Standards of International Legitimacy and Multilateral Democracy

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The legitimacy of international institutions has become an important issue as more and more states delegate competencies to international institutions, where competencies are no longer under the direct control of citizens. However, the concept of domestic legitimacy being highly related to democracy cannot be transferred directly to the international realm. This paper develops an account of international legitimacy that is sensitive to different kinds of international institutions and elaborates multilateral democracy as a maximal standard.

First, I will argue that an account of legitimacy is needed for international institutions, though such legitimacy cannot be equated with democracy as majority rule. Moreover, domestic liberal democracy is not solely defined by equal participation and majority rule, but also by the rule of law and standards of transparency and accountability. These values are achievable without a full-blown democracy and can therefore serve as alternative standards of legitimacy. Furthermore, different international institutions have to be evaluated against different standards depending on their function and competences. In such an integrated approach of international legitimacy, a minimal standard should guarantee transparency and the non-violation of human rights. By contrast, multilateral democracy is to be understood as the maximal concept of legitimacy for specific supranational institutions holding direct rule-making competences, like the EU.
Introduction

The legitimacy of international institutions has become an important issue as more and more states delegate competencies to international institutions, where competencies are no longer under the direct control of citizens. But when is an international institution legitimate and hence have a right to rule? Or to put the question differently when is it worthy of support? The international legal standard of state consent is normatively problematic. Therefore, a substantial account of international legitimacy is needed. However, the concept of domestic legitimacy being highly related to democracy cannot be transferred directly to the international realm.

It is controversially discussed whether these national approaches can be applied to the international and supranational levels without changes or whether they are appropriate for the international level at all (e.g. Cohen and Sabel 2004; Buchanan and Keohane 2006; Bohman 2007; Risse 2006). The most convincing standard so fare steams from Buchanan and Keohane (2006) who have developed a legitimacy standard of global governance institutions that issues rules, and compliance with these rules leads to significant consequences. This standard consists of first, on-going consent of democratic states; second, substantive criteria of minimal moral acceptability and third, epistemic virtues. The scope of these standards is limited to global governance institutions. The same is true for Keohane (2011), who adds inclusiveness as a forth element to the standard. Although both accounts are valuable as minimal standards for global governance institutions, other international institutions – not only rule-making international organisations (IOs), but also nongovernmental organisations (NGOs), advocacy networks, social movements, and transnational corporations (TNCs) – should also be considered to rule in a weak sense and therefore be included in the framework. These institutions are coercive since they fulfil government functions and have a significant impact on the range of options available to firms, states and individuals in public matters. Therefore, a standard that applies to all kinds of international institutions is necessary.

1 According to Buchanan and Keohane global governance institutions include among others the World Trade Organization (WTO), the International Monetary Fund (IMF), the climate change regime built around the Kyoto Protocol, judges’ and regulators’ networks, the UN Security Council, and the International Criminal Court (ICC)
This paper develops an account of international legitimacy that is sensitive to different kinds of international institutions. I will first outline what legitimacy means in general and why an account of legitimacy is needed for international institutions, while emphasising that its standards differ from the ones relevant to coercive state institutions. Second, I will show that even though democracy can be regarded as the gold standard for legitimacy, it is not required for every international institution. Instead, the appropriate requirement of legitimacy varies for different international institutions, depending on their function and competences. Furthermore, not all normative standards associated with democracy can be equated with democracy as majority rule. Liberal democracy as conceived in national states is not only defined by equal participation and majority rule, but also by the rule of law and standards of transparency and accountability. Although these values are the basis for liberal democracy, they are to a certain extent, achievable without a full-blown democracy and can therefore serve as alternative standards of legitimacy. In such a matched approach of international legitimacy several standards can be defined: As the lowest level, a minimal standard should guarantee output, transparency and non-violation of human rights. A medium level standard for institutions with indirect effects should consist in the promotion of human rights, as well as deliberation and contestation rights. Finally, as maximal standard of legitimacy I suggest multilateral democracy. This standard is required for specific supranational institutions holding direct rule-making competences, like the EU.

1 Concepts of Legitimacy for International Institutions

First, it should be noted that legitimacy has a descriptive (sociological) and a normative meaning (Beetham 1991). The descriptive aspect of legitimacy as Weber (1964) defines it refers to the social acceptance of authority, which means that its participants believe in its legitimacy (‘Legitimitätsgläube’). The normative understanding of legitimacy specifies a standard for the justification of political power or authority (Peter 2013). In this sense, legitimacy is a virtue of political institutions and decisions (Rawls 1993). In this section, I will focus on the normative meaning of legitimacy and its connection with democracy, specifically focusing on the legitimacy of international institutions. I will discuss whether legitimacy also applies to international institutions and, if yes, what the standards of international legitimacy are.
In the literature, accounts of legitimacy in the normative sense are either concerned with the justification of political power or political authority. While accounts of political authority explore the circumstances under which a state or a government has a right to be obeyed, accounts of legitimate political power analyse the grounds for justified political coercion (e.g. Peter 2010). As I will focus on the legitimacy of political power of international organisations, I am mainly concerned with the moral justification of actions and the impact of international institutions, even though the reasons for which one has to support, or at least comply with, such an institution are also relevant to its effectiveness.2

Furthermore, the concept of legitimacy elaborated here subscribes to the view that legitimacy does not have to reach the perfect standards of justice. I follow Rawls’ idea that legitimacy is weaker than justice (Rawls 1995). First, in the face of pluralism, there are different, potentially conflicting ideals of justice. Nevertheless, this disagreement over justice should not render any political institutions impossible. The concept of legitimacy enables us to regard institutions as acceptable based on general moral reason, even though they might not meet one’s ideal of justice. Generally effective institutions that are not fully just are necessary to make progress towards justice possible (Buchanan and Keohane 2006, 412). Therefore, legitimacy can be understood as a non-ideal concept that takes the feasibility of institutions into account. Second, as legitimacy applies specifically to political institutions and their procedures while justice also applies to outputs, the procedures may be legitimate but lead to unjust outcomes or decisions. This implies that political legitimacy is a minimal, procedural standard of justice.

