I. Introduction

In Chapter 5, 'Democracy: Legitimacy and International Institutions', Thomas Christiano argues that the legitimacy of the international order requires the development of a voluntary association of representative states—an association only dimly foreshadowed in current conditions—and not anything that we might describe as a global democracy. This paper supports the position defended by Christiano, arguing to a broadly similar conclusion from a starting point provided by neo-republican ideas.¹

What follows is in three sections. Section II identifies a republican view of legitimacy as it would apply in the national and international contexts. Section III

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looks at how legitimacy might be attained in the rational context. And then
Section IV outlines a picture of how it might be achieved in the international. I
would have liked to concentrate more exclusively on the international context but
the notion of legitimacy emerges in the first place with domestic regimes and, in any
case, the legitimacy of the international order turns in good part on the domestic
legitimacy of the states that constitute it.

II. LEGITIMACY, NATIONAL
AND INTERNATIONAL

1. Freedom as Non-Domination

The main focus in neo-republican theory is on the value of freedom as non-
domination. Take a given choice between alternatives, A, B, and C. You will be
dominated in that choice, and lose your freedom, to the extent that others exercise
non-deliberative control over what you choose; you will be free to the extent that
you avoid such control.

Let others have a degree of control over your choice so far as they can raise the
probability that you choose an option they favour. Such control will be deliberative,
and so no threat to freedom, if others exercise the control just by sincerely giving you
advice, on a take-it-or-leave it basis, about reasons to act one way or another; you
may seek an articulation of these reasons or accept the advice on trust. Deliberative
control will not affect your freedom because it does not intentionally mislead you
about your options and it leaves the choice between those options up to you; it
serves the role that deliberating with yourself may serve. Thus, it does not remove
any options, as in the exercise of force; it does not replace any options that have
penalties attached, as in the case of coercion; it does not undermine your capacity for
choice, as in manipulation; and it does not mislead you about any of those factors.2

Avoiding the non-deliberative control of others in a given choice means
avoiding these kinds of force or coercion or manipulation or deception. But
avoiding non-deliberative control is not ensured by avoiding the interference
of others in that choice; that is, avoiding their active obstruction or coercion
or manipulation or deception. Others may control you non-deliberatively
without active interference, since they may stand by in a monitoring or in-
vigilating position and only interfere on a need-for-interference basis. They let
you go as you will, if you are inclined to act as they want, but they are prepared
to take steps to block or inhibit or redirect your choice—or at least

Republicanism and Political Theory (above, n. 1). to make you regret that your
choices in particular should
not represent a way of
exercising interference or
choices in particular should
not be free in every poss
the power of interference, and are read
You operate only within their power a
by their implicit or explicit leave.

3 This will remain true even if others
amusing—that they allow you to act
the power of interference, and are read
You operate only within their power a
by their implicit or explicit leave.

4 Pettit, P., Republicanism: A Theory,
5 Pettit, P., 'The Basic Liberties', in
Press, 2008). The domain of choice ov
national context. And then evolved in the international. The international context but domestic regimes and, in any good part on the domestic

value of freedom as non-
A, B, and C. You will be extent that others exercise ll be free to the extent that so far as they can raise the control will be deliberative, just by sincerely giving you ct one way or another; you dvice on trust. Deliberative t intentionally mislead you hose options up to you; it . Thus, it does not remove ce any by options that have undermine your capacity for about any of those factors.3 in a given choice means ulation or deception. But avoiding the interference efficative obstruction or coer-rol you non-deliberatively / in a monitoring or interfearence basis. They let y want, but they are pre-your choice—or at least

Laborde, C. and Maynor, J. (eds.),
to make you regret that type of choice and avoid it in the future—if your pattern of behaviour, or their pattern of preference, should change. Thus, interference may be absent while invigilating control remains in place. And interference may remain absent, if you become aware of the invigilation—or just think there is invigilation—and inhibit yourself so as not to activate any interference: say, by resorting to self-censorship or self-ingratiation.3

But not only may non-deliberative control obtain without active interference. The opposite is also true. You may undergo the active interference of others without having to endure their control. Suppose that you prefer that others exercise a certain obstruction or coercion or even manipulation in your life, say in order to cope with an addiction; you are happy to allow your spouse to lock away the whisky or the cigars for fear of your own inclination. To the extent that you can call off this interference in your life and affairs, should you change your mind, that interference will not represent a way in which you are controlled. Others figure as agents of interference in this story but they do not control you, since they operate subject to your own control; the interference they practice is non-arbitrary: it is forced to track your conscious interests, not the interests of the interferer.4

On this neo-republican account, the non-deliberative control that affects your freedom is identified with domination. You will be dominated by others in a given choice in the measure to which they have a power of interfering in that choice and that power is not subject to your own control: it is, in that sense, an arbitrary power in your life. The account implies that freedom in a particular choice requires the absence of an arbitrary power of interference on the part of others. But it does not require the absence of a non-arbitrary power of interference. To the extent that others interfere only non-arbitrarily, the interference practised will restrict your choice, as natural obstacles may do, but it will not make you unfree in that choice; you will be the one who is ultimately in charge.

So much for what republican freedom requires in a given choice. But people cannot be free in every possible choice, if only because some choices—say, that of exercising interference or not—may be inimical to the freedom of others. So what choices in particular should be free, on the republican approach?

The approach hails freedom as non-domination as an ideal for those choices that each can enjoy, consistently with others enjoying them equally at the same time: that is, for those choices that count as basic liberties.5 Freedom in this sense is a property of persons; it is a status that they enjoy to the extent that they are

3 This will remain true even if others become so well disposed—even if you prove to be so charming or amusing—that they allow you to act in whatever happens to be your preference. To the extent that they retain the power of interference, and are ready to interfere should their disposition change, they remain your masters. You operate only within their power and whatever you do is done cum permisso, in the old republican phrase: by their implicit or explicit leave.
5 Pettit, P., "The Basic Liberties", in Kramer, M. (ed.), Essays on H. L. A. Hart (Oxford: Oxford University Press, 2008). The domain of choice over which the freedom is defined may not seem to be very extensive but
more or less proof against dominating control by others in basic domains of choice. Intuitively, it is the property of being able to stand equal with others in a position where all can see, and all can see that it is universally seen, that the person cannot be pushed around with impunity. Attempts to push the person around will be met with resistance or, should they succeed, the perpetrators will be subject to a sort of redress that is designed to vindicate the standing of the victim.  

