like Held, she assumes that, since the European Union makes decisions that affect the citizens of all its member States, these citizens should be treated as though they were all citizens of a federal State.<sup>12</sup>

Yet most democratic deficit critics recognize that the European Union is not yet a federal State, and it appears that most Europeans do not want the Union to become one: a mid-May 1994 MORI poll conducted for *The European* found only 32 percent of respondents in favour of a federal Europe, while 49 percent opposed it (averaged across the 12 member states). Opposition was strongest in Denmark (74 percent), the Netherlands (73 percent), Britain (68 percent), Germany (67 percent), and France (45 percent).<sup>13</sup>

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<sup>10</sup> Held, *op. cit.*, 1993, p. 40.

<sup>11</sup> S. Williams, "Sovereignty and Accountability in the European Community," *The Political Quarterly*, vol. 61, no XX.

<sup>12</sup> In a federal system, sovereignty is divided between the two orders of government. Neither order can unilaterally alter the jurisdiction of the other. That can only be done in accordance with an amending formula that requires the consent of both orders of government. The European Union is not a genuine federal system by this definition. It has no constitution and no amending formula. Any member State can unilaterally regain all of the powers delegated to the Union by unilaterally renouncing the Treaty of Rome and supplements such as the Maastricht Treaty. That such an action is politically difficult and unlikely does not make the Union a federation. Conceptually, at least, it remains a confederation.

<sup>13</sup> *The Economist* (May 21, 1994), p. 14. We must, of course, take such data with many grains of salt, since we cannot know what people mean by "a federal Europe" when they respond to such surveys. It is most unlikely that everyone means the same thing within



If democratic principles are being invoked, the fact that most Europeans do not wish to enter into a federal union is surely important. If most do not want such a system, what is the democratic justification for treating them as though such a system existed? The mere fact of growing international policy interdependence is no answer, because there is more than one way of responding to the accountability problems that increased interdependence creates (even if we assume that it cannot be reversed). One alternative to federal union is increased intergovernmental consultation, cooperation, and treaty-making among democratic nation-States.<sup>14</sup> This “intergovernmental” response may be equally effective in policy terms, and more desirable from the standpoint of the democratic principle of the self-determination of peoples.<sup>15</sup>

European Union “democratic deficit” critics may find this line of argument more compelling in the North American context. The three North American governments have already agreed to a dense continental economic integration regime comprised of international treaties and agreements, overseen by trilateral panels and national commissions and courts. Even before this international regime was constructed, economic policy decisions made in Washington had

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countries, still less across them. For the public response to the Maastricht Treaty in the 12 member States (polls conducted in the Autumn of 1993) — perhaps a somewhat clearer concept in the public mind — see *The Economist* (September 10-16, 1994), p. 21. According to these polls, support for the Maastricht Treaty in the EU as a whole stood at about 40 percent, and opposition at about half that level. The remaining 40 percent were undecided or gave no answer.

<sup>14</sup> National federations faced the same trade-offs and choices as their regional economies became more integrated and economic and social policies became more interdependent: subnational governments could transfer more jurisdiction to the central government, or they could increase the level of information exchange, policy coordination, and formal agreements between national and subnational governments. In Canada, the latter choice was made in most, though not all, cases. See R. Simeon & I. Robinson, *State, Society and the Development of Canadian Federalism*, Toronto, University of Toronto Press, 1990.

<sup>15</sup> This is not to deny that the scope for genuine popular self-determination may be severely constrained under intergovernmental as well as federal decision-making. But on balance, the citizens of smaller States may judge that one or the other approach represents the lesser constraint. Small States may not always prefer confederal to federal decision-making processes. Small *poor* States may fear the tyranny of largely unregulated global market forces more than they fear the tyranny of supranational parliamentary majorities. They might, therefore, opt for the federal approach, reckoning that it should increase the economic power of highly populous poor States (e.g., China, India, Brazil and Indonesia), relative to the less populous economic “Great Powers” (e.g., the USA, Japan, and the European Union) that currently promote neoliberal globalization.

profound implications for Canada and Mexico. Still, none of this implies that these governments — still less the people they purport to represent — desire a continental federation, or should be treated as though they do.<sup>16</sup> Under such an institution, the interests of the Canadian (or Mexican) people might easily be swamped. From the standpoint of the Canadian political community, then, Held's prescription for a continental parliament would constitute a reduction in democratic accountability with respect to the jurisdiction transferred to the continental legislature.<sup>17</sup>

