

**SPECIAL ISSUE ARTICLE**

# New perspectives on the legitimacy of international institutions and power

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In democracies around the world, political forces calling for a rollback of globalization are on the ascendancy. Longstanding consensus about the benefits of free trade and human rights and around the legitimacy of the international institutions enabling these goods has been questioned by successful populist politicians on both sides of the ideological spectrum. Some even claim that the entire liberal international order has become contested, perhaps as never before (Lake et al., 2021). An emerging critique of multilateralism argues that states and peoples should not be shackled by international legal arrangements and international law, but rather, that states should “do it alone.” The picture painted is one where state sovereignty is constrained and undermined by international institutions. This view implies that there is necessarily a tradeoff between multilateralism and state autonomy.

Yet, in our globalized world, the relationship between state autonomy and international legal institutions is more complex than both critics and some defenders of the international order acknowledge. Though states frequently find themselves under pressure to join international legal institutions, this is often because there are good reasons to do so. In a globalized world, membership in these institutions is often crucial for states to function properly, serving their citizens domestically, while also cultivating productive relationships with other states. Therefore, international institutions may contribute to the construction of domestic legitimacy (Buchanan, 2011). By imposing reciprocal limitations on states, international institutions may increase, rather than diminish, a state's room to maneuver. Furthermore, the very act of joining and submitting to international authority may be seen as an expression of state autonomy rather

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than a surrender of it. Without dismissing the growing opposition to international institutions as uninformed, misguided, or insincere, this special symposium seeks to deepen our theoretical understanding of the complex authority and power relations between international legal arrangements and states and between particular international institutions and the broader institutional structure in which they are embedded.

More specifically, the special symposium explores power relations and legitimacy issues in the context of international legal institutions in two dimensions. It assesses, first, what we call vertical power, that is, power and authority exercised by international bodies over states and societies. The special symposium explores claims made about power abuse and illegitimacy by investigating how this kind of power operates, what sort of legitimacy problems it gives rise to, and the normative conditions and criteria of legitimacy that are relevant. Second, the special symposium addresses questions about the international horizontal allocation of power, that is, the division of functions, roles, and responsibilities among international institutions. The fact that international institutions are not part of a centralized government, but instead constitute a decentralized and fragmented system, and that specific institutions are limited in their functions, roles, and capacities, creates special kinds of legitimacy problems and dilemmas. International institutions are furthermore embedded in a predominantly state-based structural background with inbuilt power imbalances, which pose an additional challenge to assessing their legitimacy.

Against this backdrop, the articles in this collection focus on a range of complementary topics. They entertain broad conceptual and normative questions about the authority mechanisms that can compel states to comply with the directives of international institutions (Scherz) and about the underlying power dynamics of the global political order (Aytac), about the rise of populism as a threat to multilateralism in the European Union and elsewhere (Cozzaglio and Efthymiou), and about the wider questions of legitimacy and sovereignty that guide these themes. Our contributors also focus on specific transnational institutions like the International Criminal Court (ICC; Christiano) and the European Court of Human Rights (ECtHR; Follesdal). By addressing these conceptual and theoretical legitimacy questions and applying them to specific institutions, this special symposium contributes to a growing literature on the legitimacy of international institutions (Adams et al., 2020; Buchanan & Keohane, 2006; Christiano, 2012; Follesdal, 2006; Hurd, 2019; Scherz, 2021; Tallberg et al., 2018; Tallberg & Zürn, 2019) from a decidedly normative perspective.

Scherz's paper addresses an important philosophical puzzle: under what circumstances can international institutions legitimately demand state compliance with their norms? While theories of political legitimacy abound, they generally focus on binding obligations between states and individuals; the legitimacy claims of international institutions on sovereign states often go unexplored. After outlining her own "autonomy-based" conception of legitimacy, Scherz argues that states do indeed have reasons to comply with international institutions, as a condition of their legitimacy. These claims apply to both democratic and nondemocratic states.

Christiano's paper focuses, more specifically, on the legitimacy dilemmas surrounding the ICC. The ICC has been accused of selective prosecution—targeting African militia leaders and officials deemed unfriendly to Western powers. And it often "asymmetrically" targets one party to a conflict while leaving the other untargeted. Christiano wonders whether this "selective prosecution" threatens the legitimacy of the ICC. Without resolving the normative status of the institution generally, he nonetheless clarifies the terms upon which future determinations of its legitimacy should proceed, while considering strategies for mitigating the problem of selective prosecution. Christiano remains broadly sympathetic to the ICC and its mission, but

attuned to the distinctive challenges the ICC faces in the international arena; the article offers a “clear-eyed understanding of its operation and the political context in which it is operating” (Christiano, p. 2).

However, as Aytac's contribution argues, all international institutions must contend with the structural power of the transnational capitalist class. Global business elites function as an interlocking community, through their position on corporate directorates, policy groups, NGO's, and prominent international financial institutions. Together, they disproportionately shape global policy and even impose constraints on state power, by engaging in activities like capital flight and tax sheltering (Arlen & Burelli, 2022). Any account of global political legitimacy must, Aytac argues, account for this structural power. Drawing on a sophisticated “radical realist” methodology, Aytac differentiates his approach from more conventional global justice discourses; arguing that realist philosophical frameworks are best suited to capture the distinctive power constellation manifested by global business elites.

The European Union, which arguably attracts the greatest breadth of legitimacy challenges in international politics today, is the focus of Cozzaglio and Efthymiou's contribution. Many challenges to EU legitimacy are waged by populists, on both sides of the spectrum, who view the institution as fundamentally undemocratic and elitist. Populists attack both the “input” legitimacy generated by the EU's rules and procedures, and the “output” legitimacy associated with its political outcomes. Yet this populist challenge to EU legitimacy ultimately lacks coherence, the authors argue. For one thing, not all populists are nationalists: some, like Jeremy Corbyn's labor party, adopt anti-elitist language while maintaining a cosmopolitan stance on the EU. Moreover, many populists deploy a distinction between “the people” and the “elite” which, the authors argue, fails to withstand conceptual scrutiny. The populist challenge to EU legitimacy ultimately proves redundant, they contend; “old wine in new bottles, after all” (Cozzaglio and Efthymiou, p. 13). It adds little to the longstanding debates between statist and cosmopolitans that have evolved since the EU's founding.

Follesdal's contribution focuses more specifically on the ECtHR. This institution plays a dynamic role vis-à-vis EU member states: ensuring that those states are complying with human rights norms and informing citizens of one EU country about the human rights record of other EU countries. But as Follesdal argues, deference to the judicial authority of member states is sometimes justified, especially when domestic judges have epistemic advantages—that is, greater respect for local decision-making, values, and traditions. The challenge, then, is balancing the ECtHR's judicial review powers against the “pockets” of judicial sovereignty maintained by EU member states. The balance can be struck, Follesdal argues, but doing so will require effort to fine-tune our understanding of the ECtHR, including by making it more demographically representative. Like the ICC, the legitimacy of the ECtHR remains a work in progress.

By analyzing these power and authority relations, the essays in this special symposium thus make general theoretical contributions to the debate over legitimacy beyond the state. But they do this by studying particular international legal institutions and the specific and sometimes sui generis normative problems they generate. In this way, the special symposium furthers our knowledge of the normative issues arising in the context of international institutions.

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