2. Republican Justice and Republican Legitimacy  
One of the features of neo-republicanism, unlike the older tradition on which it draws, is that it embraces an inclusive conception of the members of any society; they include at least all permanent residents who are adult and able-minded, not just the propertied, mainstream males on which political theory had traditionally focused. For that reason, the approach might be described as liberal republicanism. What are the requirements of freedom as non-domination from the point of view of such an inclusive citizenry?  

A first requirement is that citizens should each have sufficient resources not to be subject to personal domination by other agents, individual or corporate; such resources will include financial clout, social standing, and legal protection. A second is that they should have sufficient resources as a group not to be subject to collective domination by agents such as states, multinational corporations or international organizations. And a third is that the agencies whereby such a distribution of empowering resources is ensured—and, as it may be, some other collective goods are made available—should not themselves dominate those people either personally or collectively.

The first of these requirements for justice and the second as resources should be allocated so that the free, undominated subjects of each country are given their due in their right as a collective. The third demand, by contrast, is that the agencies whereby a suitable pattern in pursuing the distribution of resources— that at least be taken on the right of the affairs of the relevant particular republican requirement for the welfare of those on a non-arbitrary basis; or, as my partner, on my own in my cigar box.

This demand of legitimacy is domestically assured is the aspect of the welfare is bound to involve the adequate description it, for short, as the republican criterion for the problem of domestic power whereby the international level, of the non-dominating organizer.

The problem of international power whereby the international groupings, and pursues an sensible and attractive refor so much for the general a would sponsor. In the next the republican criterion of the then in the international criterion makes a good deal sensibly and attractive ref.  

6 Should I have said that the neo-republican maxim is equal freedom as non-domination, not just freedom as non-domination, period? If the equal-freedom formula is preferred I am happy to go along with it. But for the record I think that freedom as non-domination is a property such that the best way to maximize it from any less than perfect position will be to take steps towards ensuring greater equality in its enjoyment. See Pettit, P., Republicanism: A Theory of Freedom and Government (ab-ve, n. 1); Lovett, F. N., 'Domination: A Preliminary Analysis', Monist (2001) 84, 98. Let the weaker be further protected and that will increase their aggregate non-domination without necessarily reducing anybody else's. Let the stronger be further protected and two features of the move are likely to make it ineffective. First, the extra protection is unlikely to increase the non-domination of the strong as much as it would have increased the non-domination of the weaker; it may just make assurance doubly assured. And second, the extra protection is likely to give them yet a further resource for imposing on the weaker and so reducing the non-domination of the weaker.

s in basic domains of choice. With others in a position seen, that the person cannot the person around will be met rs will be subject to a sort of victim.

**Legitimacy**

An older tradition on which it he members of any society; adult and able-minded, not cal theory had traditionally ed as liberal republicanism.7 tion from the point of view

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The first of these requirements is naturally identified as a demand of domestic justice and the second as a demand of international justice. Both prescribe that resources should be allocated according to a distributional ideal whereby individuals are given their due; their due, on the neo-republican conception, as potentially free, undominated subject. Domestic justice would ensure that the people of a country are given their due in their individual right as citizens, global justice their due in their right as a collective citizenry.

The third demand, by contrast with the first two, is one of legitimacy. It requires that the agencies whereby domestic and global justice is achieved operate on a suitable pattern in pursuit of those ends. Whatever the options taken for the distribution of resources—and however right they may seem to be—they should at least be taken on the right basis. The options will often involve interfering in the affairs of the relevant parties; this is obviously so in the case of the coercive state. The republican requirement for legitimacy is that such interference should be conducted on a non-arbitrary basis: on a basis that gives ultimate control of what happens to those on the receiving end. The interference, ideally, should resemble that whereby my partner, on my own instruction, hides the key to the whisky cabinet or the cigar box.

This demand of legitimacy divides into two, since the agency whereby justice is domestically assured is the state, and the agency whereby global justice is assured is bound to involve the actions of many states and perhaps many individuals; I describe it, for short, as the international order.

The problem of domestic legitimacy is that of ensuring that in the exercise of its public power, the domestic polity is not a dominating presence in the lives of its citizens. It is a non-dominating guardian against private domination and it is a non-dominating organizer of whatever other collective goods it seeks to advance. The problem of international legitimacy is that of ensuring that the exercises of power whereby the international regime guards against domination over national groupings, and pursues other goods, does not itself involve the domination of any individuals or their groupings. It is a non-dominating counterpart, at the international level, of the non-dominating state.

So much for the general approach to issues of legitimacy that neo-republicanism would sponsor. In the next two sections I look at the appeal and implications of the republican criterion of legitimacy, first in the context of the domestic state, and then in the international context. I argue, though only in a sketchy manner, that the criterion makes a good deal of sense in each context and that it points us towards sensible and attractive refor ms.

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III. LEGITIMACY IN THE NATIONAL CONTEXT

1. The Republican Criterion of Domestic Legitimacy

According to neo-republicanism, the state can claim to be legitimate just to the extent that it exercises its role in a non-dominating way. It must discharge its functions under the ultimate control of the citizens. Specifically, it must give its citizens effective and equally shared control over how it performs.

That a state is legitimate does not necessarily mean that you as a citizen are morally obliged to obey its laws; other moral considerations might argue against obeying them in particular instances. The notion of legitimacy is tied, rather, to two distinct implications. The first is that you have to acknowledge the right of the regime to enforce the law coercively, to charge law-breakers with offences and to punish them if they are duly convicted. And related to this, the second is that you are only entitled to challenge the law by means that are available within the system.

The republican criterion of legitimacy contrasts with more standard approaches in focusing on how the state functions, not on how it is formed. There are two formational constraints that might be suggested for legitimacy. One, associated with Hobbes and Locke, is that citizens should consent to live under the state they form. This is unappealing, since consensual entry would mean much unless there is consensual exit; and in any case it would make all states illegitimate. The other constraint is that citizens, however they enter, should have the option of leaving a state if they wish. This is normatively more attractive, since freedom of exit would mean that anyone who continues to live under a state does so voluntarily.