This argument takes national (and subnational) peoples and their political communities seriously, and assigns them a status in normative democratic theory parallel to that assigned to individual civil and political rights. It is a familiar idea that majority rule must not be permitted to erode basic individual rights such as freedom of speech, assembly and association, because those rights are necessary (if not sufficient) to democratic participation and relatively free political preference formation. In a parallel if less familiar way, majority rule must not be permitted to erode or destroy the basic right of "peoples" or self-constituting political communities to determine the laws under which they should live.<sup>18</sup> The procedural and institutional manifestations of this concern to protect minority collective self-determination rights are sometimes termed "consociationalism."<sup>19</sup> In any adequate democratic theory, both individual civil and political rights and collective self-determination rights thus impose constraints on the operation of the majority rule principle.<sup>20</sup>

While highly sensitive to the necessity of popular consent for democratic legitimacy, and to the increasingly problematic question of which peoples and political communities should be entitled to vote on

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<sup>16</sup> We need not speculate in the Canadian case. The 1990-93 World Values Survey asked Canadian respondents whether, on balance, they would support political union with the United States. Less than half of those asked gave an answer. Of those that did, 68 percent said "No", while 22 percent said "Yes." See World Values Study, 1990-1993, Inter-university Consortium for Political and Social Research Catalogue Number ICPSR 6160, University of Michigan-Ann Arbor.

<sup>17</sup> The result is less clear in the Mexican case, because the quality of Mexican democracy is much more limited, though few would deny that the recent Presidential election represented a significant step forward. See Reding, *op. cit.*

<sup>18</sup> See R. Dahl, *Democracy and its Critics*, New Haven, Yale University Press, 1989, p. 193-209. See also, C. Taylor, "Why Do Nations Have to Become States?" and "Impediments to a Canadian Future," *Reconciling the Solitudes*, Montréal, McGill-Queen's University Press, p. 40-58 and 187-200.

<sup>19</sup> The seminal work on this subject is by Arend Lijphart. See his *Democracy in Plural Societies: A Comparative Exploration*, New Haven, Yale University Press, 1977.

<sup>20</sup> See Dahl, *op. cit.*, p. 146-148, 153-162.

which policies, Held seems oblivious to the related point that national or subnational peoples and their political communities may not support his cosmopolitan model of democracy. They might refuse because they judge his model to be less conducive to their (always limited) capacity for collective self-determination than the alternative of binding intergovernmental agreements. Arguments concerning the European Union's alleged democratic deficit often suffer from the same weakness. Looked at from the perspective suggested here, it makes little sense to assert that Held's model is more democratic than decisions made intergovernmentally in accordance with the principles and procedures of the European Council. It all depends, as Robert Dahl has argued, upon the character of the collective identities and loyalties of the peoples contemplating these alternative responses and how they evolve over time:

The question arises: Why this demos rather than another? Might it not properly be more inclusive — or more exclusive? The question seems to admit of no definitive answer. That answers can be reached at all is the half-concealed mystery of democratic ideas and practices. The question is, in fact, an embarrassment to all normative theories of democracy, or would be if it were not ignored. In practice, solutions call not upon theoretical reason, which is baffled by the question, but, as with Lincoln, on primordial attachments to tribe, town, city, subculture, nation, country. Though it is sometimes held that a more inclusive demos is always preferable to a less inclusive one, the argument is patently defective.<sup>21</sup>

Suppose that the peoples of the European Union wished to constitute themselves as a single people for certain purposes. On the view advanced here, it would be appropriate (on democratic grounds) to specify those purposes and assign the Union parliament the jurisdiction necessary to make laws with respect to those purposes. It would be appropriate also to increase the Union government's power to levy the taxes so that it could meet its new responsibilities. Under this scenario, the favoured response of "Euroskeptics" — invoking the principle of "subsidiarity" — would not constitute an adequate response. In effect, it gives the European Court of Justice complete discretion over where the jurisdictional boundaries will be drawn between Union, national, and subnational orders of government. No democratic federation has ever given the courts such tremendous powers, and for good reasons. The people know best what kinds of compromises they wish to make between the multiple collective identities and resulting divided loyalties

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<sup>21</sup> R. Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control*, New Haven, Yale University Press, 1982, p. 98.

characteristic of federal systems, and they ought to have the final say in this matter. The courts require guidance on these questions, even if every possible conflict or ambiguity cannot be anticipated and addressed in a formal division of powers.

