THE LEGITIMACY OF GLOBAL GOVERNANCE INSTITUTIONS

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The Problem of Legitimacy

Concerns about the legitimacy of global governance institutions have deepened as their powers have grown. ‘Global governance institutions’ covers a diversity of multilateral entities, including the World Trade Organization (WTO), the International Monetary Fund (IMF), various environmental institutions such as the climate change regime built around the Kyoto Protocol, judges’ and regulators’ networks, the UN Security Council, and the new International Criminal Court (ICC). These institutions are like governments in that they issue rules and publicly attach significant consequences to compliance or failure to comply with them—and claim the authority to do so. Nonetheless, they are not governments because they do not attempt to perform anything approaching a full range of governmental functions, they do not seek to monopolize the legitimate use of violence within a permanently specified territory, and their major actions require the consent of states.

The legitimacy of global governance institutions matters for several reasons.

First, although they do not control major means of coercion and only rarely exercise direct authority over individuals, it is difficult to consider them voluntary. For a society to be integrated effectively into the world economy, its government must belong to the WTO, which in turn requires accepting a large number of quite intrusive rules. Poor countries are likely to have great difficulty attracting foreign investment if they defy the IMF or the World Bank. Increasingly, the rules made by and through global governance institutions affect what were formerly regarded as domestic practices, and cannot easily be evaded. Second, several global governance institutions significantly constrain state sovereignty. During the 1990s the United Nations exercised effective rule in East Timor, Bosnia and Kosovo; the Appellate Body of the World Trade Organization can make judgments binding on members in international law, without their consent; and on a more limited geographical scale, the European Court of Justice has successfully asserted the supremacy of European over national law. Hence the question arises as to whether these institutions are compatible with the right of self-determination, so far as this right is exercised through the powers of sovereignty. Third, these institutions affect the well-being and opportunities of tens of millions of people, most of whom are at best dimly aware of their existence and know little of their origins and functions. Loan decisions by the World Bank or decisions on resource allocation by the Global Fund to Fight AIDS, Tuberculosis, and Malaria are matters of life and death for people in Africa and Asia. WTO policies on agricultural subsidies and import duties can dramatically affect the welfare of farmers around the world.

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The current debate over the legitimacy of global governance institutions suffers from four defects. First, it is often unclear whether the normative or the sociological sense of ‘legitimacy’ is being invoked—whether the primary concern is with how people do regard these institutions or with how they ought to regard them. Second, even when it is clear that the normative sense of the term is being employed, the precise question at issue is often unclear. Is it simply whether institutions are morally justified in doing what they do, or also whether states and individuals have reason to regard rules as binding regardless of the content of particular rules? Third, although the alleged unfairness of the procedures or distributive effects of these institutions is sometimes assumed to impugn their legitimacy, it is important to maintain a distinction between justice and legitimacy. Fourth, little is said about the circumstances of legitimacy—the conditions under which the concept of legitimacy can play a significant social role in normative theory and social practice. Yet unless we understand the circumstances of legitimacy, we run the risk that legitimacy is simply not a concept that can be fruitfully applied to these institutions.

In Section I we distinguish between the normative and sociological senses of legitimacy and explain the valuable social function that legitimacy assessments can perform. 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. Finally, we distinguish between the conception of legitimacy suitable for global governance institutions and the standards such institutions must satisfy to be judged to be legitimate according to that conception. In Section II we consider three widely-discussed standards: state consent, the consent of democratic states, and global democracy. Section III identifies a set of desiderata that a standard for the legitimacy of global governance institutions ought to satisfy and then goes on to propose what we call the Complex Standard and to show how it satisfies the desiderata. We argue that legitimacy, for this type of institution, is dynamic and relational: dynamic because legitimacy for such institutions requires the capacity for on-going, increasingly inclusive public deliberation about their proper goals and about the role these institutions ought to play in the pursuit of global justice; relational because the needed on-going public deliberation depends not only upon the characteristics of the institutions themselves but also upon connections between the institutions and agents and institutions outside of them.

I. Assessing Legitimacy

Two senses of ‘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. Ruling in this broad sense does not require that the rules be backed by coercion, much less that the rule-maker claims a rightful monopoly on coercion within a jurisdiction, so it does not presuppose the state. Later we will see that the notion of the right to rule is subject to stronger and weaker interpretations, but for now it will suffice to say that an institution is legitimate in the sociological sense when it is widely believed to have the right to rule. Social science inquiry into the conditions under which people believe an institution to be legitimate cannot substitute for a normative account of when it is legitimate. 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.

**The social function of legitimacy assessments**

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.

Once an institution is in place, on-going support for it and compliance with its rules is sometimes simply a matter of self-interest from the perspective of states, assuming that the institution actually achieves coordination that all or at least the more powerful actors regard as valuable. Similarly, once the rule of the road has been established and penalties are in place for violating it, most people will find compliance with it to be rational, from a purely self-interested point of view. In the latter case, no question of legitimacy arises, because the sole function of the institution is coordination and the choice of the particular coordination point raises no issues on which people are likely to disagree. However, although coordination is one of the most important benefits they confer, global governance institutions are not pure coordination devices in the way in which the rule of the road is. 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. In particular, there may be disagreements about what the distributive effects of a
given institution are or ought to be. The fact that all acknowledge that it is in their interest to
achieve coordinated support for some institution or other may not be sufficient to assure adequate
support for one particular institution.

