

The Many Faces of the Trade-Environment Conflict: Some Lessons for the Constitutionalization Project

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Keywords

economic integration, globalization, international trade, IMF, constitutional change, environmental policy, law, political science, economics

Abstract

The 'trade and environment' nexus emerged over the last decade as one of the main concerns of the anti-globalization movement. The dyad – 'trade-environment' – was invoked increasingly as if it designates a singular social dilemma, whose boundaries and contours are well defined. This article challenges this assumption. The trade and environment conflict, it is argued, should not be viewed as a singular problem, but rather as an amalgam of multiple dilemmas, constituted by a myriad of institutional and discursive networks. The article's main thesis, which follows from this pluralistic image, is that the trade-environment conflict cannot be resolved by a singular (meta) legal formula or economic model. Its resolution requires, rather, an assemblage of varied responses, which will be sensitive to its multi-dimensional character. This thesis leads to a more general critique of global Constitutionalism, which questions the attempts to resolve global dilemmas through unitary institutional structures. The article develops an alternative constitutional conception, which replaces the search for all-embracing universalistic structures, with an experimental (even opportunistic) outlook, directed by a pragmatic and contextual approach. The notion of '*polycentric constitutionalization*' is used to describe this alternative conception. To illustrate its general thesis the article considers the ecological problematic of the IMF 'structural adjustment' programs. The goal of this examination is both to expose the contours of the trade-environment conflict as it arises within this particular domain, and to propose some ideas for resolving the problematic of the adjustment programs, which will be guided by the vision of '*polycentric constitutionalization*'.

Kurzfassung

Die Verknüpfung von 'Handel und Umwelt' entwickelte sich während des letzten Jahrzehnts zu einem der Hauptanliegen der Anti-Globalisierungs-Bewegung. Die Dyade – 'Umwelt-Handel' – wurde immer öfter bemüht, so als würde sie das einzige soziale Dilemma bezeichnen, dessen Grenzen und Konturen eindeutig umrissen sind. Dieser Artikel stellt diese These in Frage. Der Handels- und Umweltkonflikt, so wird argumentiert, sollte nicht als einzigartiges Problem angesehen werden, sondern vielmehr als ein Amalgam vieler Dilemmata, entstanden aus einer Myriade institutioneller und diskursiver Netzwerke. Die Hauptthese dieses Artikels, die sich aus diesem pluralistischen Bild ergibt, ist, dass der Umwelt-Handels-Konflikt nicht durch eine einzelne (meta-) gültige Formel oder ein ökonomisches Modell gelöst werden kann. Seine Lösung verlangt vielmehr eine Mischung verschiedener Antworten, die seinen multi-dimensionalen Charakter berücksichtigen. Diese These führt zu einer generelleren Kritik des globalen Konstitutionalismus, die Versuche, globale Dilemmata durch einheitliche institutionelle Strukturen zu lösen, in Frage stellt. Der Artikel entwickelt eine alternative konstitutionelle Konzeption, welche die Suche nach allumfassenden universalistischen Strukturen ersetzt, mit Hilfe eines experimentellen (sogar opportunistischen) Ausblicks, geleitet durch einen pragmatischen und kontextuellen Ansatz. Der Begriff der '*polyzentrischen Konstitutionalisierung*' wird gebraucht, um diese alternative Konzeption zu beschreiben. Um seine generelle These zu illustrieren, berücksichtigt der Artikel die ökologische Problematik von 'strukturellen Neuausrichtungs'-Programmen des IWF. Ziel dieser

Untersuchung ist es sowohl, die Konturen des Umwelt-Handels-Konflikts darzulegen, wie er sich in diesem speziellen Bereich darstellt, als auch einige Ideen zur Lösung dieser Problematik der Neuausrichtungs-Programme vorzuschlagen, welche von der Vision der '*polyzentrischen Konstitutionalisierung*' geleitet sind.

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1

Cities & Eyes 2

"It is the mood of the beholder which gives the city of Zembrude its form. If you go by whistling, your nose a-tilt behind the whistle, you will know it from below: window sills, flapping curtains, fountains. If you walk along hanging your hands, your nails dug into the palms of your hand, your gaze will be held on the ground, in the gutters, the manhole covers, the fish scales, wastepaper. You cannot say that one aspect of the city is truer than the other, but you hear of the upper Zembrude chiefly from those who remember it, as they sink into the lower Zembrude..."

Calvino, Italo *'Invisible Cities'*, 54 (Picador, 1974) (Marco Polo's reflections on his travels, as they were told by him to Kublai Khan, the great emperor of the Tartars).

1 Introduction

The conflict between trade and environmental values has been one of the major themes of the anti-globalization movement. It has dominated the street protests at Seattle in 1998 and at Quebec and Genoa in 2001 and was invoked in various other domains (from the Internet to the popular media). This persistent invocation has placed the 'trade and environment' *problematique* forcefully on the public sphere, triggering a wide-range debate. The phrase – 'trade and environment conflict' – was used, increasingly, as if it represents, or designates, a singular social dilemma, whose boundaries and contours are well defined. I want to challenge this assumption. The trade and environment conflict, I will argue, should not be viewed as a singular problem, amenable to unitary descriptions, but rather as an amalgam of multiple dilemmas, constituted by a myriad of institutional and discursive networks.

The first part of this article seeks to expose this multiplicity – to generate a richer map of the trade-environment conversation. To achieve this, the article examines some of the more prominent motifs of this conversation.⁽²⁾ The first motif concerns the opposition between the notions of *nature/environment* and *trade/economic growth*. The second concerns the *institutional* aspect of the trade-environment conflict. The third motif concerns the ideas of ‘*legitimacy*’ and ‘*democracy*’. A close reading of these three motifs, and the way, in which they were invoked in this debate, brings forth a complex world of meaning. The trade and environment conflict emerges as a multiple challenge, taking place in multifarious institutional and discursive universes. My main thesis, which follows from this deconstruction effort, is that this dispute cannot be resolved by a singular (meta) legal formula or economic model.⁽³⁾ Its resolution requires, rather, an assemblage of varied responses, which will be sensitive to the multi-dimensional character of this conflict.

This simple realization creates a challenge to the constitutionalization dream (in its universal version). It questions the logic of erecting a unitary institutional structure as *the* solution to global dilemmas, and looks, instead, for a more modest constitutional vision. This alternative vision replaces the search for uniform, all-embracing universalistic structures, with an experimental (even opportunistic) outlook, which is directed by a deeply pragmatic and contextual approach. The term ‘*polycentric constitutionalization*’ provides a good heading to this alternative conception. In its second part the article seeks to demonstrate this general thesis by examining the work of the International Monetary Fund, in particular, its ‘structural adjustment’ programs. The goal of this part is both to expose the contours of the trade-environment conflict as they arise within this domain, and to propose some ideas for resolving this conflict, which will follow my more skeptic conception of constitutionalization.