Having opted for a federal system and a division of powers, the character of the Union government remains an open question. Some democratic deficit critics seem to favour a unicameral parliament. They would expand the powers of the current European Parliament, while abolishing the European Council. This response equates democracy with majority rule, tacitly if not explicitly. For that reason, it may not be appropriate for a federation comprised of many peoples. Such a federal government should probably be bicameral, with one chamber operating on something close to “rep-by-pop” principles (as does the current European Parliament) and the other on intergovernmental principles (as does the current European Council).<sup>22</sup> The Council’s current system parallels that of the *Bundesrat*, where representatives of the *Länder* governments approve or reject about two thirds of all German federal legislation in a voting system that gives more weight to smaller *Länder* than their populations would warrant.<sup>23</sup>

Other federations also have bicameral legislatures, with the second chamber representing subnational governments or voters. The earlier discussion suggests why this is so. Federal states are often preferred to unitary States where more than one “people” attempt to coexist within a single country. Simple majority rule in such a context will often be regarded with great suspicion by minority peoples. Where they are territorially concentrated, they will look to the State or provincial governments in which they constitute a majority to defend their vital interests against national majorities. Federal constitutions can assign some of the powers relevant to the defence of these minority interests exclusively to such regional governments. But many issues — e.g., economic and social policies — cannot be neatly divided and assigned

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<sup>22</sup> The smaller member States are actually over-represented in the European Parliament, from a “representation by population” perspective. Luxembourg has one Euro-MP for every 65,000 citizens, while Germany has one for every 819,200 (*The Economist*, May 21, 1994, p. 24). But because the European Parliament votes are decided by simple majorities, rather than the qualified majority and unanimity voting rules that still predominate in the European Council, smaller nations are still better able to protect the interests of their national majorities through the Council than the Parliament.

<sup>23</sup> On the workings of *Bundesrat* and its role in the German constitution, see R.J. Dalton, *Politics: West Germany*, Glenview, Ill., Scott, Foresman & Co., 1989, p. 55-7. See also Uwe Thaysen, “The *Bundesrat*, the *Länder*, and German Federalism,” *German Issues* no. 13, Baltimore, American Institute for Contemporary German Studies, The Johns Hopkins University.

to one or the other order of government.<sup>24</sup> Such policies require some other form of balancing mechanism. One possible response to this need, though not the only possible one, is a second chamber that gives subnational governments some capacity to represent their peoples' interests within the federal legislature.<sup>25</sup>

The European Union is comprised of more national peoples than most existing federal States. There is thus a democratic rationale — rooted in the principle of the self-determination of peoples — for a strong European Council, and for weighted country votes at least as protective of small member nations as the rules of Germany's *Bundesrat*. Without a strong Council, the eight small nations of the Union could easily be swamped by the votes of representatives from the “Big Four”: Germany, France, Italy, and the UK.<sup>26</sup> As it is, these larger countries have much more political and economic power than smaller member States, but not as much as they would have under a unicameral, simple majority system.

For the foreseeable future, most of the world's inhabitants will continue to identify themselves primarily as members of national or subnational peoples and political communities, rather than as *citoyens du monde*. They will insist that their political institutions reflect, with reasonable accuracy, the relative intensities of their divided political loyalties. Some theorists of justice (e.g., utilitarians and Kantians) will deplore this fact, while others (e.g., communitarians such as Michael Walzer<sup>27</sup>) would probably defend it. But a commitment to democratic politics requires a respect for this fact because, as Dahl points out, a

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<sup>24</sup> This may be because (as in the German case) regional governments administer many policies falling under exclusive federal jurisdiction, or because policies formally categorized quite differently (e.g., unemployment policy and education policy) intersect in complex ways in practice.

<sup>25</sup> Another possible response would be assigning jurisdiction in such areas “concurrently” — that is, giving both national and subnational governments the right to legislate in this area, and assigning one or the other “paramountcy” in the event that they pass mutually incompatible legislation. If paramountcy is assigned to the subnational order of government, the national legislature will be compelled to compromise with the legislature representing the minority people on the issue in question. However, national majorities may doubt that subnational governments and their electorates have sufficient incentives to compromise. Bicameralism permits more fine-tuning of incentives and balances than are permitted by the mechanism of concurrency.

<sup>26</sup> Since the June 1994 elections, the “Big Four” have had 63 percent (360 of 567) of the seats in the European Parliament.