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. However, if the
concept of legitimacy is to perform its coordinating function, actors must not insist that only
institutions that are optimal from the standpoint of their own normative views are acceptable,
since this would preclude coordinated support in the face of diverging normative views.
Similarly, actors must not assume that an institution is worthy of support only if it is perfectly
just, since this requirement would ensure that in our imperfect world, the needed support would
never materialize. 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 and Self-Interest**

It is one thing to say that an institution promotes one’s interests and another to say that it
is legitimate. Sometimes self-interest may speak in favor of treating an institution’s rules as
binding; that is, it can be in one’s interest to take the fact that an institution issues a rule as a
weighty reason for complying with it, independently of a positive assessment of the content of
particular rules. This would be the case if one is likely to do better, from the standpoint of one’s
own interest, by taking the rules as binding than one would by evaluating each particular rule as
to how complying with it would affect one’s interests. But if one’s only reasons for taking the
institution’s rules as binding were those of self-interest, it would add nothing to say that the
institution is legitimate. Yet clearly it makes sense to ask whether an institution that promotes
one’s interests is legitimate. So 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.

It is important to achieve coordinated support for institutions on the basis of normative
reasons, rather than on the basis of purely self-interested reasons. First, the appeal to normative
reasons is instrumentally valuable in securing the benefits that only institutions can provide
because, as a matter of psychological fact, normative reasons matter to us when we try to determine what our practical attitude toward particular institutional arrangements should be. For example, we care not only about whether an environmental regulation regime reduces air pollutants and thereby produces benefits for all, but also whether it fairly distributes the costs of the benefits it provides. Given that we disagree as to which institutional arrangement would be optimal, we need to find a shared evaluative perspective that makes it possible for us to achieve the coordinated support required for effective institutions without requiring us to disregard our most basic normative commitments. Second, from a moral standpoint, it is preferable to achieve coordinated support for valuable institutions through the alignment of normative reasons, rather than simply through purely self-interested ones, because doing so is an important expression of our moral values, including that of mutual respect. Respect for all as moral agents requires that we attempt to secure the support of all by appeal to normative reasons rather than proceeding as if they were no more than beings whose behavior can be manipulated by the imposition of material costs and benefits. Third, and perhaps most important, if our support for an institution is based on reasons other than self-interest, it may be more stable, because what is in our self-interest may change as circumstances change. In particular, normative commitments can preserve support in the face of shifting balances of power.

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.8

Understanding the social function of legitimacy assessments helps us to identify which concept of legitimacy—which interpretation of the notion of the right to rule—is appropriate. Two alternatives are worth considering. According to the first, weak interpretation, an institution has the right to rule if and only if its agents are morally justified in carrying out their institutional roles. According to the second, stronger interpretation, two additional conditions must be 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.

Our account of the social function of legitimacy assessments suggests that the second, stronger interpretation of the right to rule best captures what is usually at stake in real-world debates about the legitimacy of global governance institutions. When someone asserts or denies that a particular global governance institution is legitimate, part of what is at stake is whether those who occupy key roles in the institution are morally justified in performing the functions attached to those roles, including formulating rules and attempting to ensure that they are complied with. But that is not all: there is the issue of whether states or other collective entities to which the institution addresses its rules ought to take those rules as binding, independently of a positive assessment of the content of each particular rule. In other words, legitimacy disputes concern not merely what institutional agents are morally permitted to do but also whether those to whom the institution addresses its rules should regard it as authoritative.9

There is also the question of whether individuals ought to support their governments when the latter take the rules to be binding or whether individuals may rightly protest their states’ compliance with the institution’s rules or attempt to sabotage it. The debate about the legitimacy of global governance institutions, then, engages both the perspective of states and that of individuals. Yet, regardless of which perspective is at issue, the key point is that legitimacy assessments focus upon the proper practical attitude toward the institution as a source of rules rather than merely upon whether the institution’s agents are morally justified in trying to rule. Legitimacy in the case of global governance institutions, then, is the right to rule, understood according to the stronger of the two interpretations.

Justice and legitimacy

The foregoing account of the social function of legitimacy assessments helps clarify the relationship between justice and legitimacy. Collapsing legitimacy into justice undermines the social function of legitimacy assessments. There are two reasons not to insist that only just institutions have the right to rule. First, there is sufficient disagreement on what justice requires that such a standard for legitimacy would thwart the eminently reasonable goal of securing coordinated support for valuable institutions on the basis of normative reasons. Second, even if we all agreed on what justice requires, withholding support from institutions because they fail to meet the demands of justice would be self-defeating from the standpoint of justice itself, because progress toward justice requires effective institutions. To mistake legitimacy for justice is to
make the best the enemy of the good. Yet if an institution is sufficiently unjust, there will not be sufficient normative reasons to support it, because whatever moral reasons there are for supporting it will be overwhelmed by its extreme injustice.

II. Competing Standards of Legitimacy

So far we have identified the proper conception of legitimacy for application to global governance institutions (the right to rule on the stronger interpretation), explained the circumstances of legitimacy and the social function of legitimacy assessments, argued that legitimacy is not reducible to being in accordance with self-interest, and distinguished between legitimacy and justice. Having explicated our conception of legitimacy, we now explore standards of legitimacy: the conditions an institution must satisfy in order to have the right to rule. In this section we articulate three candidates for the appropriate standard of legitimacy: state consent, consent by democratic states, and global democracy.

State consent

The legitimacy of policies or laws is often thought to be a matter of pedigree, of whether they came to be through the right sort of process. Similarly, institutions are sometimes said to be legitimate if they were created by the right sort of process, and, more specifically, if they were created by legitimate institutions, the idea being that legitimacy can be transferred, as it were. In international legal scholarship it is often assumed that global governance institutions are legitimate if they are created through state consent. Call this the International Legal Pedigree View (the Pedigree View, for short). If this view were correct, the problem of assessing the legitimacy of these institutions would be easily solved: we would need only to determine whether they were created by states, in accordance with the international law of treaties. A more sophisticated version of the Pedigree View would require the periodic reaffirmation of state consent, on the grounds that states have a legitimate interest in determining whether these institutions are performing as they are supposed to.