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2 The Different Facets of ‘Nature’ and ‘Economic Growth’[↑]

Let me start with the thesis: what seems to constitute the essence of the trade-environment conflict – the opposition between the notions of *nature/environment* and *trade/economic growth* – does not reflect a clear binary opposition, but constitutes, in effect, a complex discursive continuum, whose two sides are imbued with a variety of (sometimes-conflicting) interpretations. The combination of these two terms does not produce, therefore, a singular opposition, but, rather, generate a broad spectrum of distinct ‘disputes’. This means that the trade-environment debate is not governed by a single discursive system (with common and well-defined criteria for reaching understanding), but is rather the playground of multiple discourses and ideologies.⁽⁴⁾ The discursive disorder, which typifies the trade-environment debate, explains I believe much of the bitterness and violence that has characterized it over the last years. Making the differences between these conflicting discourses more transparent is a necessary step in the attempt to alleviate the tensions between trade and environmental concerns.⁽⁵⁾

One way by which the rich discursive horizon, which underlies the trade-environment conversation can be exposed, is by looking at it through the lens of a distinct (but closely related) *problematique*: the relationship between *society* and *nature*. The traditional construction of the *nature/society* duality insisted that nature could be of value – whether intrinsic or instrumental – only to the extent that it is of value to humans.⁽⁶⁾ One of the major achievements of the modern ‘environmental’ movement was to put in question the validity of this traditional conceptualization. However, as the discussion below demonstrates, this common challenging did not produce a singular understanding of the nature/society duality (a common *environmental rationality*). It created, rather, an assemblage of different visions, which generate varied images of the trade-environment conflict.

Consider, first, the view of deep ecology. The deep ecologists argue that the nature/society duality

should be understood in terms of a new *transcendent, non-anthropocentric ethics*. The answer to the current ecological crisis lies, under this view, in a different conception of nature, which gives nature a “social role beyond being a means for human well-being”.⁽⁷⁾ This trend of thought sees the major problem of the modern society in the idea of ‘domination’ of nature, which informs all our political and economic institutions. In practical terms, the deep ecologists call for a complete withdrawal from the industrial system and the adoption of a pre-capitalist way of life.⁽⁸⁾ For the ‘deep ecologists’ the route of ‘social asceticism’ constitutes the only route by which the belief in the intrinsic value of nature could be given full effect.

For other ecological and moral thinkers, there is no reason to abandon the very familiar grounds of the Kantian, anthropocentric morality. What we need, instead, is to take more seriously, the idea that what is ‘good-for-man’ depends on what is good for ‘nature’. And if the challenge to the Kantian moral vision is rejected, it seems more appropriate to view the ‘environmental problem’ – not as a problem of a ‘new ethics’ – but rather as a sequence of *pragmatic dilemmas*, which can be resolved by a more sensitive use (more ‘taking into account’ ...) of our existing depository of technical-scientific know-how. This pragmatic vision leads to various interpretations. Some (economic conservatives) take this view to mean that there is no need for a fundamental change in the basic ethos of the modern society, with its strong reliance on technology and free-market structures, and its endless appetite for growth.⁽⁹⁾ For these trade observers the trade-environment conflict represents a ‘false-dilemma’, which disappears once this conflict is analyzed through the tools of neo-classical economics. Trade liberalization, or economic integration, cannot be harmful to the environment for two main reasons. First, because it should lead to “improved allocation and more efficient use of resources”, and second because it should help developing countries to generate the resources they “need to protect the environment and work towards sustainable development”.⁽¹⁰⁾ Other economic observers take a more skeptic view of the power of the ‘market’, and believe in the need to develop a more ‘enlightened’, or ecologically-sensitive economics, which will be able to deal with the various maladies (market failures, externalities) of the current economic system.⁽¹¹⁾

3

Yet, for others, the current ecological crisis is, in fact, a reflection of a deeper *political crisis*: our multiple environmental problems are seen as the inevitable result of, on the one hand, the failure of the political institutions of the modern democratic state to create mechanisms for fair deliberation, which could give voice to the *different constituents* of the polity (including its non-human members), and, on the other hand, the uncontrollable rise of an expert-technocratic administrative culture.⁽¹²⁾ Another variant of this ‘political’ strand takes a more anthropocentric view of the trade/society problematique. The eco-socialists in the West or the Gandhians in India prefer to construct the discussion, not as a critique of human domination of *nature*, but as a critique of the *social injustices*, which, for them, underlie the contemporary ecological crisis.⁽¹³⁾ Pollution and environmental degradation are seen as (another) form of injustice that was unfairly inflicted by the society’s elite (‘omnivores’) on the poor and marginal sectors of society. While these two variants of ‘eco-politics’, take a different view of the nature/society distinction, both see the solution to the trade-environment conflict in the creation of a new political order. The details of this ‘new’ order remain, though, unclear.

These diverse interpretations of the nature/society duality posit nature as a multi-facet concept. Nature is posited as a *docile but highly sensitive resource*, as a locus of *sacredness*, as a reflector of *social injustices*, and as a *legitimate partner* in a new polity. These varied images imbue the trade-environment conflict with conflicting meanings. For those who accept the Kantian framework, the debate focuses on the *value* of free trade and the institutional framework that supports it *to humanity*. The fact that the Bretton Woods institutions (the WTO, the World Bank and the IMF) were established with the particular task of facilitating an expansion in the scale and scope of international

commerce, is not, in itself a ‘bad’ thing. Under these premises these institutions could be criticized only if it is shown that they are not *sufficiently attentive* to the environmental impacts of international commerce, to the extent that these impacts *have an adverse effect on humanity*.

However, operating within an anthropocentric world-view does not generate, in itself, agreed criteria for resolving the trade-environment debate. Thus, for example, modern environmental economics rejects the simple narrative of classical trade theory, according to which the (free) forces of the global economy should necessarily lead to environmental improvement. It argues, rather, that once the different ‘imperfections’ of the modern society – environmental externalities and governmental failures – are taken into account, trade liberalization *can* and *does* lead to environmental degradation – both on the *local* and the *global* levels.⁽¹⁴⁾ These failures call for various ‘fixes’ or ‘internalizations modules’. The nature and structure of these ‘modules’ is still highly debated.⁽¹⁵⁾ From the perspective of Eco-socialism or Gandhism, however, the methodology of enlightened economics does not constitute a suitable framework for resolving the trade-environment conflict. Problems of social justice cannot be captured, or indeed resolved, through economic or monetary calculus. They demand other tools, other perspectives.

But, as was noted earlier, the Kantian world-view does not exhaust the discursive spectrum in which the trade-environment debate is entertained. From the perspective of deep-ecology or eco-politics the Kantian frame constitutes a dangerous discursive straitjacket which should be resisted. The Kantian perspective is necessarily incomplete because it leaves unchallenged the *basic paradigms* of appropriation of nature, economic growth, and political governance, which lie at the core of the free trade ethos. For these observers there is no reason why the current structure of the global economy should be taken as a legitimate ‘starting point’ for the debate. Accepting this ‘starting point’ will bar any discussion of the radical reforms, which these non-anthropocentric view-points call for.⁽¹⁶⁾

Any attempt to resolve the trade-environment conflict must take into account, then, these varied world-views. There is no a-priori reason why the trade – environment debate should be entertained under the shadow of the *Kantian* tradition. Deliberating this conflict requires a frame, which will be sensitive to this discursive complexity. The problem of course is that these multiple worldviews are, to a large extent, non-commensurable. By recognizing them as legitimate standpoints, one could argue, we will ‘bury’ any real chance for resolving this conflict through ‘rational’ deliberation. I return to this question in the two concluding sections of this article.