<sup>27</sup> See M. Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame, Ill., University of Notre Dame Press, 1994.

strong sense of belonging to particular peoples, and corresponding political communities, are the bedrock of democratic government. Without them, there is no practical political solution to the fundamental question of the boundaries of democratic polities, who should be included and who excluded.<sup>28</sup>

This does not imply that democrats should not contest what defines a particular people or national political community. Such contestation is inevitable (as we have learned in recent years) even in “totalitarian” States. Democrats who are also committed to social justice and environmental sustainability — both of which must have a substantial global dimension — do not have to accept conceptions of national self-interest that deny, say, that the people of one county have an interest in promoting democracy or social justice in other countries. Nor, obviously, should democrats accept conceptions of the national community that require practices such as ethnic cleansing. The point is that progress towards the goals desired by the democratic deficit critics considered in this section is more likely to flow from contesting conventional conceptions of national identity than from proposing reforms to international political institutions that are unlikely and unjustified on democratic grounds until citizens’ supranational collective identities and loyalties are strengthened.

International social movements (ISMs) may be the most promising agents of a gradual strengthening of supranational identities. As an increasing number of citizens from diverse nations participate in the organizations and activities that constitute these movements, they will develop a more global sense of collective identity, and new ideas about what these broader loyalties require in the way of national public policy. These ideas will be the product of interactions with people who have similar ideals (hence their common membership in the social movement) but distinct experiences, perspectives, and interests, rooted in the diverse national and subnational communities from which they come. Such interactions within ISMs may, for this reason, offer more potential for the development of policy responses to the challenges of globalization that are consistent with democratic principles than the formation of continental and global federal regimes, at least for the present.

The membership of the organizations that make up the ISMs — e.g., Greenpeace or Friends of the Earth, in the case of the international environmental movement — is voluntary in a way that (the theoretical contortions of consent theorists such as Locke notwithstanding)

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<sup>28</sup> Of course, the existence of such feelings may not be sufficient to solve boundary problems — consider Canada’s apparently endless constitutional travails.

citizenship in a nation-State can never be. This is not to deny that these organizations may be dominated by members from wealthy countries (as Robert O'Brien<sup>29</sup> rightly notes), or a particular political persuasion. But individuals who cannot agree with the basic trajectory charted by these majorities (or in some cases, executives and activist minorities) are free to quit the organization without sanction. This difference gives those individuals a more effective voice option, and usually inclines social movement organizations to a more consensus-oriented form of decision-making. In any case, it finesses the problem of the tyranny of continental or global majorities vis-à-vis minority peoples.

ISM members who take a more international perspective will then work to build support for these policies within their respective nations. If more and more citizens participate in ISMs, the relative weight of the international component of their collective identities will increase. As this occurs for a growing share of national citizens, their governments will have to respond by negotiating and adhering to the new forms of international cooperation necessary to realize these new (or intensified) citizen preferences. In this fashion, the social basis for moving gradually and democratically towards a global equivalent of the European Union or even a genuine world federalism will gradually be built within existing nation-States, and more fundamentally, within the hearts and minds of their peoples.<sup>30</sup>

To conclude, the charge that the European Union suffers from a democratic deficit at the present time seems misconceived, its chief problem being that it is premised on an simplistic, majority rule conception of democracy. Specifically, it fails to recognize that the self-determination of peoples — a bedrock democratic principle — can be undermined by the tyranny of a “cosmopolitan” majority as easily as the individual rights essential to full democratic participation can be undermined by a national majority. What holds for the European Union holds *a fortiori* for continents and worlds in which citizens express much less support for federal union because supranational identities and loyalties are much weaker. Seen in this way, the version of the democratic deficit critique considered in this section is wide of the mark.

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<sup>29</sup> In personal correspondence.

<sup>30</sup> Richard Falk argues that global social movements are already having an important impact on domestic and international politics, and that their political influence is likely to grow in the future. See R. Falk, *Explorations at the Edge of Time: The Prospects for World Order*, Philadelphia, Temple University Press, 1992.

