THE LEGITIMACY OF GLOBAL GOVERNANCE INSTITUTIONS

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Summary

The debate on the legitimacy of global governance institutions is often confusing because the proper distinctions are not made. We argue that legitimacy assessments are not reducible to claims about self-interest, show that justice and legitimacy ought to be kept distinct, and identify the conception of legitimacy that is central for global governance institutions. The core of the memo identifies a set of desiderata that global governance institutions should meet to be legitimate, in what we call a “complex standard.” This standard identifies the need for a channel of accountability that the ongoing consent of democratic states makes possible; three substantive criteria (minimal moral acceptability, comparative benefit, and integrity); and effective epistemic measures to deal with both factual and normative uncertainty. A key element in the legitimacy of international institutions lies in the relationships between such institutions and their socio-political environment: in particular, external agents, which monitor and criticize the operation of international institutions, are crucial to their ongoing legitimacy. Respect for democratic values is essential for legitimacy, but this does not imply that procedures analogous to domestic democratic procedures are necessary at the global level.

This memo is based on a full-length paper of the same title, which is available for anyone who wishes to examine our arguments more closely.

I. Assessing Legitimacy

‘Legitimacy’ has both a normative and a sociological meaning. To say that an institution is legitimate in the normative sense is to assert that it has the right to rule—where ruling is promulgating rules and attempting to secure compliance with them by attaching costs to noncompliance and/or benefits to compliance. When people disagree over whether the WTO is legitimate, they are not disagreeing about whether they or others believe that institution has the right to rule; they are disagreeing about whether it has the right to rule.

Global governance institutions are valuable because they create norms and information that enable member states and other actors to coordinate their behavior in mutually beneficial ways. They reduce transaction costs, create opportunities for states and other actors to demonstrate credibility, thereby overcoming commitment problems, and provide public goods, including rule-based, peaceful resolution of conflicts. However, an institution can only perform these valuable functions if those to whom it addresses its rules regard them as binding and if others within the institution’s domain of operation support or at least do not interfere with its functioning. It is not enough that the relevant actors agree that some institution is needed; they must agree that this is the institution that is worthy of support. So, for institutions to perform their valuable coordinating functions a higher-order coordination problem must be solved.

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However, although coordination is one of the most important benefits they confer, global governance institutions are not pure coordination devices. Even though all may agree that some institution or other is needed in a specific domain (e.g., the regulation of global trade) and all may agree that any particular institution is better than the noninstitutional alternative, different parties, depending upon their differing normative perspectives, will find some feasible institutions more attractive than others. The concept of legitimacy allows various actors to coordinate their support for institutions by appealing to their common capacity to be moved by what might be called normative reasons, as distinct from purely strategic or exclusively self-interested reasons, under conditions in which there is serious and persisting normative disagreement. To attain the valuable benefits of institutions, therefore, we need a standard of legitimacy that is both accessible from a diversity of normative standpoints and less demanding than justice. The needed evaluative perspective must appeal to various actors’ capacities to be moved by normative reasons, but without presupposing more normative agreement than exists. Legitimacy, understood as the right to rule, is a normative notion, but not one that reduces to rational self-interest. To say that an institution is legitimate is to imply that it has the right to rule even if its ruling is not in accordance with the best interests of everyone who is subject to its rule.

For legitimacy to be an issue in the first place there must be considerable normative disagreement; yet for agreement on legitimacy to occur there must be sufficient agreement on what sorts of considerations count as normative reasons for evaluating the institution in question. The domain of the concept of legitimacy, then, is the space between the thorough-going normative agreement that makes questions of legitimacy otiose and the thorough-going normative disagreement that precludes coordinated support for institutions on any basis other than that of a modus vivendi. The concept of legitimacy is grounded in a complex belief, namely, that while it is true that institutions ought to meet standards more demanding than mere mutual benefit (relative to the noninstitutional alternative), they can be worthy of our support even if they do not maximize our own interest and even if they do not measure up to our highest normative standards.  

Our conception of legitimacy, defended at more length in our paper, is that an institution has the right to rule only if its agents are morally justified in carrying out their institutional roles, and two additional conditions are satisfied: those to whom the institution addresses its rules must have content-independent, noncoercive reasons to comply with them, and those within the domain of the institution’s operations must have content-independent, noncoercive reasons to support the institution or at least not to interfere with its functioning. This conception clearly differentiates legitimacy from justice: Collapsing legitimacy into justice undermines the social function of legitimacy assessments.

In Section II of the paper, not summarized in this memo, we reject a pure state consent view and a global democracy standard, arguing that the on-going consent of democratic states is a necessary although not sufficient condition for the legitimacy of global governance institutions.