3 The False Solitude of the WTO [↑]

The trade-environment conversation was undermined by another blind-spot. The debate – as it was rehearsed in the streets of Seattle, the media, and the academia – was dominated by one prominent and rarely contested assumption – that the WTO constitutes the epitome and focal point of this conflict. This is an unfounded assumption. It ignores the fact that this conflict takes place in *a variety of institutional arenas*, and that the WTO – despite its significance – is only one of these multiple settings. The global economic system is governed by a complex legal network, which consists both of treaty-based regimes, such as the IMF, the World Bank, and regional trade agreements⁽¹⁷⁾ and of private legal systems. Each of these domains has its own institutional infrastructure, overburdened by a unique history and tradition. Of these multiple systems the private realm has received the least attention. The power to make law in the transnational level has ceased to be the prerogative of inter-state politics. Similar processes of norm-creation, with matching global aspirations, take place outside the inter-state system. These processes do not follow the familiar routes of public international law (treaty making or customary law), but, rather, reflect the work of trade associations, independent professional organizations, commercial arbitrators and Multinational Enterprises.⁽¹⁸⁾

The emergence of these new forms of a-national law reflects a deep social phenomenon: the *transition from a fragmented civil society to a globalized society*.⁽¹⁹⁾

The influence of this complex network of legal governance (from the IMF to the *lex mercatoria*) has not been limited to the economic domain. These multiple forms of law have encroached deeply into the civic domain – *influencing various civic concerns including the environment*. Thus, for example, in the field of technical standardization, the International Organization for Standardization (“ISO”) and the Codex Commission have been involved in the production of standards with serious social impacts, which include the ISO environmental management standards (the ISO 14000 series), and the Codex evolving standards on foods derived from biotechnology.⁽²⁰⁾ Another example is the field of accounting standards. The International Accounting Standards Committee has announced on several occasions that it has an interest in developing global standards on environmental and social responsibility reporting.⁽²¹⁾ There are other examples.⁽²²⁾ Section IV examines more closely the ecological sensitivity of one of these ‘other’ legal domains – the work of the IMF.

A proper analysis of the trade-environment conflict must be sensitive, then, to this institutional diversity. There is no place in this pluralistic picture to the monolithic image of a reified global ‘cartel’ – consisting of the three Bretton Woods institutions and the transnational corporations – which dominated the green protest since Seattle. This pluralistic exploration should not only bring forth the different institutional cultures that separate these legal domains (which inevitably affect how they view environmental dilemmas), but could also expose the *intricate linkages* between these different settings. Of particular importance in this context are the various, and not always transparent links between the WTO and other legal domains.⁽²³⁾

4 Democracy and Legitimacy [↑]

The transference of governance powers from the state-level to the transnational level creates an increasing cleavage between the new global law, and its traditional sources of legitimacy – the nation, the cultural unit. The result is a deepening legitimacy crisis. The recent wave of anti-globalization protests provided a clear indication to the breadth of this crisis. To a large extent this protest is a reflection of a deep dissatisfaction from the way in which decisions are made at the transnational level. Indeed, a major part of the critique against the Bretton Woods institutions focused on the non-participatory and unaccountable nature of their decision-making procedures.⁽²⁴⁾ Overall, this critique reflected a deep skepticism of the *legitimacy* of the Bretton Woods framework, and a conviction that the world-citizenry should be given a greater ‘voice’ in the operation of these regimes.

5

The problem seems to be clear: *legitimacy*. The solution also looks close at hand: *democratization* – only on a larger scale. The only antidote to the shift in the power structure (from the state to the transnational level), so the argument goes, is a parallel shift in the institutions of democracy, which will enable a worldwide democratic experience. The problem is that once the triplet ‘legitimacy-democracy-globalization’ is examined more closely, both the question and the answer seem to lose their sharpness. Rather than leading to a unitary moral-political theory or a distinct action-program, this triplet gives rise to a plurality of ideologies and practices – each with its own claim for social, moral or political superiority. Further reflection postulates ‘legitimacy’, ‘democratization’ as highly indeterminate linguistic artifacts.

The analysis of this triplet (‘legitimacy-democracy-globalization’) cannot be pursued to its full extent in this article. The discussion below seeks, therefore, only to sketch some of the interpretative uncertainties that this triplet generates. Consider first the question of *legitimacy*. Two major

interpretations of ‘legitimacy’ (of ‘law’ or ‘authority’) can be distinguished.(25) The *first* views the question of legitimacy from a *functional* or *substantial* perspective: to the extent that a transnational norm promotes the common good it should be seen as legitimate. From this perspective, the process, which led to the adoption of a certain norm, is not relevant to the question of its ‘legitimacy’. ‘Democracy’, under this account, has no role in the ‘making’ of legitimacy. The question is rather different: which set of criteria constitutes the *best expression* of the common good. And there are numerous answers to this question – from economics, to science and religion – each with its own community of ‘experts’.

Social experience provides mixed signals with respect to the acceptability of this interpretation. On the one hand, the declining trust in ‘experts’ and ‘professional expertise’ has significantly eroded the power of expert-knowledge to provide privileged accounts of the ‘common good’, and hence to serve as a source and arbiter of legitimacy.(26) This erosion seem to reflect a widely-shared societal expectation that the people affected by a certain normative structure should be involved in its design and implementation. On the other hand, the decline of ‘expert-knowledge’ has not been absolute. There are still many occasions in which the legitimacy of the international regime depends more on the opinion of the relevant expert-community, than on the qualities of the political process which preceded its establishment.(27) The scientific work of the Intergovernmental Panel on Climate Change is a good example for such a legitimization process.(28) What turns one set of experts into legitimate proxies of the common good (e.g., scientists in the cases of the climate change convention), and disqualifies others (e.g., other scientists in the case of bio-technology, the economists of the IMF) constitutes a difficult puzzle.

The decline in the status of expert-knowledge reflects, among other things, the increasing popularity of a competing vision of legitimacy – which envisions this concept as a measure of *consent* and *control*. Legitimacy is to be measured, first and most, by the nature of the process that led to the creation of the relevant regime, and by the accountability of the players that take part in its operation.(29) This brings me to the *second source* of interpretative obscurity in the legitimacy ‘critique’ – in what sense (if at all) does the call for ‘democratization’ solve the problem of ‘legitimacy’? Deeper reflection raises various doubts about the almost taken-for-granted association between ‘democratization’ and ‘legitimacy’.

A *first set* of doubts is primarily *practical*. It questions the possibility of erecting a global democratic scheme.(30) The two alternative solutions, which tend to be mentioned in this context – ‘global federalism’ and ‘directly deliberative democracy’ – are both highly problematic, and the arguments in that context are widely known.(31) A *second set* of doubts is directed toward the *theoretical assumptions*, which are used to justify the link between democracy and legitimacy. These theoretical assumptions portrait the concept of democracy as an instrument for attaining *consent*, and take the latter as the only possible ground for legitimacy. But is democracy a reliable proxy of consent? Without entering too much into this wide-ranging debate it will suffice to point out that the argument which associates deliberation with consent depends on strong assumptions with respect to the nature of inter-subjective communication, and the possibility of inter-subjective agreement.(32) If one’s vision of social communication considers disagreements, misunderstandings, and consensus as equally-probable results of communication,(33) the linkage between democratic deliberation and consent becomes less obvious.