## 2 Surpanational Quasi-Judicial Institutions

This version of the democratic deficit critique does not argue that supranational legislatures should be strengthened. Quite the contrary, in the North American and global contexts where this critique is most commonly found, it is generally assumed that national (and subnational) legislatures remain the sole locus of democratic decision-making. This assumption easily slides into a conflation of nation-State sovereignty with democratic principles: if democratic decision-making institutions and processes exist only within nation-States, the defence of the sovereignty of national institutions becomes a democratic imperative. Framed in this general way, any international treaty would have to be regarded as intrinsically undesirable, from the standpoint of democratic principles, since it would alienate at least some of the sovereignty of democratic governments.

However, as Held has already observed, it is not so simple. Suppose, for example, that labour and environmental standards can be protected from social dumping pressures more effectively at the global or European Union than at the national level. Suppose also that the protection of these standards is something that citizen majorities in all of the relevant nation-States want, and that they have been increasingly frustrated by the apparent inability of their national governments to resist international market pressures to reduce such standards. In such a case, it could be argued that transferring the power to interpret and enforce international minimum standards in these areas to a quasi-judicial commission would constitute a significant increase in popular sovereignty vis-a-vis market forces. An important objective shared by most people in all of these countries is now, *ex hypothesi*, being realized more effectively than their national governments could have done. In effect, "nation-State sovereignty" has been reduced in order to increase "popular sovereignty," where the latter is understood to mean the degree to which popular majorities (subject to the individual and group rights constraints discussed in the previous section) are able to organize their societies and set their priorities in accordance with their basic commitments and preferences.

In a case such as this, it is not necessarily a problem if the supranational institutions that monitor and enforce these international standards are not themselves democratic. For the reasons outlined in the previous section, we might prefer that the content of these standards be decided by national majorities, negotiated intergovernmentally and then entrenched in binding international treaties, rather than decided by the legislative representatives of continental or global majorities. The issue is whether a particular international agreement, and the supranational institutions that will interpret and enforce it, is likely to extend or curtail



the sovereignty of the people who will have to live under these new international rules, principles, and institutions.<sup>31</sup>

There are clearly two questions here. One goes to the content of the international agreement, and whether the process that yielded these results reflected the well-informed preferences of the citizens whose governments sign the agreements. The other question is whether the composition of the new quasi-judicial bodies created by these agreements, and the processes by which they make their interpretative decisions, meet the requirements of due process and democratic principles. Democratic deficit critiques have been advanced along both lines, and we will consider each version in turn.

## 2.1 Process and the Content of International Agreements

This line of criticism may focus on the negotiation or the ratification process. Critics of the negotiation process insist upon broader public and interest group participation, through consultative committees, in the process by which governments determine their original bargaining objectives, and in the negotiations process itself. They also put a premium on the openness of negotiations so that citizens and organizations unable to participate in the consultative process can follow and understand what is happening, and respond to developments while negotiations are still under way. Ralph Nader, Public Citizen, and the Citizens' Trade Coalition have been forceful exponents of these views in their critiques of NAFTA and the Uruguay GATT in the United States.

The critique of the ratification process argues that the scale of the economic changes implied by neoliberal economic integration agreements, and the difficulties of changing them in the future, give them the status of amendments to the *de facto* economic constitutions of the participating countries. Moreover, like all international agreements, these ones involve the alienation of significant areas of national (and, often, subnational) State sovereignty. In such a situation,

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<sup>31</sup> For a deeper and more comprehensive analysis of the concepts of popular and national sovereignty, and the political implications of different ways of framing the democratic critique, I am indebted to Allen Hunter for sharing his draft essay, "Democracy, Yes, Sovereignty, No: An Exploration of Tensions Between Domestic and Transnational Political Activism," A. E. Havens Center for the Study of Social Structure and Social Change, University of Wisconsin, Madison, n.d. Hunter might not agree with the way in which the State/popular sovereignty distinction is employed in this paper.

it is argued that the proposed changes should be put to a national referendum. Canadian critics of CUSFTA and NAFTA made arguments along these lines. So did many critics of the Maastricht Treaty, encouraged by the commitments of the Danes, the Irish, and ultimately the French to hold referendums on the issue.

### *Negotiations Process*

One response to criticisms of the negotiations process is that bargaining of all kinds involves strategic behaviour. Out of the desire to get the most they can in return for what they give up, bargainers endeavor to present a united front to their interlocutors, and to keep their "bottom lines" obscure until the final phase of negotiations. If this is so, it is unclear how much inclusion and transparency there can be in trade negotiations. The need to present a united front may make it difficult if not impossible for subnational governments and social movement organizations to participate in the negotiating process. Similarly, the need for secrecy regarding bottom lines may limit what can be said (honestly) about bargaining objectives at the outset and about changes in those objectives as negotiations unfold.