The republican criterion of legitimacy will require, in accordance with this exit constraint, that the state should allow its citizens to leave if they wish; if it denied citizens this right, then its status as a non-arbitrary source of interference would surely be put in question. Giving citizens the right to exit, however, doesn't mean much in the contemporary world since there is no possibility of being able to emigrate to an area where no state rules and only a limited possibility of being able to emigrate to another state; no other state may grant the right of entry. Does that mean that no state is legitimate, then? Surely not. The fact that everyone has to live under some state, and that no one can opt for a state-free existence, is the product of natural and historical necessity, not in itself the effect of dominating interference by the local state.

2. Satisfying the Republican Criterion of Domestic Legitimacy

What might it mean in principle for the state to function under the ultimate control of its citizens or population? If two broad conditions are satisfied by agents and agencies that they specify, then the influence is suitably susceptible to independent oversight and this influence is channelled on terms that are endorsed by those who are reasonably entitled to treatment. In a phrase, the will of the people should be constrained by reason.

a. First Condition: The State of Persons

Government cannot be exercised only in view of the numbers of individuals who in some sense, direct or represent the people. I describe these people as those who are reasonable agents or agencies. The exercise of government cannot be taken as a matter of domination if those who are reasonable agents or agencies a dispositional duty to respond to the people. Let us assume that the principle of consent has already been established; we may focus on the first of our two kinds of representatives, the agents or agencies a dispositional duty to respond to the people. And they might be agents or agencies a dispositional duty to respond to the people.

11 Rousseau may seem to be the服 falsity that. But Rousseau is an innovator of the neo-Roman republican tradition. Philip Pettit (Oxford: Oxford University Press, 1995).


10 Notice, however, that how disobedience is an act of protest within the system, not without, since the protesters accept the right of the system to penalize their law-breaking the idea, at least with overt disobedience, to display the intensity of the protest by the willingness to risk and accept such penalties.
In view of these considerations, republican theory focuses on a functional rather than a formational account of legitimacy; thus it is generally dismissive of the idea of a state of nature from within which people would voluntarily form a state. The crucial requirement, according to almost all versions of the approach, is that the state operates on a non-arbitrary basis: that is, as I interpret the requirement that it operate under the effective equally shared control of its citizens.

2. Satisfying the Republican Criterion of Domestic Legitimacy

What might it mean in practice for a state to operate under the effective and equal control of its citizens or people? The people will control the state in this way only if two broad conditions can be fulfilled. The first is that government is exercised by agents and agencies that are subject to effective, popular influence: they are suitably susceptible to inputs originating with the people. And the second is that this influence is channelled and organized so that it forces government to operate on terms that are endorsed across the population as a whole—or at least across those who are reasonable enough not to think that they should be given special treatment. In a phrase, the government of the non-dominating, legitimate state should be constrained by the people to operate on the people’s terms; it should answer to that broadly democratic ideal.

a. First Condition: The People’s Influence

Government cannot be exercised by an assembly of the citizenry as a whole, if only in view of the number: of individuals involved. It must be exercised, then, via individuals who in some sense represent the people. There are broadly two different types of representatives that we can expect to be duly sensitive to the influence of the people. I describe these, respectively, as deputies and proxies.

Let us assume that the popular terms on which government should operate have already been established; we return to how this might happen in a moment. To take the first of our two kinds of representative, people might find or induce in certain agents or agencies a disposition to track, within flexible boundaries, whatever terms they specify. And they might then rely on those agents or agencies as on deputies: servants of their will. Or, to take the second possible channel, they might find

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11 Rousseau may seem to be the great exception, since the state of nature plays such an important role in his theory. But Rousseau is an innovative thinker who draws on many sources and he is not a typical representative of the neo-Roman republican tradition that I have in mind. See Spitz, J.-F., La Liberté politique (Paris: Presses Universitaires de France, 1995).
and induce in certain agents or agencies a disposition to behave more or less inflexibly, out of a fixed motivational or institutional frame, in a way that happens to fit with the terms they endorse. And they might ten rely on those agents or agencies as on proxies: independent centres whose operation in suitable positions of power answers to their standing will as to how power should be exercised there.

Deputies are most obviously recruited in the process of electoral appointment, as when public authorities are elected for a period on the basis of their electoral promises and then held to account for those promises when they seek re-election. Or at least that is how it works in the ideal. But election is not the only way of appointing deputies, and the desire for re-election is not the only basis on which deputies can become disposed—or be reinforced in an existing disposition—to track civic targets. Deputies may be recruited without election, as when those elected appoint other functionaries to office. And elected or unelected deputies may be given extra incentives to track civic targets. Deputies may be recruited without election, as when those elected appoint other functionaries to office. And elected or unelected deputies may be given extra incentives to track civic targets on the basis of a desire to achieve certain rewards—perhaps just the good opinion of those they serve—or to avoid any of a range of penalties: the loss of office, a legal sanction, a public rebuke, or of course the bad opinion of others. Elected deputies will include most of the members of parliament or congress in all democracies, and in presidential systems they will include a variety of other public officials as well, in particular the president or head of the executive. Unelected deputies will include the members of the executive in parliamentary democracies and, in all systems, the members of the executive staff: the functionaries whose job it is to carry out the wishes of the administration.

Where do proxies fit in the standard political picture? At a variety of points, I would say. Take the judge who is appointed for life, or at least at the pleasure of the appointing executive. Or take the statutory officer—the head of an electoral commission, the head of the central bank—who is appointed on similar terms. Given such terms of appointment, these agents and the agencies will not constitute deputies who are triggered to respond to varying demands. But they may still serve the people well. Suppose that the popular terms on which government should operate require the fair and sensible application of the law, fair and sensible electoral districting, and fair and sensible decisions on interest rates. Suitably constrained and motivated, individuals and bodies of the sort mentioned should be capable of imposing those terms very effectively.

But the proxies in a democratic system are not confined to those with official appointments. Take the democracy in which there is such transparency of information, such freedom of speech, and such access to the courts and parliament—that individual citizens and groups of citizens are enabled to make challenges to those in power, and to do so with some chance of success. Those who make such challenges within the system can be seen as proxies for the people as a whole, since the people license such contestation and may do so with a view to imposing a government that they do not mount their challenges out of a felt, personal grievance. But government may help to public scrutiny and answer to such challenges.

b. Second Condition:

The people in a democracy are to the extent that they may be aggregated in the efforts, incentive, and constraint of deputies and proxies might give them control. The influence of the weather.