The Pedigree view, on both its variants, fails because it is hard to see how state consent could render global governance institutions legitimate, given that many states are nondemocratic and systematically violate the human rights of their citizens and for that reason are themselves illegitimate. State consent in these cases cannot transfer legitimacy for the simple reason that there is no legitimacy to transfer. To assert that state consent, regardless of the character of the state, is sufficient for the legitimacy of global governance institutions is to regress to a conception of international order that failed to impose even the most minimal normative requirements on
states. Indeed, once we abandon that deeply defective conception of international order, it is hard to see why state consent per se is even a necessary condition for legitimacy.

**The consent of democratic states**

The idea that state consent confers legitimacy is much more plausible when restricted to democratic states. However, on reflection the mere fact of state consent, even when the state in question is democratic and satisfies whatever other conditions are appropriate for state legitimacy, is not sufficient for the legitimacy in the case of global governance institutions.

First, these institutions are often dominated by a few powerful states, but weaker states would suffer serious costs by not participating. Insofar as these conditions obtain, the weaker states’ consent is not genuinely voluntary, regardless of whether they are democratic. Yet voluntariness is generally thought to be a necessary condition for consent to play a legitimating role.11

Second, although some global governance bodies such as the United Nations General Assembly and Security Council, and the legislative body of the WTO do operate on the basis of “specific consent,” many global governance institutions do not.12 Adjudicatory institutions such as the Appellate Body of the WTO do not rely on specific consent at all, and bureaucracies such as the IMF and World Bank have considerable scope for policy innovation within the broad boundaries of their mandates from states. Global governance institutions operate in a turbulent environment: they must respond to new problems thrown up by the quickening pace of globalization.13 Such institutions have to be dynamic and adaptive, or they will become irrelevant. Rapid adaptation is in tension with reliance on specific state consent.

The dilemma of rapid adaptation versus specific consent could in principle be resolved by relying on general state consent: delegating substantial authority to global governance institutions. But general state consent, even by democratic states, is anemic as compared to the consent of democratic publics within states, because there is a serious problem of bureaucratic distance – between citizens and the rule-making agencies. In view of the remoteness of most global governance institutions from democratic publics, it seems unlikely that consent sufficient for legitimacy will often be provided through long and complex chains of delegation.

Yet even if the consent of democratic states is not sufficient for the legitimacy of global governance institutions, it may appear to be necessary. Indeed, it seems obvious that for such an institution to attempt to impose its rules on democratic states without their consent would violate the right of self-determination of the people of those states. However, matters are not so simple. A democratic people’s right of self-determination is not absolute. If the majority persecutes a minority, the fact that it does so through democratic processes does not render the state in
question immune to sanctions or even to intervention. One might accommodate this fact by stipulating that a necessary condition for the legitimacy of global governance institutions is that they enjoy the consent of states that are democratic and that respect the rights of all their citizens.

This does not mean that all democratic states must consent. A few such states may willfully seek to isolate themselves from global governance (Switzerland only joined the UN in 2002). Furthermore, democratic states may engage in wars that are unnecessary and unjust, and resist pressures from international institutions to desist. It would hardly delegitimize a global governance institution established to constrain unjust warfare that it was opposed by a democratic state that was waging an unjust war. For these reasons we cannot simply assume that the consent of all democratic states is an unexceptionable necessary condition for the legitimacy of all global governance institutions. A more reasonable position would be that there is a presumption that global governance institutions are illegitimate unless they enjoy the on-going consent of democratic states. Let us say, then, that on-going consent by democratic states constitutes the democratic channel of accountability and that the well-functioning of this channel is generally necessary for legitimacy.  

However valuable the democratic channel of accountability, it is not sufficient, for two reasons. First, not all the people who are affected by global governance institutions are citizens of democratic states, so even if the on-going consent of democratic states fosters accountability, it may not foster accountability to them. If—as is the case at present—democratic states tend to be richer and hence more powerful than nondemocratic ones, then the requirement of on-going consent by democratic states may actually foster a type of accountability that is detrimental to the interests of the world’s worst-off people. For this reason, and because of the problem of bureaucratic distance, the idea that the legitimacy of global governance institutions requires democracy on a grander scale may seem plausible.

Global democracy

Because democracy is now widely thought to be the gold standard for legitimacy in the case of the state, it may seem obvious that global governance institutions are legitimate if and only if they are democratic. And since these institutions increasingly affect the welfare of people everywhere, surely this must mean that they ought to be democratic in the sense of giving everyone an equal say in how they operate. Call this the Global Democracy View.

The most obvious difficulty with this view is that the social and political conditions for democracy are not met at the global level and there is no reason to think that they will be in the foreseeable future. At present there is no global political structure that could provide the basis for democratic control over global governance institutions, even if one assumes that democracy
requires little direct participation by individuals. Any attempt to create a such a structure in the
form of a global democratic federation that relies on existing states as federal units would lack
legitimacy, and hence could not confer legitimacy on global governance institutions, because, as
has already been noted, many states are themselves undemocratic or lack other qualities necessary
for state legitimacy. Furthermore, there is at present no global public—no world-wide political
community constituted by a broad consensus recognizing a common domain as the proper subject
of global collective decision-making and habitually communicating with one another about public
issues. Nor is there consensus on a normative framework within which to deliberate together
about a global common interest. Indeed, there is not even a global consensus that some form of
global governent, much less a global democracy, is needed or appropriate. Finally, once it is
understood that it is liberal democracy, democracy that protects individual and minority rights,
that is desirable, the Global Democracy View seems even more unfeasible. Democracy worth
aspiring to is more than elections; it includes a complex web of institutions, including a free press
and media, an active civil society, and institutions to check abuses of power by administrative
agencies and elected officials.