These diverse visions of democracy and legitimacy cast doubts on the ability of the global society to conclude the trade-environment debate with a ‘legitimate’ solution. However, they provide further support to the conceptual shift, which was alluded to above – from uniform to polycentric constitutional vision.

5 The Case of the International Monetary Fund [↑]

5.1 A Story of Ecological Indifference

This part of the article seeks to provide a concrete illustration to the general argument, which was sketched above. It has two complementary goals: first to give a portrait of the trade-environment conflict as it arises in the context of the International Monetary Fund (“IMF”), and, second, to sketch possible solutions to this conflict. The IMF sits at an important junction at the global governance map. Its wide regulative powers and unique lending capacities turn it into a powerful global player. Like the WTO, the work of the IMF was subject to intense critique, especially in the wake of the 1997 Asian crisis. However, not much has been written about the environmental aspects of the IMF’s work. And it is this neglected question to which this section is directed. This section seeks to do, then, two things. First, to expose the sensitivity (or lack of) of the IMF to ecological considerations and, second, to consider the implications of this (in)sensitivity from a constitutional perspective; that is to search for possible ways to change it in a constitutional way.(34)

To understand the way, in which the IMF constructs and responds to ecological concerns, requires an analysis of its institutional features. It requires a diagnosis of the IMF discursive or intellectual tradition and its organizational structure. The IMF environmental (in)sensitivity arises from the coupling of these structural and discursive attributes. I will focus, in particular, on the way in which the IMF legal system and its unique economic tradition have contributed to the creation of an atmosphere of indifference toward environmental concerns. The role of law in the IMF institutional apparatus received little attention in the literature.(35) The IMF is usually presented as the playground of monetary and political calculations. The argument that legal communication plays a significant and independent role in the IMF decision-making process requires, therefore, some clarification. To understand the role of law in the IMF, it is necessary to look into the informal practices, customs, and routines, which together form the IMF institutional culture. Looking at these practices reveals two key-ways in which the IMF makes law: *standardized loan agreements* and *universal standards*. It is through these two paths of norm-making, and after a long process of institutionalization, that the law has turned into an independent force within the IMF.

Of the two forms of norm-making that were noted above, the contractual realm plays a more important role in the context of this article.(36) The contractual realm has become central to the IMF work with the expansion (in scale and scope) of its lending activity – in particular the increasing role of the IMF ‘structural adjustment programs’.(37) While historically, the IMF was supposed to focus only on short-term financial assistance to countries suffering liquidity crisis, in recent years most of its lending portfolio consisted of general-purpose loans, with broad economic and social objectives.(38) The recipients of these loans were usually countries (mainly developing or transition economies) suffering from severe financial crisis. The change in the IMF activity had significant legal repercussions. The lending instruments were structured as regulative instruments – seeking to ‘restructure’ the economies of the recipient countries (they were, thus, markedly different from private loan-agreements). This was achieved by subjecting the loans to a broad set of conditions, which reflected the IMF vision of ‘sound economic policies’ – ‘*conditionality*’ in the IMF jargon.(39) However, what turned this sequence of highly complex contracts or programs into a semi-independent legal domain, was the evolvment of certain *regularities*, or *discursive practices*, which were independent of any cognitive considerations (of economic, political or moral nature).(40) These linguistic practices became *sanctified in and by themselves*.(41)

These emerging normative patterns reflected a certain economic-political ethos, which gave little weight to ecological concerns. A recent study of the IMF structural adjustment programs, which was

conducted by the IMF in 2001, provides a clear indication to the nature of these normative patterns. (42) It points out that the structural conditions imposed by the IMF tend to focus on a limited number of issues: close to two thirds of the conditions have been related to reforms in the fiscal and financial sectors, the exchange and trade system, and economic statistics. (43) To a less extent, the programs included also conditions related to the restructuring of public enterprises, privatization, and the reform of the social security system (which accounted together for another 20 percent of total conditions). All the various conditions were based on a shared economic vision – ‘the neo-liberal consensus’ – which emphasized the importance of fiscal restraint and greater openness to foreign investment and trade, as necessary measures for the achievement of stabilized and growing economy. (44) Other issues of social concern – environmental problems, poverty, health, education – had no place in this vision, and indeed appear rarely (if at all) in the IMF conditions. (45) Figure 1 of this article provides more details on the distribution of IMF structural conditions across economic sectors between 1987-1999.

Figure 1

The environmental indifference of the IMF ‘structural adjustment programs’ had, in general, a negative impact on the environmental conditions in the recipients countries, and, in that sense, hampered the capacity of these countries to achieve ‘sustainable development’. This result could be associated with several features of the IMF structural adjustment lending. First, by their nature the IMF conditions have tended, overall, to exacerbate local ecological problems. (46) Consider, for example, the policy of ‘trade liberalization’ – a prominent IMF medicine. Trade liberalization has been shown to produce adverse ecological effects within developing countries (when unaccompanied by appropriate environmental measures). (47) This is due, mainly to a shift in the output composition – towards more pollution-intensive products – and to the general effect of economic growth (the *scale* effect) that is predicted to raise aggregate emissions levels. (48) A second common IMF measure – deep cuts in government spending – could weaken substantially the country’s environmental institutions, and lead to further environmental deterioration. (49) This feature of the IMF programs is particularly problematic because it is especially in times of financial distress that proper environmental management is mostly needed.

A second problematic aspect of the IMF programs has to do with the way in which its loans were *distributed*. Over the last years the IMF funds have been used mainly to support the currency of the recipients’ countries and to meet obligations on external debt. (50) The funds were not used to support the citizens of these countries, who were facing a deep financial crisis. At the personal level these citizens were confronted with an almost unbearable situation: increasing unemployment, high inflation rates (accompanied by loss of consumer purchasing power), leading, usually to a bitter poverty. This financial distress at the individual level has led, in many cases, to over-exploitation of natural resources (e.g., unsustainable land-clearing practices). (51)

It is possible to offer several explanations to this ecological indifference as it became codified in the IMF law. The first explanatory path links the IMF policy-priorities to a certain discursive or intellectual tradition. The discursive universe of the IMF is dominated by the rules and conventions of classic macro-economics with its traditional methods of ‘national accounting’. This tradition relies on measures such as Gross Domestic Product (GDP) as indicators of wellbeing and economic growth. (52) This measure fails to reflect the (negative) impact of the economy on the environment (in terms depletion of natural resources, pollution etc.) or on society (in terms of income inequalities) – all of which may be positively correlated with adjustment programs. (53) The traditional methods of ‘national accounting’ do not measure, therefore, the opportunity costs of economic growth, and thus fail to reflect the possibility that (conventional) economic growth can lead to a decline in wellbeing. (54)

From the perspective of traditional macro-economics, the IMF disregard of ecological issues follows directly from its 'statutory' mandate. The IMF 'constitution' provides that its role is to promote macroeconomic stabilization, an open exchange system, and a balanced growth of international trade.(55) Since, the practice of 'conditionality' was seen as a way "to ensure that the Fund's resources are used in accordance with the purposes and provisions of the Articles of Agreement", (56) it was only natural that it will reflect a macro-economic interpretation of the IMF statutory tasks. This explains, then, why the conditions imposed by the IMF have focused on traditional macro-economic concerns (i.e., the fiscal, monetary, and international trade policies of the borrowing nations). Ecological questions were not part of these concerns. As will be argued below, this is not the only possible interpretation of the IMF 'Articles of Agreement'.