There are broadly two support as terms on which as terms of association, the population can claim to that directs us to terms, apart from popular acceptance as rules what should be done by government is conducted with a view to imposing these two breach the terms of association. There are some obvious possibilities:

- Government is conducted of wealth and power, parties are willing to a
- Government is conducted is, what ought to be in each; some parties are
- Government is conducted but those who claim in determining whether
- Government is conducted do not have any acce contest or gain a hear
tion to behave more or less frame, in a way that happens then rely on those agents or operation in suitable positions: power should be exercised of electoral appointment, on the basis of their electoral s when they seek re-election. tion is not the only way of not the only basis on which an existing disposition—to out election, as when those elected or unelected deputies on the basis of a desire to ion of those they serve—or xe, a legal sanction, a public d deputies will include mostocracies and in presidential is as well, in particular the es will include the members all systems, the members of carry out the wishes of the re? At a variety of points, I r not at least at the pleasure er—the head of an electoral appointed on similar terms. r agencies will not constitute emands. But they may still in which government should nw, fair and sensible electoral rates. Suitably constrained tioned should be capable of refined to those with official ch transparency of informa-ourts and parliament—and and groups of citizens are do so with some chance of stem can be seen as proxies contestation and may do so with a view to imposing suitable terms on government. The contesters may or may not mount their challenges for public-spirited reasons—they may just be acting out of a felt, personal grievance—but in any case the actions they bring against government may help to keep the authorities on their toes, exposing their decisions to public scrutiny and assement.

b. Second Condition: The People’s Terms

The people in a democracy can have a sustained influence on how they are governed to the extent that they recruit deputies and proxies into a suitable network for aggregating their efforts and can impose a suitable framework of opportunity, incentive, and constraint on what they actually do. But such an organization of deputies and proxies might give the people a lot of influence on government without giving them control. The influence might be as wayward and directionless as the influence of the weather. And if it were, then it would not deserve to be described as control; it would not serve the imposition of any particular terms on the way government is conducted. A crucial question, then, is whether we can find a basis for specifying terms that the organization of democratic deputies and proxies might be recruited to implement.

There are broadly two classes of terms that we might expect to have popular support as terms on which government should operate. One class we might describe as terms of association, the other as terms of argument. The first directs us to those terms that have to be satisfied under any arrangement in which the members of a population can claim to share equally in the control of government. The second directs us to terms, apart from the terms of association themselves, which command popular acceptance as relevant if not conclusive considerations in arguments about what should be done by government.

There are a number of ways in which government might be conducted that would breach the terms of association required for the very possibility of legitimacy. Here are some obvious possibilities.

- Government is conducted on the basis of bargaining from unequal positions of wealth and power, with resolutions depending on the compromises that parties are willing to accept, given their beliefs about what others will accept.
- Government is conducted on the basis of debate about what is acceptable—that is, what ought to be accepted—but not about what is acceptable equally to each; some parties are given a privileged position in the exercise.
- Government is conducted on the basis of what is acceptable equally to each but those who claim a privileged position are given an equal role with others in determining whether something is acceptable.
- Government is conducted via elected or appointed representatives but outsiders do not have any access to the exercise and do not have an opportunity to contest or gain a hearing for claims about equal acceptability.
Government is conducted with a view to achieving unanimity and no policy is adopted that falls short of being endorsed as acceptable on all sides; no recourse is allowed to procedures for aggregating non-unanimous views.

Aggregation is allowed but the procedure that is used in any instance—majority voting, the use of a lottery, referral to the expert committee—is not required to be acceptable to each as a procedure to govern such cases.

Suppose that decision-making is organized in a society so that possibilities like this are avoided and plausible terms of association are implemented. There is still an abstract possibility that in arguing about what is equally acceptable to each, citizens or their representatives will find nothing to say in favour of any proposal or any procedure other than the bare claim: this is equally acceptable to each. But if this happens, then there is going to be no way beyond assertions and counter-assertions about equal acceptability. There will be a stalemate between those on different sides.

While such a stalemate is possible in principle, however, it is not the sort of thing that materializes in practice when people manage to conduct an ongoing debate about issues of acceptability. Typically, the debate will go forward, however slowly, as the parties succeed in finding considerations—terms of argument—that pass muster on all sides as evaluations that are relevant to the issues under discussion. Those considerations may not be equally weighted on all sides. And for that reason, or because of differences in related empirical beliefs, their acknowledgement may not lead to any consensus about the policy or procedure under discussion. But the dissensus that appears will be built up on the basis of an agreement, perhaps even an accumulating body of agreement, in normative presuppositions. Those presuppositions will provide emerging terms of argument in the polity. They will identify values that everyone is prepared to acknowledge as pro tanto grounds for explaining why a policy or procedure ought to be equally accepted by each.

I assume that the people and the representatives in any potentially legitimate state will routinely participate in deliberation and discussion about what the government should be doing and that they will frame this on the basis of considerations relevant to what each ought to accept. They will conduct a debate that radiates throughout the society, engaging citizens in their neighbourhood and workplace, in their churches and associations. They will conduct the debate, not on a sectarian or in-group basis, but on a basis that is common to more centralized, diverse forums: for example, forums like the media, the hustings, the parliament or congress. And they will give the debate particular importance in contexts, formal or informal, where it is used as a basis for publicly justifying or contesting what government has actually done or is proposing to do.

If public debate has this prominence in a society, and does not run straight into stalemate, it is bound to give rise to the sorts of common, normative presuppositions I have in mind. When people must give some credence to premises and the conclusions of rejecting a premise or any point of explicit dis-relevance means that we...
ing unanimity and no policy acceptable on all sides; no non-unanimous views. In any instance—majority committee—is not required such cases.

I have in mind. When we find an argument relevant in any discussion then we must give some credence to the connection it posits or presupposes between the premises and the conclusion. We may not find the argument compelling, because of rejecting a premise or because the support the premises offer for the conclusion is outweighed by other considerations. But even if we reject an argument, marking out a point of explicit disagreement with our interlocutor, the fact of accepting its relevance means that we will have acknowledged an implicit point of agreement. The intended effect of the response may have been to focus on a difference but the unintended side-effect will be to mark out a common presupposition.

Let one person argue from the value of fairness to the need for a universal health service, for example, and another argue from the value of quality in health provision to the need for keeping a private component in the system. In so far as they do not reject one another's arguments as irrelevant, they will display a common presupposition. They will divide on the case for a universal health service only because of weighting those values differently or differing on some related matter of fact: they may differ, for example, on whether universal health provision would reduce the quality of service. But from our viewpoint, the important thing to notice is how much they agree on. They presuppose in common that the fairness of medical treatment and the quality of health provision both matter in the society.