II. A Complex Standard of Legitimacy

We put forward six desiderata that our complex standard of legitimacy must meet. (1) The standard must provide a reasonable basis for coordinated support for the institutions in question, on the basis of normative reasons that are widely accessible in spite of the persistence of significant normative disagreement: in particular, about the requirements of justice. This is an important point, discussed in some detail in our paper: Whatever the standard of legitimacy for global governance institutions is, it must some how accommodate the facts of normative
disagreement and uncertainty. (2) The standard must not confuse legitimacy with justice but nonetheless must be consistent with the intuition that extreme injustice is incompatible with legitimacy. (3) The standard must take the on-going consent of democratic states as a presumptive necessary condition, though not a sufficient condition, for legitimacy. (4) The standard must not make authorization by a global democracy a necessary condition of legitimacy, but should nonetheless be consonant with the key values that underlie the demand for democracy. (5) The standard must properly reflect the dynamic character of global governance institutions: the fact that not only the means they employ, but even their goals, may and ought to change over time. Finally, (6) the standard must address the problem we encountered earlier: the limitations of accountability through the on-going consent of democratic states. So the standard of legitimacy must incorporate some other way of providing broad accountability.

We propose three intuitively plausible substantive criteria that go some distance toward remedying the inadequacy of the rather formal standard of democratic state consent. The first of these is minimal moral acceptability, understood as a requirement to refrain from violations of the least controversial human rights. Of course, in view of deep normative disagreement and uncertainty, such a minimal requirement seems inadequate by itself. The conclusion we draw is that the standard of legitimacy should require minimal moral acceptability, but should also somehow accommodate and even encourage the possibility of developing more demanding requirements of justice for at least some of these institutions. Our second criterion is comparative benefit. The legitimacy of an institution is called into question if there is an institutional alternative that is feasible, accessible without excessive transition costs, and meets the minimal moral acceptability criterion. Our third criterion is integrity: that there be no major discrepancies between an institution’s behavior, on the one hand, and its prescribed procedures and professed goals, on the other.

Our three substantive conditions are best thought of as what Rawls calls “counting principles”: the more of them an institution satisfies, and the higher the degree to which it satisfies them, the stronger its claim to legitimacy. 4 However, even if these three conditions are generally necessary for the legitimacy of multilateral institutions, there are two epistemic reasons why they are not jointly sufficient. The first is the problem of factual knowledge: being able to make reasonable judgments about whether an institution satisfies any of the three substantive conditions requires considerable information, which may be difficult to obtain. The second difficulty with taking the three substantive conditions as jointly sufficient for legitimacy is the problem of normative disagreement and uncertainty noted earlier. Even if there is sufficient agreement on what counts as the violation of human rights, there are on-going disputes about whether at least some global governance institutions should meet higher normative standards than this minimal one. As emphasized earlier, there is not only disagreement but also uncertainty as to the role that some of these institutions should play in the pursuit of global justice, chiefly because we do not have a coherent idea of what the institutional division of labor for achieving global justice would look like. For example, some argue that the WTO’s goals should include not only “liberalizing trade” and making trade “fairer,” but also more direct action to combat poverty and disease, for example, through policies that support universal labor standards or make life-saving medicines more affordable through modifications in the intellectual property rights regime it has put into place. Yet whether the WTO should play these roles may depend upon what is assumed about the roles of other global institutions and of states, in the pursuit of global justice.

We shall argue that the proper response to both the problem of factual knowledge and the problem of normative disagreement and uncertainty is to focus on what might be called the epistemic-deliberative quality of the institution, the extent to which the institution provides reliable information needed for grappling with normative disagreement and uncertainty.
concerning its proper functions. To lay the groundwork for that argument we begin by considering two items that are often assumed to be obvious requirements for the legitimacy of global governance institutions: accountability and transparency. We agree with conventional wisdom that accountability and transparency are crucial. But we also seek to demonstrate the limitations of these notions, as they are commonly understood.

**Accountability and Transparency**

Accountability as we define it includes three elements: (1) standards that those who are held accountable are expected to meet; (2) information available to accountability-holders, who can then apply the standards in question to the performance of those who are held to account; and (3) the ability of these accountability-holders to impose sanctions: to attach costs to the failure to meet the standards. The need for information means that a degree of transparency regarding the institution’s operations is essential to any form of accountability.