This brings me to a second explanatory path, which links the IMF ecological indifference to its organizational culture and human profile. The recent writings of Joseph Stiglitz on the IMF are revealing in this regard. Stiglitz's comments are interesting not just because of his recent Noble prize, but more importantly, because he was the Chief Economist of the World Bank and thus has an extensive knowledge of the internal 'side' of these two global organizations. Stiglitz argues that the IMF current lending policy does not reflect its original mandate, which was "to provide liquidity in a world of imperfect capital markets". Today, Stiglitz argues the IMF "focuses on the repayment of loans far more than on the maintenance of the affected country's GDP".(57) This change in focus, Stiglitz argues, reflects the interests of the financial community in advanced industrialized nations. (58) The IMF huge bailout programs provide, in effect, "the funds for the developing countries to repay the developed countries' banks, but the real burden is borne by the taxpayers in the developing countries, since the IMF is almost always repaid".(59) The legal regularities that were pointed out above consolidate, and give normative effect, therefore, to the economic expectations of the financial community at the West – they do not flow from a 'real' concern (not even a 'macro-economic one) to the wellbeing of the peoples of the recipient countries.

The radical cynicism of this explanation could raise objections. A close examination of the IMF human profile offers, however, another explanation, which is a bit 'softer' in its portrait of the IMF officials. This explanation interprets the IMF environmental indifference as a reflection of closed intellectual paradigms, weak cognitive (fact-finding) base, and entrenched arrogance. IMF officials, in both their education and social background, have little experience with the analysis of ecological problems. Their fields of expertise are prominently macroeconomics and international trade. The comprehensive economic theory, which was developed over the last 30 years to deal with ecological problems, is largely unfamiliar to them.(60) This shared educational background has turned the IMF officials into facile captives of the conventional macro-economic discourse, with its inherent blindness toward ecological concerns. This intellectual closure was exacerbated by a tradition of arrogance, and a weak cognitive capacity. The IMF was criticized for the 'top down' manner in which it designs and implements its adjustment programs, and the inability of its officials to comprehend the real difficulties of the Fund 'clients'.(61) These two features of the IMF working culture provided a strong incentive for relying on normative regularities (rather than on contextual/local indicators) in the development of financial assistance programs. The following account of an IMF 'bail-out' mission provides a nice illustration of these dual features:(62)

"When the IMF decides to assist a country, it dispatches a 'mission' of economists. These economists frequently lack extensive experience in the country; they are more likely to have firsthand knowledge of its five-star hotels than of the villages that dot its countryside. They work hard, poring over numbers deep into the night. But their task is impossible. In a period of days or, at most, weeks, they are charged with developing a coherent program sensitive to the needs of the country. Needless to say, a little number-crunching rarely provides adequate insights into the development strategy for an entire nation. Even worse, the number-crunching isn't always that good. The mathematical

models the IMF uses are frequently flawed or out-of-date. Critics accuse the institution of taking a cookie-cutter approach to economics, and they're right. Country teams have been known to compose draft reports before visiting. I heard stories of one unfortunate incident when team members copied large parts of the text for one country's report and transferred them wholesale to another. They might have gotten away with it, except the 'search and replace' function on the word processor didn't work properly, leaving the original country's name in a few places. Oops”.

5.2 Ecological Sensitization: Bridging the Unbridgeable

Constitutional skepticism denies the possibility of resolving the tensions that arise in international relations through mega-constitutional structures. It looks, instead, for possible bridges in the 'fabrics' – in the micro textures – of a particular dilemma. In the case of the IMF any such solution would have to overcome two critical obstacles: the closure of the macro-economic discourse – as it became *codified in IMF law* – and the *top-down arrogance* that characterized the IMF operational routine. I will argue that it is possible to design a plausible compromise in the context of the IMF by utilizing the same economic and legal rationalities, which have generated the blindness of the IMF toward ecological problems.

Consider, first, the closure of the macro-economic discourse. A pessimistic observer will interpret the ecological indifference of the IMF as a reflection of unbridgeable 'epistemic rupture'. This interpretation leaves very little room for negotiation or dialogue. Indeed, from an environmental perspective it could only lead to the dismantling of the IMF. This conclusion has some support within the economic circle (although not necessarily for the same reasons).(63) This recommendation does not seem to constitute, however, a plausible political agenda. An alternative, and more opportunistic approach, will seek to provide the IMF and its 'green' opponents, with some common ground, which will enable them to cooperate without denouncing their underlying ideologies.

The insights of environmental economics provide such a possible common ground. Environmental economics provides both theoretical and methodological means to translate ecological failures into monetary terms.(64) While this translation is not without problems(65) – it could nonetheless provide a route for incorporating environmental considerations into the IMF decision-making process. Using the discourse of environmental economics (i.e., putting monetary values on our use or abuse of nature) provide the ecological argument with an 'entry-ticket' into the world of macro-economics. This solution does not force the parties, however, to agree to a common philosophical vision, but, rather utilizes a 'local' discursive module (here 'environmental economics') as an instrument for attaining common practical goal (prevention of ecological degradation).(66) Each side retains the freedom to interpret this process according to his particular worldview.

This argument offers a different interpretation to the IMF formal mandate, as it was defined in its Articles of Agreement. Article I(ii) of the Articles of Agreement provides that the purposes of the IMF are (also):

“To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy”.

An environmental oriented interpretation of the IMF mandate will interpret the notions of 'balanced

growth', 'real income', and 'the development of the productive resources' as reflecting a commitment to the idea of sustainable development. Using this interpretation it is possible to argue that the IMF current lending practices are incompatible with its statutory obligations. As was noted above, the IMF indifference toward ecological questions had – most probably – a negative effect on the environmental conditions in its recipient nations, and, in that sense, has hampered the capacity of these nations to achieve 'balanced growth'. New studies indicate that this negative effect is not minor – unsustainable trade and monetary liberalization could cause substantial environmental damage.(67)

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To the extent that structural adjustment programs are understood as mechanisms for increasing the long-term development prospects of the recipient nations, the current indifference of the IMF to environmental concerns seems, then, unsupported. This environmental interpretation could be expressed and justified also through legal means, by relying on the similarity between the IMF 'structural-adjustment-programs' and traditional (private) loan agreements. The main goal of banking instruments is to ensure that the lender will 'get' its money back. From this perspective an important part of the IMF role is to operate as a 'bill collector' for its 'share-holders'.(68) If, as was argued above, ecological degradation can cause severe economic damage, it could also affect the ability of a borrowing nation to meet its contractual obligations. It could also increase the probability that such a nation will suffer from balance-of-payments problems in the future, which will force it, once again to turn to the IMF. Thus, even from a narrow 'lawyery' perspective, there is a 'good sense' for introducing ecological conditions into the loan instruments.(69)