Critics might reply that even if these points were granted, they would not prevent national governments from creating much more inclusive consultative processes, before and during negotiations. They might also question whether any democratic government participating in trade negotiations ever really presents a unified front. Trade negotiators have strong incentives to learn about the divisions within the societies and states of their partners, so as to better interpret the meaning of their bargaining positions. In a democratic society, this information is not too difficult to obtain. The United States government is seldom a coherent, unified bargainer on trade-related issues, and neither is the European Union, as the Uruguay GATT negotiations on agriculture starkly revealed.<sup>32</sup> This does not mean that the goals and motives of these or other parties to negotiations are ever completely transparent, or that trade negotiators should or will cease to behave strategically. But if the other parties already know that their bargaining partners suffer from a range of internal divisions, this weakens traditional defenses of secrecy and exclusion during negotiations.

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<sup>32</sup> On the politics of U.S. trade policy formation and negotiations up to NAFTA, see I.M. Destler, *American Trade Politics*, Washington, D.C., Institute for International Economics, 1992. On the politics of agricultural negotiations within the European Union during the Uruguay GATT round, see G. Skogstad, "Agricultural Trade and the International Political Economy," in Stubbs and Underhill (eds.), *op. cit.*, p. 246-58.

A more telling reply to the critics might ask what difference it would have made to the final content of, say, NAFTA, if the negotiating process had been more open and inclusive. Despite official secrecy, the process in the United States was actually quite open because, to put it crudely, Washington "leaks like a sieve." Almost all important documents related to the NAFTA negotiations were reproduced in detail by *Inside U.S. Trade*, a weekly publication available to any organization that could afford about \$650 for a year's subscription, or arrange to xerox copies from one that could. So it is questionable whether the limited increases in *de facto* openness that are plausible in the U.S. would have made much difference to the goals pursued by the U.S. Administration. However, the United States government is no doubt exceptionally leaky, so greater official openness would make a greater difference in other countries.

The case for a more inclusive consultative process is somewhat stronger. Suppose that critics of neoliberal integration had been better represented on trade advisory committees that were, as a matter of fact, comprised almost exclusively of business representatives who supported neoliberal integration. Given the organizational culture of trade officials, and the economic ideologies of the governments they were bound to serve, would the outcome have been much different? It seems unlikely. The government officials that negotiated these deals were not unaware of the arguments of their critics, even if they sometimes had trouble understanding them. It is possible that they would have understood them better had they discussed them in greater detail with their proponents in trade consultation bodies. But, having understood them better, would they have liked them any better, or taken them more seriously? Again, it seems unlikely. Neoliberal governments tended to include in their consultation processes all major groups that they believed would share their basic vision, so as to claim the broadest possible consultation and support. They excluded those that they knew opposed basic premises of their economic policies. Thus, the exclusiveness of the process reflected prior and deep political differences over what counts as good economic policy; it did not create these differences.

On this view, creating a more inclusive consultative process is no substitute for electing governments championing a different economic ideology, though it may be tempting to focus on the former, given the impossibility of doing anything about the latter in the short run. If the process had been more open and inclusive, but the results had been very similar to those embodied in the actual agreements, would the critics have been happy with them? Most critics would probably answer "No," because they objected to the substance of the agreements at least

as strenuously as they did to the process by which they were negotiated. In many cases, I would venture to say that process objections were largely driven by substantive concerns. If it is unlikely, in any case, that increased inclusiveness and openness would alter the neoliberal premises that determined the objectionable content of these agreements, how much weight should be given to this line of democratic deficit argument?

### *Ratification Process*

The same basic point — that concerns about substance and outcomes drive most concerns about process — can be made about criticism of the ratification process. However, national referendums on such international agreements might make a substantial difference to the outcome of negotiations, because public opinion in many OECD countries has been very skeptical of these agreements. Of course, had referendums been part of the ratification process, efforts to modify public opinion by the proponents of neoliberalism would likely have been much greater than they actually were. For example, in the course of Canada's 1988 federal election, fought more on the issue of CUSFTA than anything else, pro-CUSFTA forces spent about \$30 million — roughly ten times the amount that the anti-CUSFTA coalition could muster.<sup>33</sup> Still, this media blitz had a very limited impact on public opinion: public support for the deal fell, from about two thirds when the idea was first broached to about one third in the last month before the election. Even in that final month when pro-CUSFTA spending peaked, public opposition was only reduced by two or three percentage points. On election day, 44 percent remained opposed, while support stood at only 37 percent; the rest remained undecided.<sup>34</sup>