3. Building on These Conditions

Let us suppose that government is organized on a representative basis—a framework and network of deputys and proxies—that allows for popular influence. And let us suppose that there are terms of association and argument available that have popular endorsement in the society. If those conditions are fulfilled, then there is room for

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13 See Rawls, J., *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999). Rawls may often have such normative presuppositions in mind when he speaks of public reasons and my ideas have clearly been influenced by his discussion. I prefer to speak of common presuppositions, emphasizing points that are not made in Rawls and might even be rejected by him: first, that they are generated as byproduct of ongoing debate; second, that they are relevant to such debate, no matter at what site it occurs, private or public, informal or formal; and third, that the presuppositions that operate in a society, or even in the international public world, may include some that carry no independent moral force: we may think that it is a mistake that the relevant parties endorse them. The language of common presuppositions, as used here, may be more in the spirit of Habermas (see Habermas, J., *A Theory of Communicative Action*, vols. 1 and 2 (Cambridge: Polity Press, 1984, 1988) than Rawls (Moon, J., D., 'Ravs and Habermas on Public Reason', *Annual Review of Political Science*, 6 (2003), 257). I am grateful to Tim Scallon for a discussion on this point.

14 Can't we put everything up front in the premises of an argument and not allow presuppositions to sneak in and establish areas of agreement behind our backs? No, we can't. Every set of premises supports a conclusion on the basis of a principle of inference that is not itself quoted as a premise. See Carroll, L., 'What the Tortoise said to Achilles', *Mind*, 4 (1895), 278
organizing the state so that it is more or less effective and equally controlled by the citizens: so that, in the etymological sense, it is a democracy, a regime that is subject to the power of the people. This goal will be achieved to the extent that the organization of representatives ensures that government is conducted under the discipline of those popular terms of reference.

A suitable organization of deputies and proxies will have two aspects. Any policies that are inconsistent with the terms of reference will tend, for that very reason, to be taken off the agenda of government; they will become unthinkable options. And where a number of policies are consistent with those considerations, as many will certainly be, then the decision between those tied candidates will be made via a procedure whose use in the case at hand is supported by those considerations. The procedure may be a vote in parliament, a referral to a community or expert committee, a lottery device of some kind, or a society-wide referendum. Or it may involve a mix of such processes: think, for example, of the gamut of tests that a bill must pass under many democratic constitutions before it can become law.

I shall assume that a well-designed frameworking and networking of deputies and proxies can enable a people to regulate government for its conformity to local terms of association and argument; it can provide a constitution under which those values are reliably satisfied. The constitution, plausibly, would distribute opportunities, incentives, and constraints among officials so as to maximize the chance that they honour those values; it would require officials to justify their initiatives on the basis of such considerations; and it would enable a variety of individuals and bodies to challenge such initiatives for their conformity with the considerations.

Would this sort of organization serve to vindicate the legitimacy of the governing regime? It would control government by considerations that equally reflect the concerns of each. But would it give them effective control? I think so. The sort of control that people would have over democratic decision-making in the scenario envisaged can be compared with the control that individual agents enjoy when their values are duly empowered in their decisions. If I am to be a self-controlled agent, not just an arena where attitudes and actions form, then I must impose my values on how those states evolve, not micro-manage them. I must ensure that I judge according to the evidence or form desires that cohere with my values, not that I judge that p or desire that q. What the people control for is conformity to the public values of democratic exchange, in more or less exact parallel, not for the detailed direction of policy. If the control in self-controlled agents is significant, then so is this form of democratic control.


IV. LEGITIMACY

1. Approaching the Issue

Under the republican conception of a community will be equally shared control of power that is forced to transpose the agency means, not that they are required to fulfill their own obligation, if they control the guidelines.

We have now seen how a shared or domestic context, requires people—say, by the frame of a community to operate on the people's terms. For the discussion of international ideal—that of the legitimation of what international legitimacy.

The issue of international legitimacy is established by states—ultimately the international forum. A shared understanding of international law frames a framework of international decision making to constitute a network in which but seeks more or less such entities. They include both the regional as well as a global; in those of a global, regulatory.

Kingsbury, Krisch, and Zacher (eds.): formal treaty-based institutions: (Organizations, the Security Council, etc.); informal intergovernmental entities: (such as the Basel Committee of banking; implementing global regulatory...
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IV. LEGITIMACY IN THE INTERNATIONAL CONTEXT

1. Approaching the International Context

Under the republican conception of legitimacy an agency that interferes in the lives of a community will be legitimate to the extent that it is subject to the effective, equally shared control of the members—to the extent that it is a non-arbitrary power that is forced to track the interests they are disposed to avow. The legitimacy of the agency means, not necessarily that members are obliged to obey its dictates, but that they are required to acknowledge its right to issue those dictates and their own obligation, if they do not approve, to oppose them within given systemic guidelines.

We have now seen how this conception of legitimacy applies in the national or domestic context, requiring a legitimate government to be constrained by the people—say, by the framwork and networking imposed on representatives—to operate on the people's terms. The discussion of national legitimacy provides a model for the discussion of international legitimacy and, as we shall see, it identifies an ideal—that of the legitimating state—that plays an important role in the specification of what international legitimacy requires.

The issue of international legitimacy is raised by the various agencies that are established by states—ultimately for the certainty and order that they confer— in the international forum. These are organized on the basis of a more or less shared understanding of international law and its jurisdiction; they develop around a framework of international and regional agreements and treaties; and they constitute a network in which each body operates in a relatively distinct sphere but seeks more or less successfully to coordinate its actions with those of other such entities. They include military as well as more political bodies, and bodies of a regional as well as a global character. But the agencies of most pressing concern are those of a global, regulatory character.

Kingsbury, Krisch, and Stewart identify a variety of players in global regulation: formal treaty-based international organizations (such as the World Trade Organization, the Security Council, the World Bank, the Climate Change regime, etc.); informal intergovernmental networks of domestic regulatory officials (such as the Basel Committee of national bank regulators); domestic authorities implementing global regulatory law; and hybrid public-private as well as purely private

transnational regulatory regimes. These implement a regime of global regulation over commercial and other activities. They establish international networks of agencies and officials that have been said to constitute a 'new world order'.