It is misleading to say that global governance institutions are illegitimate because they lack accountability and to suggest that the key to making them legitimate is to make them accountable. Most global governance institutions, including those whose legitimacy is most strenuously denied, include impressive mechanisms for accountability. The problems are that existing patterns of accountability are inadequate from a normative standpoint, and, in view of the pervasiveness of normative disagreement and uncertainty, there is insufficient provision for their contestation and improvement. What might be called narrow accountability – accountability without provision for contestation of the terms of accountability – is insufficient for legitimacy. Because what constitutes appropriate accountability is itself subject to reasonable dispute, the legitimacy of global governance institutions depends in part upon whether they operate in such a way as to facilitate principled, factually-informed deliberation about the terms of accountability, which we denote as *broad accountability*. There must be provisions for revising existing standards of accountability and our conception of who the proper accountability holders are and whose interests they should represent.

What we call *broad transparency* is also of critical importance, since it is needed for critical revisability of the terms of accountability. Both institutional practices and the normative principles that shape the terms of accountability must be revisable in the light of critical reflection and discussion. Under conditions of broad transparency, information produced initially to enable institutionally-designated accountability holders to assess officials’ performance may be appropriated by agents external to the institution, such as NGOs and other actors in transnational civil society, and used to support more fundamental criticisms, not only of the institution’s processes and structures, but even of its most fundamental goals and its role in the pursuit of global justice. Broad transparency is not a panacea and could have negative effects in particular situations, but we believe that on balance, more transparency is generally better than less.

Legitimate global governance institutions should possess three epistemic virtues. First, because their chief function is to achieve coordination, they must generate and properly direct reliable information about coordination points; otherwise they will not satisfy the condition of comparative benefit. Second, because accountability is required to determine whether they are in fact performing their current coordinating functions efficiently and effectively requires narrow transparency, they must at least be transparent in the narrow sense. They must also have effective provisions for integrating and interpreting the information current accountability-holders need and for directing it to them. Third, and most demanding, they must have the capacity for revising the terms of accountability, and this requires broad transparency: institutions must facilitate positive information externalities to permit inclusive, informed contestation of their current terms.
of accountability. There must be provision for on-going deliberation about what global justice requires and how the institution in question fits into a division of institutional responsibilities for achieving it.

Overcoming informational asymmetries

A fundamental problem of institutional accountability is that insiders generally have better information about the institution than outsiders. Our emphasis on epistemic issues is well-suited to illuminate these problems of asymmetrical information. First, in some cases information that is more accessible to outsiders can serve as a reliable proxy for less accessible information. Faced with uncertainty about the quality of a car, the potential buyer of a used car facing a seller with more information can infer poor quality from the seller’s unwillingness to let him have the car thoroughly checked out by a competent mechanic engaged by the buyer. Likewise, outsiders to an institution are justified in imagining the worst if insiders refuse to provide crucial information about their deliberations in a timely fashion. Second, there may be an asymmetry of knowledge in the other direction as well, which can have beneficial consequences for institutional accountability. Consider an issue area richly populated with independent nongovernmental organizations (NGOs) that seek to monitor and criticize national governments and global governance institutions and to suggest policy alternatives. The fact that in such a situation the information held by external epistemic actors is dispersed will make it difficult for institutional agents to know what is known about their behavior or to predict when potentially damaging information may be integrated and interpreted in ways that make it politically potent. The institutional agents’ awareness of this asymmetry will provide incentives for avoiding behavior for which they may be criticized. A condition of productive uncertainty will exist: although institutional agents will know that external epistemic actors do not possess the full range of knowledge that they do, they will know that potentially damaging information that is currently harmless because it is dispersed among many external epistemic agents may at any time be integrated and interpreted in such a way as to make it politically effective. But since they will not be able to predict when this will occur, they may refrain from abuses of power that, if revealed, would have damaging consequences for themselves.

The process of contestation and revision that we have described depends upon activities of actors outside the institution. It is not enough for the institutions to make information available. Other agents, whose interests and commitments do not coincide too closely with those of the institution, must provide a check on the reliability of the information, integrate it, and make it available in understandable, usable form, to all who have a legitimate interest in the operations of the institution. Therefore, in the absence of global democracy, and given the limitations of the democratic channel described earlier, legitimacy depends crucially upon the activities of external epistemic actors in what might be called the transnational civil society channel of accountability. The needed external epistemic actors, if they are effective, will themselves be institutionally organized.

All three elements of our complex standard of legitimacy are now in place. First, global governance institutions should enjoy the on-going consent of democratic states. Second, these institutions should satisfy the substantive criteria of minimal moral acceptability, comparative benefit, and institutional integrity. Third, they should possess the epistemic virtues needed to achieve the on-going contestation and critical revision of their goals, their terms of accountability, and ultimately their role in a division of labor for the pursuit of global justice, through their interaction with effective external epistemic agents.
Our “complex standard” views the legitimacy of global governance institutions as both dynamic and relational. Its emphasis on the conditions for on-going contestation and critical revision of the most basic features of the institutions captures the exceptional normative disagreement and uncertainty that characterize the circumstances of legitimacy for this type of institution. While acknowledging this normative disagreement and uncertainty, the complex standard includes provisions for developing more robust normative requirements for institutions over time. The complex standard also makes it clear that whether the institution is legitimate does not depend solely upon its own characteristics, but also upon the epistemic-deliberative relationships between the institution and epistemic actors outside it.