Democratic authorization, then, if this is understood on analogy with liberal democracy at
the level of the state, is not a practicable standard of legitimacy for global governance
institutions. If global governance institutions must be authorized by a global democracy to be
legitimate, then none are legitimate and none are likely to be for the foreseeable future. Yet
global governance institutions provide benefits that cannot be provided by states and, as we have
argued, securing those benefits may depend upon these institutions being regarded as legitimate.
We should therefore question the assumption that to be legitimate these institutions must be
authorized by a global democracy.

We are now in a position to identify at least one condition that a standard of legitimacy
for global governance institutions should include: the on-going consent of democratic states. For
reasons already indicated, however, such consent is not sufficient. Accordingly, our proposal for
a standard of legitimacy must be more complex.

III. A Complex Standard of Legitimacy

Desiderata for a standard of legitimacy

Before further elaborating our proposal, it will be useful to identify the characteristics
that a standard of legitimacy for these institutions should have. Our discussion of the practical
function of legitimacy assessments and our critique of the three dominant views on the standard
of legitimacy for these institutions (state consent, democratic state consent, and global
democracy) suggest the following desiderata. (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. (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.

**Normative disagreement and uncertainty**

The first item on the list of desiderata is complex and warrants further explication and emphasis. We have noted that a central feature of the circumstances of legitimacy is the persistence of normative disagreement about (i) what the proper goals of the institution are (given the limitations imposed by state sovereignty properly conceived); (ii) what global justice requires; and (iii) what role if any the institution should play in the pursuit of global justice. Normative disagreement is not unique to global governance institutions. At least under modern conditions, disagreements about what justice requires and the role of the state in the pursuit of justice occur within the state. For example, some citizens may think that the state should provide comprehensive health care for all, while others reject this or other welfare functions for the state, and this disagreement may be rooted in deeper disagreement about what justice requires.

However, there are two circumstances in the case of global governance institutions that exacerbate the problem of normative disagreement. First, in the case of the state, democratic processes provide a way of accommodating these disagreements, by providing a public process that assures every citizen that she is being treated as an equal, through the electoral process, while as we have seen democracy is unavailable at the global level. Second, although there is a widespread perception, at least among cosmopolitans broadly speaking, that there is serious global injustice and that the effective pursuit of global justice requires a significant role for global institutions, it is not possible at present to provide a principled specification of the division of institutional labor for pursuing global justice. In part the problem is that there is no unified
system of global institutions within which a fair and effective allocation of institutional responsibilities for justice can be devised. How responsibilities for justice ought to be allocated among global institutions and between states and global institutions depends chiefly on the answers to two questions: what are the proper responsibilities of states in the pursuit of global justice, taking into account the scope of state sovereignty (because this will determine how extensive the role of global institutions should be); and second, what are the capabilities of various global institutions for contributing to the pursuit of global justice? But neither of these questions can be answered at present, in part because global governance institutions are so new, and in part because people have only recently begun to think seriously about achieving justice on a global scale. So the difficulty is not just that there is considerable normative disagreement about the proper goals of global governance institutions and about the role these institutions should play in the pursuit of global justice; there is also normative uncertainty. Whatever the standard of legitimacy for global governance institutions is, it must some how accommodate the facts of normative disagreement and uncertainty.

The standard of legitimacy we propose is complex. To be legitimate, we argue, a global governance institution must have certain attributes, but also must stand in certain relationships to entities outside the institution. We have already noted one key relationship: the channel of accountability that the ongoing consent of democratic states makes possible. We argued that the democratic channel is presumptively necessary for legitimacy, but not sufficient. What more is needed? In our view, the democratic consent condition needs to be supplemented with substantive criteria that specify the attributes a global governance institution must have to be legitimate. We begin with a set of institutional attributes that have considerable intuitive appeal: minimal moral acceptability, comparative benefit, and institutional integrity.

Three substantive criteria

Minimal moral acceptability

Global governance institutions, like institutions generally, should not persist in committing serious injustices and if they do we should not take their rules as binding or otherwise support them. We believe that the primary instance of a serious injustice is the violation of human rights. We also believe that the most plausible conception of human rights is what might be called the basic human interest conception. This conception, which we can only sketch in broad outlines here, builds on Joseph Raz’s insight that rights generally are normative relations (in particular, duties and entitlements) which, if realized, provide important protections for interests. Given this conception of what rights are, it is clear that to justify the claim that R is a right, one must identify an interest, support the claim that the interest is of sufficient moral
importance to round duties, explain why the duties are owed to the right-holders, and make the case that if the normative relations in question are satisfied, significant protection for the interest will be achieved. On this view, certain rights are properly called human rights because the duties they entail provide especially important protections for basic human interests, given the standard threats to those interests in our world.¹⁸

What the standard threats are can change over time. For example, when human societies create legal systems and police and courts to enforce laws, they also create new possibilities for damaging basic human interests. For this reason, the content of particular human rights, and even which rights are included among the human rights, may also change, even though the basic interests that ground them do not. For example, all human beings, regardless of where they exist, have a basic interest in physical security, but in a society with a legal system backed by the coercive power of the state, adequate protection of the interest in physical security requires rights of due process and equal protection under the law.

Unsurprisingly, there is disagreement among basic interest theorists of human rights as to exactly what the list of human rights includes and how the content of particular rights is to be filled out. However, there is agreement that the list at least includes the rights to physical security, to liberty (understood as at least encompassing freedom from slavery, servitude, and forced occupations), and the right to subsistence. Assuming that this is so, we can at least say this much: global governance institutions, and institutions generally, are legitimate only if they do not persist in violations of the least controversial human rights. To require that global governance institutions not persist in the most basic human rights violations is certainly minimal as a requirement for legitimacy. Yet in view of the normative disagreement and uncertainty that characterize our attitudes toward these institutions, it might be hard at present to reach agreement on a more extensive set of rights that they are bound to respect. It would certainly be desirable to develop a more meaningful consensus on stronger human rights standards. But to deny legitimacy to the very institutions that are seeking to strengthen human rights standards, on grounds that they do not meet strong ones, would make the best be the enemy of the good. What this suggests is that global governance institutions must not only respect minimal human rights, but should be moving progressively in the direction of stronger standards.