Legitimacy in the international context raises two particularly sharp problems that do not have domestic analogues. I describe one of these as the membership problem, the other as the imbalance problem. In what follows I first sketch the membership problem and how to resolve it; then I introduce the line on international legitimacy that a republican approach would support; and after that I discuss the imbalance problem and the difficulty that it raises for republican theory.

2. The Membership Problem

By analogy with domestic legitimacy, the legitimacy of the international order is going to depend on the extent to which that order is an object to the effective, equally shared control of the members of the order. But in the domestic case there is little or no question as to who should be the relevant members. Membership is individual and inclusive; it extends at least to all adult, a-le-minded, and more or less permanent residents of the state’s territory. In the international context, however, the analogous question of membership is naturally subject to dispute. Should the parties who are to exercise effective, equally shared control be all individuals on earth, or all the states under which such individuals live, or perhaps all ‘peoples’, in John Rawls’s preferred term?

There are difficulties with taking all actual individuals to be the relevant parties to international legitimacy. One problem with the proposal is that there is no such thing as an international discourse, analogous to the discourse in a deliberative democracy, which would identify considerations that all individuals understand, regard as relevant, and would want to be empowered. Christiano emphasizes perhaps the most important aspect of this problem when he says that international civil society—the society of vigilant citizens and civil movements—is not nearly as dense as the civil society that keeps domestic governments on their toes.

A further problem with the idea that individuals should be taken as the parties to international legitimacy is that if people form domestic states, and if those states are legitimate in the sense explained, then it is hard to see why they would want the international order to be controlled by them in an individual capacity rather than via the states that they form. ‘The democratic state is a reasonably successful mechanism’, as Tom Christman says, ‘as long as we look at the interests and concerns of the members of such states, and not why the members of such states are to be taken as the parties to the international order.

So should we say that a state is effectively and equally shared control by itself, either, since there is no people or individuals over the international order? This would be a naturally illegitimate: for the states that do not have the capacity to exercise the exercise of dominating themselves, their peoples; dominating others. But we may applaud states: those that fail to set their boundaries. Certainly we we, if we hold, plausibly, that it counts as good or bad just as a state.

Christiano effectively raised rates: that states might do very well for their citizens, and, this is not so well. We include states that act primarily in business in such secrecy their power, account.

Might we avoid these problems? The difficulty with being legitimate in so far as it is a state? The difficulty with states acting as individuals, with oppressive, ill-ordered states: those that serve few if any interests; and that were more or less legitimate in the international order was that not all states were members.

These observations are international order must, and the conditions under which all states act for them as peoples; it is effectively and equally controlled, in the ideal-world theory, of course.

21 Christiano, T., in this volume, 134–5.
22 Ibid. 136.
A regime of global regulation through international networks of a 'new world order'.

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mechanism', as Tom Christiano says, 'for accommodating and representing the interests and concerns of its members'. And that being the case, it is hard to see why the members of such a state should not prefer to rely on the states to police the international order.

So should we say that an international order will be legitimate to the extent that it is effectively and equally controlled by all states? That doesn't appeal as a way to go either, since there is no persuasive ground for wanting states to exercise such control over the international order, if those states include some that are undemocratic and domestically illegitimate; if they include some that oppress their peoples or some that do not have the capacity to serve them appropriately. We have to condemn the exercise of dominating control over legitimate states that speak and act for their peoples; dominating those states means dominating the individuals who form them. But we may applaud certain exercises of dominating control over illegitimate states: those that fail to serve the interests of the individuals who live within their boundaries. Certainly we will take this line if we are normative individualists: that is, if we hold, plausibly, that a treatment given to an institutional entity like a state counts as good or bad just in so far as the effects are good or bad for individuals.

Christiano effectively raises the same problem when he says that while democratic states might do very well at policing the international order on behalf of their members, this is not so with what he describes as non-representative states. These include states that act primarily for an elite or a preferred majority, or that do their business in such secrecy that there is no possibility of holding officials to popular account.

Might we avoid these problems by claiming that the international order will be legitimate in so far as it is effectively and equally controlled by legitimate, democratic states? The difficulty with that approach is that it gives no role, as intuitively it should do, to those individuals who live under illegitimate states: that is, under oppressive, ill-ordered states that only serve a minority or under poor, disordered states that serve few if any one. There would be no problem if all states on earth were more or less legitimate, for giving such states equal and effective control over the international order would be consistent with normative individualism. But the difficulty is that not all states are of that kind.

These observations irresistibly push towards the conclusion that a legitimate international order must, ideally, discharge two separate tasks: first, establish conditions under which all populations can form legitimate states to speak and act for them as peoples; and second, set up a suitable international order that is effectively and equally controlled by such states. That conclusion takes us into ideal-world theory, of course, but it gives guidance on what should be attempted

22 Ibid. 136.
by the international order in the real, deeply imperfect world. It suggests that while the international order should be maintained by states that are more or less legitimate—and maintained on terms that those states accept—it should be committed as a first priority to trying to establish legitimate states for peoples who are denied them.

This policy would argue for international steps to help relieve suffering and deprivation in disordered states and to take suitable, if proportional measures to replace or reform oppressive regimes. The international order would be primarily an arrangement among domestically legitimate states—in effect, well-ordered democracies—but it would be committed to enabling more and more states to become legitimate in that sense.

If we adopt this approach to international legitimacy, then we effectively take sides with John Rawls when he argues for an international order of peoples rather than states. A people exists and operates, on his view, just in so far as its government is a 'representative and effective agent', so that the state counts as 'the political organization of the people'. A people exists and operates when the state it forms is a liberal one, in Rawls's terminology; in effect, a state that conforms to our requirements for domestic legitimacy. To take the line suggested here, then, is precisely to give priority to peoples in Rawls's sense.

Rawls's insistence that a people properly exists and functions only in the presence of a fully liberal state represents his ideal-world theory. Famously, however, he allows that in the real, imperfect world peoples may also be taken to form and act—and should gain recognition in the international order—under what he calls 'decent' regimes. In these regimes, everyone will have a say but some may have a less direct say than others. As the members of a religious or other minority, for example, they may have the collective voice provided by a minority spokesperson: they may not have a vote in their own right or they may not be able to contest government decisions in their own right.