Having articulated the complex standard, and indicated how it reflects several key democratic values, we can now show, briefly, how it satisfies the desiderata for a standard of legitimacy we set out earlier. (1) The complex standard provides a reasonable basis for coordinated support of institutions that meet the standard, support based on normative reasons that are widely accessible in the circumstances under which legitimacy is an issue. To serve the social function of legitimacy assessments, the complex standard only requires a consensus on the importance of not violating the most widely recognized human rights, broad agreement that comparative benefit and integrity are also presumptive necessary conditions of legitimacy, and a commitment to inclusive, informed deliberation directed toward resolving or at least reducing the normative disagreement and uncertainty that characterize our practical attitudes toward these institutions. In other words, the complex standard steers a middle course between requiring more normative agreement than is available in the circumstances of legitimacy and abandoning the attempt to construct a more robust, shared normative perspective from which to evaluate global governance institutions. In particular, the complex standard acknowledges that the role that these institutions ought to play in a more just world order is both deeply contested and probably not knowable at present. (2) In requiring only minimal moral acceptability at present, the complex standard acknowledges that legitimacy does not require justice, but at the same time affirms the intuition that extreme injustice, understood as violation of the most widely recognized human rights, robs an institution of legitimacy. (3) The complex standard takes the on-going consent of democratic states to be a necessary, though not a sufficient condition for legitimacy. (4) The complex standard rejects the assumption that global governance institutions cannot be legitimate unless there is global democracy, but at the same time promotes some of the key democratic values, including informed, public deliberation conducted on the assumption that every individual has standing to participate and the requirement that key institutional policies must be publicly justified. (5) The complex standard reflects a proper appreciation of the dynamic, experimental character of global governance institutions and of the fact that not only the means they employ but even the goals they pursue may and probably should change over time. (6) The complex standard’s requirement of a functioning transnational civil society channel of accountability—an array of overlapping networks of external epistemic actors—helps to compensate for the limitations of accountability through democratic state consent.

Conclusion

We characterize our view as a proposal for a standard of legitimacy for global governance institutions, not as a discovery, through pure normative-conceptual analysis, of the conditions of legitimacy. This characterization reflects our understanding of the social function of legitimacy assessments about global governance institutions. These institutions are quite new and still evolving. They exist in a world in which there is a relatively recent but growing commitment to global justice and an increasing capacity for beginning to achieve it, but also a great deal of disagreement about exactly global justice requires, as well as uncertainty about the appropriate allocation of institutional responsibilities for pursuing it. Few would deny that global
governance institutions supply important benefits that neither states nor traditional treaty-based relationships among states can provide. Yet normative disagreement about them is so pronounced that there is a risk that they will not continue to enjoy the support needed for them to function effectively. Under these conditions a principled proposal for a standard of legitimacy might, if it garners sufficient support, serve as a focal point for provisional support while at the same time providing guidance for improvement and leverage for stimulating institutional change. Given the benefits and the imperfections of existing global governance institutions, there is an urgent need for a shared evaluative perspective that is sufficiently critical, yet not so demanding as to make coordinated normatively-based support unlikely. Our hope is that the complex standard we propose is a first step toward meeting this need.


3 Legitimacy can also be seen as providing a “focal point” that helps strategic actors select one equilibrium solution among others. For the classic discussion of focal points, see Thomas C. Schelling, The Strategy of Conflict (Cambridge: Harvard University Press), chapter 3. For a critique of theories of cooperation on the basis of focal point theory, and an application to the European Union, see Geoffrey Garrett and Barry Weingast, “Ideas, interests and institutions: constructing the European Community’s internal market,” especially pp. 178-185, in Judith Goldstein and Robert O. Keohane, eds., Ideas and Foreign Policy (Ithaca: Cornell University Press, 1993).


9 The issue area of the environment – with the World Wildlife Federation, Sierra Club, Greenpeace, Environmental Defense, and many more organizations active – is an example of a domain with many external epistemic actors. So is human rights – consider Amnesty International, Human Rights Watch, and organizations designed to oppose torture. Other areas, such as world poverty or development, or health, also are thickly populated with external epistemic actors.

10 We use the term “external epistemic actor” here broadly, to include individuals and groups outside the institution in question who gain knowledge about the institution, interpret and integrate such knowledge, and exchange it with others, in ways that are intended to influence institutional behavior, whether directly or indirectly (through the mediation of the activities of other individuals and groups).