Nonetheless, a theory of legitimacy cannot ignore the fact that in some cases the dispute over whether a global governance institution is legitimate is in large part a disagreement over whether it is worthy of support if it does not actively promote human rights. This certainly seems to be true of the heated controversy over the legitimacy of the WTO. While some critics contend that the WTO actually violates human rights (for example, the right to subsistence, through its
policies on import duties and agricultural subsidies), others claim that even if it does not violate human rights, it ought to promote protection of them, for example, by requiring trade agreements to include universal labor standards for safety and health, and for limitations on child labor. The issue of promoting human rights raises issues both of generality and of obligation.

Our goal in this paper is to develop general criteria for legitimacy. Yet to generalize a strong general condition for legitimacy, such as the requirement that global governance institutions not only refrain from human rights violations, but also actively promote human rights, would be implausible, given the prosaic functions of some of these institutions (e.g., creating standards for electronic communications, corporate accounting, or securities regulation).

Nevertheless, for some global governance institutions the satisfaction of more robust standards of justice may well be required for legitimacy.

With respect to institutional obligations, more discussion is required. It is one thing to say that it would be a good thing if a particular global governance institution took on certain functions that would promote human rights; it is quite another to say that it has a duty to do so and that this duty is of such importance that failure to discharge it makes the institution illegitimate. There are two mistakes to be avoided here. The first, is “duty dumping,” that is, arbitrarily assuming that some particular institution has a duty simply because it has the resources to fulfill it and no other actor is doing so. Duty dumping not only makes unsupported attributions of institutional responsibility; it also distracts attention from the difficult task of determining what a fair distribution of the burdens—among individuals and institutions—for protecting the human rights in question would be. The second error derives from the first: if one uncritically assumes that the institution has a duty to provide X and also assumes that X is a central matter of justice (as is the case with human rights), then one may conclude that the institution’s failure to provide X is such a serious injustice as to rob the institution of legitimacy. But the fact that an institution could provide X and the fact that X is a human right does not imply that in refraining from providing X the institution commits a serious injustice. That conclusion would only follow if it were established that the institution has a duty of justice to provide X. Merely pointing out that the institution could provide X—or even showing that it is the only existing institution that can do so—is not sufficient to show that it has a duty of justice or any duty at all to provide X.

We seem to be in a quandary. Contemporary institutions have to operate in an environment of normative disagreement and uncertainty, which limits the demands we can reasonably place on them to respects or protect particular human rights. Furthermore, to be sufficiently general, an account of legitimacy must avoid moral requirements that only apply to some global governance institutions. These considerations suggest the appropriateness of
something like the minimal moral acceptability requirement, understood as refraining from violations of the least controversial human rights. On the other hand, the standard of legitimacy should somehow reflect the fact that part of what is at issue in disputes over the legitimacy of some of these institutions is whether they should satisfy more robust demands of justice. In other words, the standard should acknowledge the fact that where the issue of legitimacy is most urgent, there is likely to be deep normative disagreement and uncertainty. 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.

Later in this section we explain how global governance institutions can be structured so as to facilitate principled, informed deliberation about whether the bar for minimal moral acceptability should be raised. In our view, the proper response to the problem of normative disagreement and uncertainty is to build the conditions needed for principled, informed deliberation about normative issues into the standard of legitimacy. For now we only want to stress that minimal moral acceptability, explicated in terms of the non-violation of human rights, is a plausible presumptive necessary condition for legitimacy for all global governance institutions.

**Comparative benefit**

This second substantive condition for legitimacy is relatively straightforward. The justification for having global governance institutions is primarily if not exclusively instrumental: we value them because of the benefits they bring, rather than regarding them as intrinsically valuable. The basic reason for states or other addresses of institutional rules to take them as binding and for individuals generally to respect the operation of these institutions is that they provide benefits that cannot otherwise be obtained.

‘Benefit’ here is comparative. 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. However, legitimacy is not to be confused with optimal efficacy and efficiency. All institutions are suboptimal when compared with the ideal; and in any case, institutional stability is a virtue. To avoid costly instability, there must be some significant potential gain in instrumental value for the issue of legitimacy even to be raised. Nevertheless, if an institution steadfastly remains instrumentally suboptimal when it could take steps to become significantly more efficient or effective, this could impugn its legitimacy in an indirect way: it would indicate that those in charge of the institution were either grossly incompetent or not seriously committed to providing the benefits that were invoked to justify the
creation of the institution in the first place. This suggests a third substantive condition for legitimacy: institutional integrity.

**Institutional integrity**

If an institution exhibits a pattern of egregious disparity between its actual performance, on the one hand, and its self-proclaimed procedures or major goals, on the other, its legitimacy is seriously called into question. The United Nations Oil-for-Food scandal is a case in point. The Oil-for-Food Program was devised to enable Iraqi oil to be sold, under strict controls, to pay for food imports under the UN-mandated sanctions of the 1990s. The purpose was both to prevent malnutrition in Iraq and to counter Iraqi propaganda holding the United Nations responsible for the deaths of hundreds of thousands of Iraqi children, without relieving the pressure on Saddam Hussein’s regime to get rid of its supposed weapons of mass destruction. Yet it led to a great deal of corruption. The most damning charge is that neither the Security Council oversight bodies nor the Office of the Secretary-General followed the UN’s prescribed procedures for accountability. At least when viewed in the light of the historical record of other, perhaps less egregious failures of accountability in the use of resources on the part of the UN, these findings have raised questions about the legitimacy of the Security Council and the Secretariat.