5.3 The Practicalities of Ecological Sensitization

It is possible, then, to base an argument for the ecological sensitization of the IMF lending practices, on the discourse of economics and banking law. There remains, however, the question of implementation. I argued above that the IMF weak cognitive apparatus and inappropriate knowledge-base contribute to its unsatisfactory approach toward environmental questions. It seems unreasonable to expect that these barriers could be overcome over a short period. How, then, can the environment be incorporated into the IMF lending practices? I see two possible paths for resolving this difficulty. The first path is based on a clear division of labour between the IMF and other international organizations. This division of labour could be implemented in two ways. The first way maintains the current involvement of the IMF in long-term financing. However, it requires the IMF to involve bodies with environmental expertise (e.g., the World Bank or the United Nations Environmental Programme) in its decision-making process, in particular, in making decisions over 'conditionality'. Another option is to limit the IMF lending operations to the provision of liquidity (short-term funding). The IMF would serve as a stand-by lender to prevent panics or crises. The task of long-term lending should then lie, exclusively, with the hands of development banks, in particular the World Bank.(70) Unlike the IMF, the World Bank has made an extensive effort over the last years to develop its environmental and social expertise.(71)

Another possible path is based on the idea of codification. If we anticipate that the IMF will continue its involvement in long-term financing, but do not believe that it can be forced to delegate some of its decision powers or to develop the necessary environmental expertise, a possible solution is to transform the requirement for environmental sensitivity into a fixed normative prescription. This will require the Fund (by law) to include in each structural adjustment program certain environmental conditions. These conditions could include, for example, a commitment to direct some of the funding to ecological issues, ensuring the priority of these funds over debt servicing (the funds could be used for erecting sound environmental institutions, supporting sustainable agricultural and industrial practices, and providing safety net to small farmers). Further conditions could be directed to the

recipient government (e.g., requiring the abolishment of unsustainable subsidies, reducing taxes or customs on less toxic pesticides). This codification process does not require a change to the IMF Articles of Agreement. It can be implemented through internal guidelines.(72)

Let me finish with two short queries. Jessica Einhorn, a former Managing Director of the World Bank, has raised the following dilemma, speaking of the Bank's structural adjustment lending: "The checklist for getting credit may now require assessing the loan's impact on poverty, gender disparities, and the environment; it may also call for competitive procurement and enhanced financial management. These requirements raise the cost of doing business with the bank to discouraging levels. The need for realistic management is acute".(73) The argument for environmental or social sensitization of the lending process could thus end in an administrative nightmare. To me this objection remains unconvincing – especially in view of the IMF and World Bank commitment to the well-being of the people who receive their funds. After all, if the IMF and the World Bank feel that the task of 'remote control' economic structuring is beyond their capacity, they could leave these decisions to the borrowing countries. It might be better to let them do their own mistakes than to impose upon them the mistakes of the IMF or the World Bank officials. Indeed, if we take Einhorn's argument seriously, it gives support to a move from conditioned loan-based assistance to unconditioned grant-based assistance.(74)

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Another difficulty concerns the legitimacy of these potential changes to the IMF lending practices. The wide critique against the secretive and undemocratic way in which the IMF operates indicates that changing the lending practice in itself may not suffice.(75) It is not enough for environmental experts and economic experts to agree among themselves on the 'right' combination of lending criteria. Such agreement will not satisfy the expectations of many that sit at the receiving end of the IMF loans. Two initial steps that could contribute to the legitimacy of the IMF are ensuring a greater transparency in the way in which it operates,(76) and involving other global institutions, such as UNEP or the World Health Organization in its decision-making process. However, these two steps will probably not suffice in themselves – the IMF will have to introduce some deep structural changes, which will allow the developing world a greater 'say' in the IMF decision-making process.(77) None of these steps could offer, however a complete solution to the problem of legitimacy, which, as was indicated in section III, remains an undetermined concept.

6 Conclusions [↑]

The main thesis of the article was that the trade-environment conflict is not amenable to *meta* solutions – of any kind. The idea that this conflict could be resolved by a singular legal formula or a sophisticated economic model is ill-founded. The resolution of this conflict requires continuous experimentation with diverse responses, which will be sensitive to its highly pluralistic nature. It requires polycentric solutions. This conclusion is somewhat disappointing – certainly from a constitutional perspective – with its inherent inclination for all-embracing structures. However, it seems to reflect more accurately the limits of our current knowledge of the rules and mechanisms, which govern the relationship between humanity and nature.(78)

It is possible though to draw some more concrete – albeit tentative – lessons from this pluralistic thesis. The first lesson concerns the direction of the trade-environment research programme. To be effective this programme must broaden its spectrum of inquiry, in a way which will reflect (and take account of) the manifold institutional and discursive domains in which the trade-environment conflict is embedded. The second lesson has to do with what I called 'polycentric constitutionalization'. Gaining better knowledge of the multiple organizational and thematic domains in which this conflict takes place, could indicate potential 'bridges' between competing parties or

discourses, and thus pave the way for 'local' solutions.⁽⁷⁹⁾ These 'local' solutions could utilize various discursive modules (e.g., 'environmental economics'), or novel decision-making mechanism (e.g., various participatory schemes). They cannot be deduced, however, a-priori, from some 'meta' universal principles. The law could have an important role in this process, both in the development of these 'local' solutions (using its experience in 'coupling' with other systems) and in giving such solutions a more permanent status (through normative consolidation). In that sense the law holds a unique social position: all the other systems, which historically played a similar role – in particular, religion – have lost their capacity to facilitate and crystallize solutions to social dilemmas.

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Endnotes [↑]

(*) An earlier version of this paper was presented at the workshop on 'Constitutionalism and Transnational Governance', 30 November – 1 December, European University, Florence. The article is to be published in Christian Joerges, Inger-Johanne Sand and Gunther Teubner (eds.), '*Constitutionalism and Transnational Governance*' (Hart Publishing, 2002/3).

(2) By its nature, this deconstruction effort cannot start with a clear-cut portrait of the trade-environment conflict. This portrait emerges as the outcome, rather than the starting point of the discussion. Indeed, as will be indicated below (section I) some observers strongly deny the 'reality' of this conflict, attributing its social persistence to the popularity of the 'ecology' theme, rather than to any real opposition between trade and environmental protection.

(3) E.g., by changing the wording of Article XX of the GATT 1947, or by devising some 'meta' economic formula.

(4) This argument draws on the work of writers like Gunther Teubner, Niklas Luhmann and Richard Rorty. Rorty distinguishes in this context between ‘normal discourse’ and ‘abnormal discourse’. For Rorty the traditional distinction between the search for ‘objective knowledge’ and other, less privileged areas of human activity constitutes merely a “distinction between ‘normal discourse’ and ‘abnormal discourse’. Normal discourse... is any discourse (scientific, political, theological or whatever) which embodies agreed-upon criteria for reaching agreement; abnormal discourse is any which lacks such criteria” (Rorty 1980: 11).

(5) This does not mean that inter-discursive disputes can be resolved through some meta-discourse. Any resolution of inter-discursive conflicts must be therefore – to some extent – arbitrary.

(6) This point of view is the heritage of the Enlightenment tradition, see, Whitebook (1979).

(7) See, Eder (1996: 207).

(8) See. e.g., Naess (1983).

(9) For a similar appeal to ideas of economic efficiency in the legal literature, see, e.g., Petersmann (1995: 3) and Ahn (1999: 860-61).

(10) See: WTO (1999: 7).

(11) See, e.g., the various contributions in Van Den Bergh (ed.), (1999).

(12) See, e.g., Latour (1998).

(13) See, e.g., Harvey (1998) and Gadgil and Guha (1995: 118-120).