Rawls's line is attractive to the extent that it guards against the danger that only a relatively small, culturally homogeneous group of states might count as the primary units in the international order. But it lowers the standards for when a state is legitimate or representative, and it may make the line taken here seem to be less normatively commanding. What should we say on the issue?

I think that the line taken by Rawls is quite reasonable but for reasons other than that he canvases. There are grounds for thinking that treating less than properly legitimate and representative states as if they commanded such a status, giving them full membership in the international order, will sometimes be the best way of achieving the first priority mentioned above: hat of enabling a maximum number of peoples to live under legitimate states. This is because the best way to

3. The Republican Idea

Suppose we adopt the view that, so far as two conditions are fulfilled, peoples are primary business of protecting collective benefits, in a manner over how it operates. The question is, can be suitably controlled?

Taking the issue of form, say, a federal state under which should assume a less definitive secede from any arrangement.

25 Ibid. 24.
perfect world. It suggests that by states that are more or less states accept—it should be ultimate states for peoples who to help relieve suffering and, if proportional measures to national order would be primarily tests—in effect, well-ordered ng more and more states to sacy, then we effectively take ional order of peoples rather ust in so far as its government state counts as 'the political rates when the state it forms state that conforms to our line suggested here, then, is ultions only in the presence ory. Famously, however, he also be taken to form and l order—under what he calls say but some may have a less other minority, for example, rity spokesperson: they may be able to contest government against the danger that only a s might count as the primary andards for when a state is e taken here seem to be less issue? nable but for reasons other aking that treating less than r commanded such a status, r, will sometimes be the best hat of enabling a maximum is because the best way to push a state towards greater legitimacy may be by treating it as if it were legitimate, incorporating it fully into the international order.

Treating immature or irresponsible individuals as responsible may 'responsibilize' them, as David Garland argues. This is because it may offer those individuals an extra incentive to prove worthy of being held to the relevant standards and it may thereby help to give them the capacity to live up to the standards; it may make them fit to be held responsible. Something similar is true, I suspect, of state legitimacy.

Few states are likely to be fully or unfailingly legitimate, in the terms of our earlier discussion, and incorporation into an international order may actually serve to increase or sustain domestic legitimacy. It can do this in two ways. First, indirectly, by pressing states to recognize in their domestic practice principles that they are led to endorse within international covenants and organizations. And second, directly, by enabling individuals to launch an appeal against their own states to international bodies that states are diplomatically or formally committed to respecting. This thought is worthy of further exploration but cannot be pursued further here. It suggests that the international order should be seen as having a partly developmental rationale. Not only can it establish a mode of relationship between states that facilitates the achievement of shared, global goals. It can also help to promote and sustain the attainment of domestic legitimacy in those states that are incorporated as full members.

3. The Republican Line

Suppose we adopt the view, then, that the international order will be legitimate in so far as two conditions are fulfilled: it is designed at any time to maximize the number of peoples who live under domestically legitimate governments; and it conducts the business of protecting legitimate states against domination, and securing other collective benefits, in a manner that gives legitimate states equal and effective control over how it operates. The central question bears, then, on how the condition of equal, effective control can be fulfilled. What form should the international order take, if it is to be subject to such control? And what means are available whereby it can be suitably controlled?

Taking the issue of form first, should the international order function like a state: say, a federal state under which existing states are incorporated irrevocably? Or should it assume a less demanding shape: one, in particular, that allows states to secede from any arrangement it that it puts in place?

28 I have benefited from a number of discussions with Bob Keohane, and Steve Macedo on how international institutions can bolster and improve the domestic democracies of those states that are party to them.
Considerations of feasibility alone would argue against seeking a federal, world state: it is very hard to see how existing states and peoples might be persuaded to give up their sovereignty irrevocably to a distinct entity. But those considerations are supported in any case by a distinct, normative argument. It is not clear how a state could be legitimately denied the right of exit, as federation would strictly require, in the event of its members deciding against continuing membership. There is no room here for the argument that we used at the domestic level to the effect that there is nowhere that an exiting member may be able to go.

On the question of the form to be taken by the international order, these considerations argue that international agencies should have the backing provided by a voluntary association of states, not the backing that a world federation—in effect, a world state—would provide. What should we say, then, on the second question? How is the order that is constituted by international agencies to be controlled by member states?

It might be thought that the right of exit will be enough on its own to give legitimate states all the control they might want and to establish thereby the legitimacy of the international order. The exit constraint means that states will be free to leave the international organizations whose legitimacy is in question. If states do not vote with their feet by leaving such agencies, as a right of exit would enable them to do, that may in itself seem to provide a guarantee that the agencies are operating in a pattern that member states approve. Christiano seems to go broadly along with this thought, when he says that voluntary association ‘allows states to pick and choose what terms they enter into’. Free exit would seem to ensure the ultimate form of control over an organization and thereby guarantee its legitimacy. It would give each member state a conditional veto on how the organization behaves: a veto on how the organization operates, if it is to retain that state as a member.

Things, unfortunately, are not as straightforward as that. Any individual state that signs up to a trading agreement, or to any organization in which its interests overlap with those of other members, is going to find it very hard to exercise the right of exit. The other members will generally be disposed to penalize any defector and the penalties in prospect may act as a powerful deterrent against secession. Given this pressure to stay within an international organization, then, any state may find itself under the thumb of that agency. For when the agency imposes its rules on a member state—when the WTO finds, for example, against one or another member of the organization—then that state will be effectively coerced into compliance. The existence of a formal right of exit may guard in principle against domination by such an agency. But in practice it will not do so. States lock themselves into potentially dominating sources of influence and control when they sign up to different international arrangements. They may have a fully effective freedom of entry—though that other states may impose exit. And freedom of entry might create a corresponding freedom of exit. And freedom of entry might create a corresponding freedom of exit.

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that other states may impel—but they will not have a fully effective freedom of
exit. And freedom of entry does not do much for securing legitimacy in the absence
of a corresponding freedom of exit; it may be just the freedom to suffer for a past
mistake.

How can states impose an equal, effective control on international bodies, then,
thereby establishing the republican legitimacy of the order that those bodies
constitute? I see only one plausible path: by framworking and networking those
organizations so that they are more or less forced in their decisions to honour terms
of association and argument that command allegiance on all sides.