It also appears that an institution is presumptively illegitimate if its practices or procedures predictably thwart the credible pursuit of the very goals in terms of which it justifies its existence. Thus, for example, if the fundamental character of the Security Council’s decision-making process renders that institution incapable of successfully pursuing what it now acknowledges as one of its chief goals—stopping large-scale violations of basic human rights—this impugns its legitimacy. Similarly, if the WTO claims to provide the benefits of trade liberalization to all of its members, but consistently develops policies that exclude its weaker members from the benefits of liberalization, this undermines its claim to legitimacy. If an institution fails to satisfy the integrity criterion, we have reason to believe that key institutional agents are either untrustworthy or grossly incompetent, that the institution lacks correctives for these deficiencies, and that therefore the institution is unlikely to be effective in providing the goods that would make it rational for us to take its directives as binding.

Integrity and comparative benefit are related but distinct. If there are major discrepancies between an institution’s behavior and its prescribed procedures and professed goals, then we can have little confidence that it will succeed in delivering the benefits it is supposed to provide. However, integrity is a more forward-looking, dynamic virtue than comparative benefit, which measures benefit solely in terms of the current situation. If an institution satisfies the criterion of integrity, there is reason to be confident that institutional actors will not only deliver the benefits
that are now taken to constitute the proper goals institutional activity, but also that they will be able to maintain the institution’s effectiveness if its goals change.

**Epistemic Aspects of Legitimacy**

Minimal moral acceptability, comparative benefit, and institutional integrity are plausible presumptive substantive requirements for the legitimacy of global governance institutions. It would be excessive to claim that they are necessary conditions * simpliciter, because there might be extraordinary circumstances in which an institution would fail to satisfy one of them, yet still reasonably be regarded as legitimate. This might be the case if there were no feasible and accessible alternative institutional arrangement, if the noninstitutional alternative were sufficiently grim, and if there was reason to believe that the institution had the resources and the political will to correct the deficiency. 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.

However, even if the three substantive 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 about the workings of the institution and their effects in a number of domains. However, some institutions may not only fail to supply the needed information, they may, whether deliberately or otherwise, make such information either impossible for outsiders to obtain or obtainable only at prohibitive costs. Even if the institution does not try to limit access to the relevant information, it may not be accessible, in suitably integrated, understandable form.

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. To expand on an earlier 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.

Furthermore, merely requiring that global governance institutions not violate human rights is unresponsive to the familiar complaint that they are unfairly dominated by rich countries and that even if they provide benefits to all, the richer members receive unjustifiably greater benefits. However, although all parties may agree that fairness matters, there are likely to be disagreements about what fairness would consist of, disputes about whether fairness would suffice or whether equality is required and about how equality is to be understood and even over what is to be made equal (welfare, opportunities, resources, etc.). So, quite apart from the issue of what positive role, if any, these institutions should play in the pursuit of global justice, there is disagreement about what standards of fairness they should meet internally.

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. Doing so will pave the way for our account of epistemic-deliberative quality.

Accountability

Critics of global governance institutions often complain that they lack accountability. To understand the strengths and limitations of accountability as a gauge of legitimacy, we start with a skeletal but serviceable analysis of accountability. Accountability 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 about whether the institution is meeting the standards accountability-holders apply 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 problem is that existing patterns of accountability are inadequate from a normative standpoint. Consider, for example, the World Bank. This institution has traditionally exhibited a high degree of accountability, but it has been accountability to the biggest donor countries, and the Bank therefore has to act in conformity with their interests, at least insofar as they agree. This kind of accountability does not ensure meaningful participation by those affected by rules or due consideration of their legitimate interests. A high degree of accountability in this case may serve to perpetuate the defects of the institution.

So accountability per se is not sufficient; it must be the right sort of accountability. At the very least, this means that there must be effective provisions in the structure of the institution for holding institutional agents accountable for acting in ways that ensure satisfaction of the minimal moral acceptability and comparative benefit conditions. However, accountability understood in this narrow way is not sufficiently dynamic to serve as an assurance of the legitimacy of global governance institutions, given that in some cases there is serious disagreement about what the goals of the institution should be and, more specifically, about what role if any the institution should play in the pursuit of global justice. The point is that what the terms of accountability ought to be—what standards of accountability ought to be employed, who the accountability holders should be, and whose interests the accountability holders should represent—cannot be definitively ascertained without knowing what role, if any, the institution should play in the pursuit of global justice.

Therefore, what might be called narrow accountability – accountability without provision for contestation of the terms of accountability—is insufficient for legitimacy, given the fact of normative disagreement and uncertainty. 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. 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.

Transparency

Achieving transparency is often touted as the proper response to worries about the legitimacy of global governance institutions. However, to suggest that transparency ensures legitimacy is inadequate. First, if transparency means merely the availability of accurate information about how the institution works, it is insufficient even for narrow accountability, that is, for ensuring that the institution is accurately evaluated in accordance with the current terms of
accountability. If information about how the institution operates is to serve the end of narrow accountability it must be (a) accessible at reasonable cost, (b) properly integrated and interpreted, and (c) directed to the accountability-holders. Furthermore (d) the accountability-holders must be adequately motivated to use it properly in evaluating the performance of the relevant institutional agents. On most accounts, the failure of U.S. intelligence agencies to anticipate the terrorist attacks of September 11, 2001, provides a compelling example of the importance of proper integration, interpretation, and direction of information. Second, if, as we have suggested, the capacity for critically revising the terms of accountability is necessary for legitimacy, information about how the institution works must be available not only to those who are presently designated as accountability-holders, but also to those who may contest the terms of accountability.

Broad transparency 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.

One especially important dimension of broad transparency is responsibility for public justification. Institutional actors must offer public justifications of at least the more controversial and consequential institutional policies and must facilitate timely critical responses to them. Potential critics must be in a position to determine whether the public justifications are cogent, whether they are consistent with the current terms of accountability, and whether, if taken seriously, these justifications call for revision of the current terms of responsibility. To help ensure this dimension of broad transparency, it may be worthwhile to draw on the notice and comment procedures of administrative law at the domestic level.