Nor was the CUSFTA fight in Canada the exception. Public opinion became increasingly skeptical about NAFTA in both Canada and the United States over the course of its negotiation and ratification.<sup>35</sup> Faced

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<sup>33</sup> See G. B. Doern and B. W. Tomlin, *Faith and Fear: The Free Trade Story*, Toronto, Stoddart Press, 1991, p. 219; and S. B. Bashevkin, *True Patriot Love: The Politics of Canadian Nationalism*, Toronto, Oxford University Press, 1991, p. 115-6.

<sup>34</sup> These data are from A. Blais, "Public Opinion on Free Trade in the 1988 Election", in J. Jenson (ed.), *The Free Trade Agreement of 1988: Implications for the Future of Canadian-American Relations*, Report of a Conference held at the Center for International Affairs, Harvard University, December 9, 1989. See also R. Johnston, A. Blais, H. Brady, and J. Crête, "Free Trade and the Dynamics of the 1988 Canadian Election", in J. Wearing (ed.), *The Ballot and its Message: Voting in Canada*, Toronto, Copp Clark Pitman, Ltd., p. 315-39.

<sup>35</sup> The battle for public opinion over the CUSFTA, as well as the NAFTA, is examined in more detail in I. Robinson, "The Canadian Labour Movement Against 'Free Trade':

with skeptical public opinion of limited malleability, even governments of firm neoliberal convictions would probably find it necessary to modify the deals in ways more appealing to their democratic deficit critics.

## 2.2 Character of Panelists and Panel Processes

Even if the content of international trade and capital agreements were basically sound, there would be cause for concern if the quasi-judicial bodies interpreting these agreements were populated by people likely to take a narrow and biased view of the meaning of the agreements. These concerns would obviously be exacerbated if panel processes and decisions were not open to public scrutiny. To guard against such dangers, it would seem reasonable to give democratic legislatures some control over who serves on international trade tribunals, and to insist that they abandon private interests that might put their interests in conflict with those of the public. It would also seem reasonable to insist that members of the public — not just national governments and corporations — have standing before such tribunals, and that their proceedings and decisions be published.

Yet, none of these minimum requirements of “due process” are met in CUSFTA, NAFTA, or the Uruguay GATT’s World Trade Organization. None of these agreements make dispute resolution panelists subject to conflict of interest rules. They may work for governments and corporations that are parties to the very issue at hand. Most are likely to be trade lawyers, with the biases, preoccupations, and material interests associated with the practice of that kind of livelihood. Even more important, as Lori Wallach notes,

The secrecy of GATT dispute resolution is largely perpetuated in WTO dispute resolution. All panel proceedings are conducted in secret. Unlike complaints, briefs and affidavits in the U.S. court system, documents presented to the panel are kept confidential. The extent of the secrecy is emphasized by what is being labeled an important improvement in openness. The WTO text allows countries to request a “non-confidential summary” of the information contained in official submissions that could be disclosed to the public. This requirement is not an adequate substitute for disclosure of the submissions themselves, because the contents of the

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summaries need not fully disclose all of the evidence and arguments of the actual submissions. Interestingly, the WTO dispute resolution text specifically states that each country may release its own documents if it so chooses. There is no right for public comment or participation.<sup>36</sup>

It is no doubt possible to offer rationales for these procedures. Both governments and corporations are leery about providing many types of economic data to their competitors and the public alike. The quality and quantity of the data provided to dispute resolution panels by these sources may therefore be better as a result of such secrecy. However, the quality of information and the consideration of perspectives available from other — often expert — sources other than governments and corporations (e.g., environmental and consumer organizations) will be reduced. More importantly, the quality of democracy is surely diminished when powers formerly possessed by legislatures and courts governed by due process rules are transferred to tribunals subject to no such requirements. The character of these dispute resolution processes, while less important their neoliberal content, is bound to exacerbate the problems originating in their substance. It will reinforce the tendency to interpret provisions and decide issues on very narrow criteria — “trade and commerce *uber alles*,” as Ralph Nader has put it. This inappropriate bias will not be subject even to the disciplines of reason and precedent, since there will be no public record of the reasons for past or present decisions that can be scrutinized by citizens and other actors other than national governments.