(14) See, e.g., Cole *et al* (Cole, Rayner, and Bates 1998).

(15) See, e.g., Van Den Bergh, *supra* n. 11

(16) See the discussion in Daly (2002).

(17) For a survey of these different systems, see, Petersmann (1999: 209-229).

(18) See, e.g., Teubner (1997).

(19) The economic environment of expanded international commerce, which was facilitated by the establishment of the WTO, has contributed and supported the growth of these private forms of governance.

(20) The ISO 14000 series is a wide-ranging collection of international, voluntary environmental standards, which deal with a variety of corporate-management issues (including Environmental Management Systems, Environmental Auditing, Environmental Labels, Environmental Performance Evaluation, and Life Cycle Assessment). See, for further details, the web-site of the ISO 14000 series: <http://www.tc207.org>. The Codex Commission is currently trying to develop general principles for risk analysis of foods derived from biotechnology. See, for further details, the Codex Commission web-site: <http://www.fao.org/waicent/faoinfo/economic/esn/codex/default.htm>. The Codex Commission was involved in other controversial issues such as the risks of administrating growth-hormones to cattle.

(21) ‘IASC Current Trends and Future Perspectives’, Presentation by IASC Chairman, Stig

Enevoldsen, Berlin, 30 March 2000 (a copy is filed with the author). The ISAC standards have substantial global influence. Several stock-exchanges, such the Australian, German and British permit foreign companies to issue securities using IASC standards. The US Securities and Exchange Commission and the Canadian Securities Administrators are currently considering the use of IASC standards in their markets. See, for further details the IASC web-site: <http://www.iasc.org.uk>.

(22) Two other legal domains, which are highly important to the environmental context, are the fields of project finance and international construction law. See, Perez (2002).

(23) The WTO both relies on and gives credence to external legal sources. Because of the central position of the WTO this process deserves careful study.

(24) For a good introduction to the environmental critique against the Bretton Woods institutions see the report in *The Ecologist* 'Globalizing Poverty', September 2000 (attached to the *Ecologist*, vol.30 (6), September 2000).

(25) This question of 'legitimacy' is raised, usually, in the context of the *use of authority*. It became a dilemma for transnational law, because of its increasing ability to influence world-wide social processes. See the discussion in Bodansky (1999) and Perez (2003). Bodansky notes that legitimacy "concerns the justification of authority; it provides grounds for deferring to another's decision, even in the absence of coercion or rational persuasion" (*ibid.* at 603). Theories of legitimacy "attempt to specify what factors might serve as justifications..." (*ibid.* at 601).

(26) For a discussion of the decline of the 'expert-rule' see, e.g., Wynne (1996).

(27) For the role of scientific communities in shaping environmental regimes, see, e.g., Haas (1992).

(28) For more information on the work of the IPCC, see its web-site at: <http://www.ipcc.ch>.

(29) Under the substantive interpretation of legitimacy, the democratization project makes sense only as a measure for enhancing the 'fit' between the law and the common good (expressed by a certain set of evaluative criteria). This interpretation of the democratic project is of course radically different from the procedural vision mentioned above, which emphasizes the idea of consent. Indeed, it could lead to 'twisted' accounts of democracy, in which democratic deliberation becomes the exclusive right of a closed (elite) community (e.g., scientists) rather than a process which is open to all those who might be affected by the proposed normative structure. Furthermore, this interpretation of legitimacy takes the criteria for evaluating the 'common good' as exogenous: they cannot be renegotiated through public deliberation.

(30) This way of putting the question presupposes the failure of the institutions of the 'nation-state' (or above) to offer a real solution to the democratic deficit of transnational law.

(31) For a critique of global federalism see Bodansky (1999: 600). The idea of 'directly deliberative democracy' raises the question of the limits of effective conversation. How can the idea of 'free and equal deliberation' be implemented on a global scale? The Internet, despite all of its various advantages, does not provide a suitable solution to this problem, even if only because it is still not accessible to large portions of the world population.

(32) See, e.g., Habermas (1996) and Power (1996).

(33) See, e.g., Luhmann (1996) and Teubner (1996).

(34) I do not intend to deal in this section in the more general question of the proper role of the IMF as a global 'central bank'. I will only refer to this debate when I feel that it is relevant to the

ecological problematic of the IMF work. This question received wide attention in the last three years. See, for example, the report of the Meltzer Commission (Report of the International Financial Institution Advisory Commission, 2000, available at: <http://www.house.gov/jec/imf/imfpage.htm>), Tobin and Ranis, (1998) and Tarullo (2001).

(35) But see Tarullo, *ibid.* for a discussion of the role of rules, and normative codification, in a possible reform of the IMF.

(36) However, the role of the IMF in the creation of universal standards is not less important. For a more detailed discussion of its role in this field see the IMF web-site at: <http://www.imf.org/external/standards/index.htm> (visited: 1.11.2001).

(37) See, Mikesell (2000: 406-408) and N. S. Fieleke (1994: section V).

(38) See, Mikesell, *ibid.* at 411. The Bretton Woods framework foresaw a clear division of labour between the IMF and the World Bank. The IMF was supposed to focus on short-term financial assistance to countries suffering liquidity crisis, while the World Bank was given the responsibility for assisting countries in their long-term development needs, mainly through project-specific loans. However, this distinction has been eroded, significantly, in recent years, as both bodies became involved, increasingly, in general-purpose assistance packages. See, Mikesell, *ibid.* Similar questions arise, therefore, also with respect to the work of the World Bank. However, a review of the World Bank lending practices is beyond the scope of this article.

(39) For a more detailed description of this practice see the Report of the IMF, Structural Conditionality in Fund-Supported Programs (2001: 8-20).

(40) On the weakness of the IMF cognitive apparatus see Stiglitz (2000).

(41) Indeed, as was noted by Joseph Stiglitz in a recent paper, senior officials at the IMF “repeatedly speak of defaults or standstills as an abrogation of the sanctity of contracts” Stiglitz, (2001: 16).

(42) IMF Report, *supra* n. 39. Because the IMF adjustment programs were negotiated and signed in private, the existence of these patterns was not ‘common knowledge’.

(43) IMF Report, *ibid.* at 23.

(44) Eduardo *et al* (1995: 4).

(45) See, Eduardo *et al*, *ibid.*, and the IMF Report, *supra* n. 39 at 24-26.

(46) For a more detailed analysis see Kessler and Van Dorp (1998) and Eduardo *et al*, *ibid.*

(47) See, e.g., Dessus and Bussolo (1998).

(48) See, S. Dessus and M. Bussolo, *ibid.* at 23-24.

(49) J. Kessler and M. Van Dorp, *supra* n. 46, at 268.

(50) Stiglitz, *supra* n. 41 at 14, and Mikesell, *supra* n. 37 at 407.

(51) See, e.g., Sunderlin *et al* (2001), and J. Kessler and M. Van Dorp, *supra* n. 46.

(52) GDP – the value of final goods and services produced within the country in a given period. See,

Dornbusch and Fischer 'Macroeconomics' (1990: 34-35).

(53) See, e.g., R. Dornbusch and S. Fischer, *ibid.* at 33-62.

(54) See, Daly, *supra* n. 16 and , Eduardo *et al*, *supra* n. 44 at 30.

(55) Article I of the Articles of Agreement, and the IMF Report, *supra* n. 39 at 3.