If this is right, then there has to be an international discourse among states
that parallels the discourse of a domestic democracy. That discourse has to give
rise to a currency of considerations that are recognized as relevant considerations
that any state may reasonably invoke in assessing one or another international
initiative. And those considerations have to be empowerment by the ways in which
international agencies and their officials are frameworked and networked with
each other. Plausibly, the agencies will be subject to conditions that favour acting
on such considerations; they will have to justify their decisions on the basis of
the considerations; and those justifications will be exposed to public, potentially
effective challenges from non-state as well as states: say, from the non-governmental
organizations that operate in a global context.

Is it plausible to expect relatively egalitarian terms of association to be established
amongst states in the international arena and more or less universally endorsed
terms of argument to get endorsed there? Many will say that what we should
expect to find, rather, is: pure power play in which states bargain with one
another, each seeking to make only the minimal concession required to elicit the
cooperation of others. Give the power differentials between states, it may be said,
nothing else would be compatible with the self-seeking incentives of states and their
representatives.

Incentive-compatibility is not the only constraint, however, on what may emerge
in the dealings of states or in need any agents with one another. Equally important, or
important in only a slightly reduced degree, is something that we might describe as
constraints of discourse-compatibility. A proposal or ideal will fail to be discourse-
compatible to the extent that it is not one that can be supported in a deliberative
forum by reasons that are accepted on all sides as relevant to the issue. The most
egregious examples would represent one side in the deliberations as unequal in some
significant manner to the other. Consider in this connection the memo by Lawrence
Summers, then chief economist to the World Bank, which was leaked in 1991.

30 For an extension of the Rawlsian idea of public reasons to the international forum see Cohen, J.,
This made a case for exporting heavy polluting industries to the third world on the ground, roughly, that the anti-pollution preferences of poorer, shorter-lived individuals would not be as strong as those of the richer and longer-lived. The memo caused indignation world-wide, precisely because the proposal was incompatible with the assumptions of equality that underpin deliberation. A Brazilian official wrote in understandable incredulity that the reasoning was ‘perfectly logical and totally insane’.32

If discourse-compatibility plays an important role in the relations between states, it need not be excessively optimistic to expect that relatively egalitarian terms of association will be recognized in international forums and that universally endorsed terms of argument will tend to get established there. But is it plausible to think that international agencies might be capable of being forced to implement such terms of reference, thereby allowing legitimating control of their operations to member states? At this point we confront what I called the problem of imbalance. This is closely related to the problem that Christiano describes as one of ‘asymmetrical bargaining’.33

4. The Imbalance Problem

We confront a striking dilemma when we think about how to appoint to international bodies and how to police those appointed authorities—those deputies or proxies—so that they reliably act on suitable terms of association and argument. Either the distribution of appointments and the organization of offices will reflect the greater power of some countries, where that power may depend on population, territory, resources, or wealth. Or it will not reflect such inequalities of power but be devised on an egalitarian basis. But in the first event, won’t the arrangements tend to favour the fewer, more powerful countries; and in the second, the more numerous and less powerful? And isn’t any such favouritism inconsistent with legitimacy?

The first point to make in response is that there are some ways in which it is reasonable that the stronger or the weaker be favoured, on plausible terms of reference, and that these should be distinguished from modes of favouritism that are indefensible. It is hard to imagine an international forum of discussion in which there was no agreement that those with larger populations should get greater access to some common benefit—say, a vaccine that is distributed by international agencies—and that those with more natural resources should be enabled to use them to their commercial advantage. And, equally, it is hard to imagine that there might not be agreement that those with lesser wealth should not have to pay the same as those with greater.

Let such positions on distribution and they may have an impact on international bodies, but to control and on the model allowable asymmetries will tend to facilitate unwarranted response to the less powerful. However difficult it may be.

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32 For the content of the memo and criticism of it, including mention of this response, see <http://www.counterpunch.org/summers.html>.
33 Christiano, T., this volume, 126.
35 Braithwaite, J. and Drahos, P.,
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same as those with greater wealth into international agencies and that those with smaller populations should not be subject to unconstrained, majority control in international bodies.

Let such positions on differential treatment be accepted in international discourse, and they may have an impact, not just on how argument is conducted in international agencies and bodies, but on the appointments that different countries are allowed to control and on the modes in which appointees operate. They will support certain allowable asymmetries within those agencies and bodies. But won’t any asymmetries tend to facilitate unwarranted favouritism, whether towards the more powerful or towards the less powerful? Not necessarily, I think. The second point to make in response to the general problem of imbalance is that this is not an inevitable effect, however difficult it may be to avoid it.

Many international authorities and agencies will be proxies who are subjected to incentives, opportunities, and constraints that support decision-making according to accepted terms of reference; the very reputation of the individuals and bodies involved may depend on the display of such impartiality. And while there will certainly be many decisions that are up for negotiation between countries of different levels of power, the asymmetry can be muted by the capacity of weaker countries to make common cause with one another.

Stronger countries may always seek advantages that would be hard to support in multilateral, egalitarian discussion of what ought to be accepted by each. This appears, for example, in their tendency to shift to another forum of debate when one forum proves disadvantageous, and in their attempts to opt out of multilateral discussions altogether in favour of bilateral, one-by-one arrangements with other states. But it is by no means assured, and by no means evident, that they can always get away with these initiatives. Coalitions among weaker countries, if they can only hold together, may often be able to drag them back to the table and exploit constraints of discourse-compatibility in their own favour.

But is it possible, in that case, that the coalitions of weaker countries will be able to implement a regime that is unduly favourable to them? I do not think so, for two reasons. First of all, the constraints of discourse-compatibility will militate against such favouritism on the same grounds that they militate against favouritism towards the strong. And secondly, stronger countries will inevitably be able to exit from international arrangements at a lesser cost than others; thus they will be able to bail out of any organizations in which the balance of power has shifted uncomfortably towards coalitions of the weaker.

International forums are always in danger of becoming sites for the exercise of brute power, of course, but there is no necessity attaching to that result. If the power

35 Braithwaite, J. and Drahos, P., Global Business Regulation (above, n. 19).
on different sides looks to be even roughly balanced, then that may create a space where the international order can interfere in the affair of different states under the equal and effective control of terms that are accepted on all sides. It may constitute a regime of global regulation that has a good claim to legitimacy. We may be very far from that ideal, as things currently stand, but there are no blocks in evidence that good institutional design might not prove capable of removing.
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SECTION IV

SOURCES OF
INTERNATIONAL
LAW