## Conclusion

A careful examination reveals a wide variety of “democratic deficit” arguments, some generally more persuasive than others, and others varying depending upon whether they are deployed in Western Europe or North America. While they are probably the best known variant of the democratic deficit critique, arguments that equate democratic principles with increased powers for supranational legislatures such as the European Parliament are among the weakest, because they rest on an overly narrow conception of democratic principles.

Critiques of the processes by which neoliberal trade agreements were negotiated and ratified are somewhat stronger. Those that focus on increasing the openness and inclusiveness of the negotiations process are sound in principle, but unlikely to make much difference in

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<sup>36</sup> Testimony of Lori Wallach, Public Citizen’s Congress Watch on the GATT Uruguay Round Agreement, Before the Senate Commerce Committee, October 17, 1994.

practice, given the ideological bent of the governments negotiating the agreements. On the other hand, submitting such agreements to popular referendums, as part of the ratification process, probably would make a significant difference for the better, as even neoliberal governments would be forced to make at least some concessions to a skeptical public. Finally, critiques of neoliberal dispute resolution processes, are both justified and important, for the reasons just reviewed.

Taken together, the valid components of the democratic deficit arguments provide a number of powerful and largely unanswered reasons for modifying neoliberal economic integration agreements in the name of democratic principles. These reforms are particularly important for the North American agreements and their global counterpart, the Uruguay GATT. As noted at the outset of this paper, a thorough assessment of the implications of these agreements for democratic principles must add the weight of the the “scope” and “quality” critiques sketched in the introduction to the institutional and process-oriented arguments developed in this paper. There is no space here to develop these other arguments. However, I believe that their combined weight is more than sufficient to make the defeat and thorough rewriting of these agreements a democratic imperative.

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## Summary

Three basic types of democratic critique have been levelled against “neoliberal” economic integration agreements such as the NAFTA and the Single European Act. One type holds that the institutions created to oversee the integration process are deficient on democratic grounds. This paper summarizes and evaluates this type of democratic critique. It is argued that allegations that the European Union suffers from a “democratic deficit” are not very convincing. However, criticisms of the lack of openness and due process in neoliberal dispute resolution processes are more persuasive. Arguments for a treaty ratification process that includes a referendum are also convincing.

**Key Words:** democracy, democratic deficit, popular sovereignty, State sovereignty, neoliberal, trade policy, economic integration, due process, referendum, Canada-U.S. Free Trade Agreement, NAFTA, Uruguay GATT, Single European Act, Maastricht Treaty.

## Résumé

Trois types de critiques ont été formulés à l'endroit des ententes internationales «néolibérales» comme l'ALENA et le Single European Act. Une première critique porte sur le fait que les institutions chargées de l'application des règles nouvelles seraient insuffisamment démocratiques. Cet article se penche sur ce type de critique. À cet égard, les allégations selon lesquelles l'Union européenne souffrirait de ces lacunes démocratiques semblent mal fondées. Cependant, les critiques visant le manque de transparence de ces ententes économiques soulèvent un problème, bien réel. Dans cette perspective, l'auteur considère que les arguments en faveur de la tenue de référendums en vue de la ratification de traités internationaux sont pertinents.

Mots-clés: démocratie, «déficit démocratique», souveraineté populaire, souveraineté d'État, néolibéral, politiques commerciales, intégration économique, *due process*, référendum, libre-échange, ALENA, Uruguay GATT, Single European Act, Maastricht.

## Resumen

Tres tipos de críticas democráticas han sido formuladas respecto de los acuerdos internacionales «neoliberales» como el Tratado de Libre Comercio norteamericano y el *Single European Act*. Según una de estas críticas, las instituciones creadas para interpretar y aplicar las nuevas reglas serían insuficientemente democráticas. Para Robinson, el argumento según el cual la Unión Europea es insuficientemente democrática, no es convincente. El autor considera más plausible el argumento que sostiene que los mecanismos para resolver las disputas, creadas por los acuerdos neoliberales, no son suficientemente abiertos. Asimismo, considera convincentes los argumentos en favor de un proceso de ratificación de los tratados que incluya un referendun.

Palabras claves: democracia, «déficit democrático», soberanía popular, soberanía de Estado, neoliberal, políticas comerciales, integración económica, *due process*, referendun, libre cambio, TLA, Uruguay Gatt, *Single European Act*, Maastricht.