Earlier we noted that although comparative benefit, minimal moral acceptability, and integrity are reasonable presumptive necessary conditions for legitimacy, it may be difficult for those outside the institution to determine whether they are satisfied. We now want to suggest that broad transparency can serve as a proxy for satisfaction of the minimal moral acceptability, comparative benefit, and integrity criteria. For example, it may be easier for outsiders to discover that an institution is not responding to demands for information relevant to determining whether it is violating its own prescribed procedures, than to determine whether in fact it is violating them. Similarly, it may be very difficult to determine whether an institution is comparatively effective
in solving certain global problems, but much easier to tell whether it generates – or systematically restricts access to – information needed to try to determine whether it is. If an institution fails to cooperate in making available to outsiders the information that would be needed to determine whether the three presumptive necessary conditions are satisfied, that should count against its legitimacy.

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. Outsiders can determine whether institutions enjoy the consent of states, and whether states are democratic; but it may be very difficult for them to reach well-informed conclusions about the minimal moral acceptability, comparative benefit, and integrity conditions. Our emphasis on epistemic issues is well-suited to illuminate these problems of asymmetrical information.

First, as we have already noted, in some cases information that is more accessible to outsiders can serve as a reliable proxy for less accessible information. For example, outsiders may observe that an institution is not meeting the requirements of broad transparency, even if they do not know what is transpiring within it. Broad transparency, as we observed earlier, requires provisions for making widely available, beyond the boundaries of the institution, information about what the current standards of accountability are, who the current accountability holders are, and whose interests they are serving. It also entails providing timely public justifications for the more controversial and significant policy decisions. Faced with similarly severe 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, and this 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. Suppose that in such a domain there is a division of labor among
external epistemic actors. Some individuals and groups seek information about certain types of
issues, while others focus on other aspects, each drawing on distinct but in some cases
overlapping groups of experts. Still others specialize in integrating and interpreting information
gathered by other external epistemic actors.

The fact that 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 there are many individuals and
organizations gathering information about the institution. Further, they will know that some of
the information that external epistemic actors have access to can serve as a reliable proxy for
information they cannot access. Finally, they will also 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 they will not be able to predict when this will occur. Under these conditions,
institutional agents will have significant incentives to refrain from behavior that will attract
damning criticism, despite the fundamental asymmetry of knowledge between insiders and
outsiders.

This is not to say that the effects of transparency will always be benign. Indeed, under
some circumstances transparency can have malign effects. As David Stasavage points out, “open-
door bargaining…encourages representatives to posture by adopting overly aggressive bargaining
positions that increase the risks of breakdown in negotiations.” When issues combine highly
charged symbolic elements with the need for incentives, conflicts between transparency and
efficiency may be severe. Organizations may refrain from actions that might promote their goals, merely because they could not easily be justified to a public paying only limited and intermittent attention. For example, a number of environmental experts think that the best way to maintain healthy populations of elephants would be to cull the herds routinely and use the proceeds from selling ivory to hire game wardens and reward local populations for not destroying the animals or their habitats. However, any multilateral institution that was branded as “killing elephants” would face severe political difficulties. Similar issues have arisen with whaling. International agreements on whaling have progressively shifted from trying to promote sustainable use to banning whaling altogether, to the distress of Norwegians, Japanese and groups in other countries for which whaling has been a traditional occupation. The moral and environmental issues are complex; but for our purposes, the point is that under conditions of broad transparency it would be very difficult, regardless of the merits of the question, for any international organization now to take a pro-whaling position.

Our claim is not that outcomes are necessarily better the more transparent institutions are. Rather, it is that the dispersal of information among a plurality of external epistemic actors provides some counterbalance to informational asymmetries favoring insiders. From a dynamic standpoint, we think that, on average, too much transparency is better than too little. The ills of too much transparency can be corrected by deeper, more sophisticated public discussion, whereas there can be no democratic response to secret action by bureaucracies not accountable to the public. Broad transparency is conducive to the principled revisability of institutions, to their improvement through increasingly inclusive criticism and more deeply probing discussion over time.

Institutional agents generally have incentives to prevent outsiders from getting information that may eventually be interpreted and integrated in damaging ways and to deprive outsiders of information that can serve as a reliable proxy to assess institutional legitimacy. The very reasons that make the epistemic virtues valuable from the standpoint of assessing institutional legitimacy may therefore tempt institutional agents to ensure that their institutions do not exemplify these virtues. However, institutional agents are also aware that it is important for their institutions to be widely regarded as legitimate. Outsiders deprived of access to information are likely to react as does the prospective buyer of a used car who is prevented from taking it to an independent mechanic. That is, they will discount the claims of the insiders and may even refuse to agree to a bargain – that is, they may judge the institution to be illegitimate. So if there is a broad consensus among outsiders that institutions are not legitimate unless they exemplify the
epistemic virtues, institutional agents will have a weighty reason to ensure that their institutions do so.

**Contestation and revisability: links to external actors and institutions**

We have argued that the legitimacy of global governance institutions depends upon whether there is ongoing, informed, principled contestation of their goals and terms of accountability. This process of contestation and revision 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. 31

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. That is, the democratic accountability channel must function reasonably well. 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 ongoing 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.

The complex standard views the legitimacy of global governance institutions as both dynamic and relational. Its emphasis on the conditions for ongoing 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.

*A place for democratic values in the absence of global democracy*
Earlier we argued that it is a mistake to hold global governance institutions to the standard of democratic legitimacy that is now widely applied to states. We now want to suggest that when the complex standard of legitimacy we propose is satisfied, important democratic values will be served. For purposes of the present discussion we will assume, rather than argue, that among the most important democratic values are the following: (1) equal regard for the fundamental interests of all persons, (2) decision-making about the public order through principled, collective deliberation, and (3) mutual respect for persons as beings who are guided by reasons.