(56) IMF Report, *ibid.*, at 6.

(57) Stiglitz, *supra* n. 41 at 16. See also his 2000 paper, *supra* n. 40.

(58) Stiglitz, 2001, *ibid*, at 16.

(59) Stiglitz, 2001, *ibid*, at 18.

(60) See, e.g., Stiglitz, 2001 *ibid*.

(61) See, e.g., Eduardo *et al*, *supra* n. 44 at 6.

(62) Stiglitz, *supra* n. 40.

(63) See, e.g., Stiglitz, *supra* n. 41, at 16.

(64) See, e.g., World-Bank (1997)).

(65) See, e.g., Pearce (1998: 55-66) (discussing the limits of cost-benefit analysis as a guide to environmental policy).

(66) This solution requires both sides to make compromises. For the IMF – it entails not just a departure from its usual economic models but also a willingness to give ecological concerns priority over the interests of Western banks. For the greens this means a subscription to an economic way of valuing ecological assets with all of the difficulties associated with such a move.

(67) See, e.g., Sunderlin *et al*, *supra* n. 51, J. Kessler and M. Van Dorp, *supra* n. 46, and Jha and Whalley (1999). Jha and Whalley tried to estimate the ecologically-triggered economic losses, which are suffered by countries undergoing extensive processes of industrialisation and trade-liberalisation. They examined the annual productivity losses incurred as a consequence of various ecological problems, such as the erosion and contamination of soil, contamination of water resources, over-use of natural resources (e.g., deforestation, fishery), increased vehicle use (emissions and congestion), and untreated human and non-human waste. Their results indicate that these costs could be as high as 10% of these countries GDP. This value is much higher than the estimated gains from trade reforms, which are usually in the region of 1-3% of GDP (*ibid*, 15). The study refers to China, India, Indonesia, Pakistan, the Philippines and Thailand.

(68) This expression was used – in a rather derogatory way – by Joseph Stiglitz in his recent critique of the IMF, Stiglitz, *supra* n. 41, at 16.

(69) John Ciorciari makes a similar argument with respect to the World Bank ability to consider a nation's human rights record in its lending decisions. He argues that the Bank must determine whether the particular human rights violations it wishes to consider amount to an "economic concern" under the World Bank Articles of Agreement. That condition is safely met whenever such violations would, in the eyes of a reasonable lender in the Bank's position, adversely affect the

prospective borrower's ability to meet its obligations to the Bank under the credit agreement, Ciorciari (2000: 370).

(70) This was the view of the Meltzer Report.

(71) It is true that the World Bank lending activity was also subject to extensive criticism. However, the Bank has made a genuine effort to respond to this critique. Thus, for example, it has introduced an enhanced 'safeguard policy' to its lending operations and is investing substantial resources in the study of environmental problems (the 2003 World Development Report is dedicated, for example, to the issue of Sustainable Development). For a critique of the World Bank and a description of these efforts, see Bridgeman (2001).

(72) This argument is in line with Article XXIX of the IMF Articles of Agreement, which provides that any question of interpretation of the IMF Agreement arising between any member and the Fund or between any members, shall be submitted to the Executive Board, and at a second stage to the Board of Governors, whose decision shall be final.

(73) Einhorn (2001).

(74) The Meltzer Commission moves into this direction in its Report.

(75) See, e.g., Stiglitz, *supra* n. 41.

(76) See, e.g., Stiglitz, *ibid.*

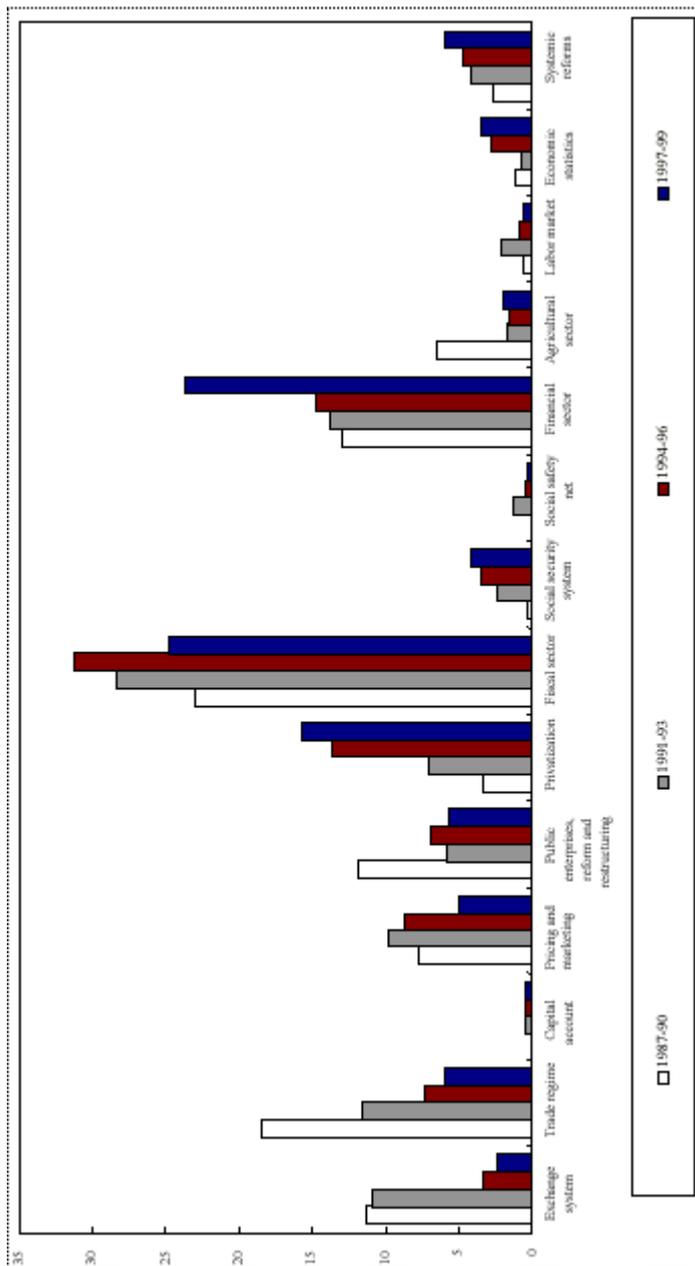
(77) See, e.g., in the context of the World Bank, Birdgeman, *supra* n. 71 at 1041-46..

(78) For a similar conclusion, which emphasizes the importance of institutional diversity, and polycentric governance – in the context of common-pool-resources dilemmas, see Ostrom (2000: 42).

(79) One example of an opportunistic solution was given in section IV. Let me now give another example, which draws on the experience of the World Bank. In providing assistance to Muslim countries the Bank was facing a difficult dilemma: how to pursue an increasingly humanistic and democratic agenda without appearing to be politically intrusive. In order to avoid this tension the Bank has described social goals as economic inputs rather than morally-right choices. Thus, for example, to justify a program of female education in Pakistan the Bank argued that Pakistan will reap higher economic returns by educating its girls. See, Einhorn, *supra* n. 73.

Figure 1

Structural Conditions by Economic Sector, 1987-1999 (In percent of total structural conditions)



Source: The figure is taken from the Report of the IMF, Structural Conditionality in Fund-Supported Programs (2001), at 24.

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