If the complex standard of legitimacy we propose is satisfied, all three of these values will be served. To the extent that connections between the institutions and external epistemic actors provide access to information that is not restricted to certain groups but available globally, it becomes harder for the institution to continue to exclude consideration of the interests of certain groups, and we move closer toward the ideal of equal regard for the fundamental interests of all. Furthermore, by making information available globally, networks of external epistemic actors are in effect addressing all people as individuals for whom normative reasons, not just the threat of coercion, determine whether they regard an institution’s rules as authoritative. Finally, if the complex standard of legitimacy is satisfied, every feature of the institution becomes a potential object of principled, principled, informed collective deliberation, and eligibility for participation in deliberation will not be restricted by institutional interests.

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.

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4 Fritz Scharpf points out that such a belief may be based on the processes used by the institution, which he denotes as “input legitimacy,” or on the results achieved, “output legitimacy.” See Governing in Europe: Effective and Democratic? Oxford: Oxford University Press, 1999. In our view, as will become clear below, both processes and outcomes are important.


7 This is a major theme of Russell Hardin, *Liberalism, Constitutionalism, and Democracy* (Oxford: Oxford University Press, 1999).

8 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 Because there are stronger and weaker senses of ‘the right to rule’, legitimacy judgments can be ambiguous. In this paper we are concerned with the grounds for asserting that a global governance institution is legitimate, where this conveys more than that the institutional agents have the right to rule in the weak sense, that is, that their attempting to rule is not morally impermissible. An institution can fail to be legitimate (lack the right to rule in the stronger sense) and yet not be illegitimate (not lack the right to rule in the weaker sense, that is, not act impermissibly in attempting to rule). So, given this ambiguity of ‘legitimacy’, it is a mistake to infer from the statement that an institution is not legitimate that it is illegitimate.


11 For a perceptive discussion of how consent to new international trade rules in the Uruguay Round (1986-94) was merely nominal, since the alternatives for poor countries were so unattractive, see Richard H. Steinberg, “In the shadow of law or power? Consensus-based bargaining and outcomes in the GATT/WTO. *International Organization*, volume 56, no. 2 (spring 2002): 339-374.


13 For a discussion of the concept of turbulence, which is even more relevant today than when Ernst Haas discussed it, see Ernst B. Haas, “Turbulent fields and the theory of regional integration, *International Organization*, Vol. 30, No. 2 (Spring, 1976), pp. 173-212.
How the requirement of on-going consent should be operationalized is a complex question we need not try to answer here; one possibility would be that the treaties creating the institution would have to be periodically reaffirmed.


For a valuable discussion that employs a different conception of normative uncertainty, see Monica Hlavac, “A Developmental Approach to the Legitimacy of Global Governance Institutions” (unpublished paper).

See Raz, The Morality of Freedom, cited above.

Drawing on John Tasioulas’s illuminating application of the interest-based conception of rights to the case of human rights, we can outline the basic form that arguments for various human rights would take, according to the basic interest conception of human rights. (Tasioulas, “The Moral Reality of Human Rights,” unpublished article).

(1) All human beings are entitled to be treated in a manner that acknowledges their equal fundamental moral worth. (The Moral Equality Principle)
(2) Treating all human beings in a manner that acknowledges their equal fundamental moral worth requires a serious commitment on the part of all individuals, both in their conduct as individuals and through the operation of their institutions, to protecting the basic human interests of all human beings, that is, to ensuring the conditions for a decent or minimally good life for every human being (so far as this commitment is compatible with the facts of human psychology and with the fact that what we owe to others is limited by the permissibility of a degree of partiality toward ourselves and our personal attachments).
(3) X (e.g., physical security, access to materials needed for subsistence, not being tortured, etc.) is a basic human interest; that is, X is generally a condition for having a minimally good or decent human life.
(4) A serious commitment to the reasonable protection of every human being’s interest in X requires the acknowledgement of duties and/or the imposition of duties (for example, through the operation of institutions) to ensure that every human being is provided with X.
(5) Because the duties in question are grounded in the fundamental equal moral worth of each human being, they are owed to the individual simply as a human being.
(6) If duties to provide X to every human being are owed to every human being simply as a human being, then X is a human right.

(7) (Therefore) there is a human right to X.


20 For instance, as of the beginning of 2006 the United Nations faced the issue of reconstituting a Human Rights Commission that had been discredited by the membership of states that notoriously abuse human rights, and even by Libya serving as chair in 2003. In March 2005 Secretary-General Kofi Annan called for the replacement of the Commission on Human Rights (53 members elected from slates put forward by regional groups) with a smaller Human Rights Council elected by a two-thirds vote of members of the General Assembly (see his report, “In Larger Freedom,” A/59/2005, paragraph 183). As of the beginning of January, no agreement had been reached on this proposal, but Secretary-General Annan’s chief of staff, Mark Molloch Brown, was quoted as saying that “For the great global public, the performance or nonperformance of the Human Rights Commission has become the litmus test of U.N. renewal” – in other words, crucial to its sociological legitimacy. See *New York Times*, January 1, 2006, p. 1.

21 Oil-for-Food became a huge program, permitting the Government of Iraq to sell $64.2 billion of oil to 248 companies, and enabling 3614 companies to sell $34.5 billion of humanitarian goods to Iraq. Yet more than half of the companies involved paid illegal surcharges or kick-backs to Saddam and his cronies, resulting in large profits for corporations and pecuniary benefits for some program administrators, including at least one high-level UN official. For the report of the Independent Inquiry Committee into the United Nations Oil-for-Food Program (the Volcker Committee), dated October 27, 2005, see http://www.iic-offp.org/story27oct05.htm, last accessed January 1, 2006.


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.


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).