Political legitimacy in this understanding is a normative concept which claims that an institution’s political power is justified or, in other words, that it has a moral right to rule (Buchanan 2010, 80). The need for institutions that wield political power to meet standards of legitimacy is generally understood to be grounded in the fact that wielding political power means wielding a monopoly of coercive power in a specific jurisdiction.

2 For a discussion on the distinction between political legitimacy, political authority and authoritativeness see Buchanan (2002). Buchanan elaborates why the right to be obeyed is very demanding but not necessary for an institution to be morally justified and legitimate in this sense. Therefore, he argues that political legitimacy is the normatively more important notion.
Political power with a coercive element is problematic and therefore in need of justification, either from the perspective of autonomy or of equality (Raz 1986; Abizadeh 2008; Abizadeh 2010; Buchanan 2002). However, if following Buchanan (2002), we understand the exercise of political power as the creation, application and enforcement of law, coercion is only one part of a whole system that needs legitimation.

But what kind of legitimacy does such a right to rule require and how relevant is coercive power for the concept of legitimacy? In this regard, Miller (2010) distinguishes between coercion and prevention. While prevention only renders one relatively specific course of action impossible but leaves other options open, it is in need of justification; alternatively, coercion forces one to take a course of action and therefore requires democratic legitimacy. He thereby criticises the concept of Raz (1986) that is based on three criteria for a person to be autonomous: first, mental abilities to form intentions, second, adequate options to choose from and third, choice independent this means free from coercion and manipulation. In Raz’s understanding coercion invades autonomy by violating the second or the third criterion. Therefore, coercion already invades autonomy if one course of action cannot be taken if it undermines the condition of independence. For Miller, however, it is only the condition of an adequate set of options that is relevant for coercion. I do not agree with the specific definition of coercion that relies only on the restriction to one possible course of action and unacceptable alternatives3 but Miller’s distinction between prevention and coercion points to an important idea: the required form of justification is dependent upon the power or competencies to restrict the set of options of others. With regard to states, Miller argues that in modern states the web of laws is “sufficiently directive” to subject everyone within its jurisdiction to coercion (Miller 2009, 22). In this case, the subjection to a political system in which laws can be enforced by coercion leads to the requirement of democratic legitimacy. Yet also international institutions restrict the set of available

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3 First, the threat and use of physical force subject others to coercion even if they just restrict one specific course of action since the threat to use force has a specific quality that generally invades independence and thereby autonomy (see Abizadeh 2010). Second, in public but not private issues, prevention from taking one specific action, for example to run for office, is problematic from the perspective of equality and not of autonomy, even if it leaves an adequate set of options available. Therefore, in order to determine coercion, one has also to take into account the consequences a threat implies and the quality of the restricted course of action.
options however not as strong as states do. Therefore, international institutions should meet different levels of legitimacy depending on their degree of coerciveness.

The concept of state legitimacy is generally based on a strong understanding of the right to rule, which includes the right to issue rules and use coercion. However, international institutions do not have the same political power as national institutions. “These institutions do not seek, as governments do, to monopolize the legitimate use of violence within a permanently specified territory, and their design and major actions require the consent of states” (Buchanan and Keohane 2006, 406). Nevertheless, international institutions can be understood to rule in a weaker sense. “Many international legal institutions do not claim an exclusive right to rule, yet it makes perfectly good sense to ask whether they are legitimate (in a relational sense)” (Buchanan 2010, 84). If legitimacy is not understood as the mere justification of coercive power but as having a right to rule, then international institutions also fall into the realm of legitimacy because international institutions that do not possess coercive means themselves can nevertheless significantly reduce the realm of options available to states, firms and individuals. Moreover, international institutions can indirectly poses coercive means if their decisions are enforced by states. This interconnectedness of national and international legitimacy renders the question of the appropriate standard of legitimacy for international institutions even more complicated. Yet the question of which standards of legitimacy are appropriate for international institutions has increased in importance as more and more states delegate competencies to international or supranational institutions; the later being understood as international institutions in which its members delegate rulemaking power to the institution.

In order to determine the appropriate standard of legitimacy for an institution, it has to be classified according to its degree of coerciveness which in turn is closely interwoven with the institution’s power to set rules. Generally one can distinguish between institutions that have 1) rule-setting competences for technical and coordination issues having a substantial impact on the range of options available to individuals, firms or states for a small set of issues; 2) rule-setting competences and impact on a medium till broad range of issues but only with indirect effect and 3) rule-

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4 Cohen and Sable state that the global rules are “increasingly consequential for the conduct and welfare of individuals, firms and states” (Cohen and Sabel 2004, 764).
setting competences with direct effect, being understood as the principle according to which individuals may immediately invoke certain rules promulgate by international institutions, subject to several conditions, before a national or international court (s. footnote 5 below), and for a broad range of issues. In principle, every international institution can be classified according to the three categories outlined above. However, in practice, a detailed analysis is required to assign an international institution to a certain category. Such an analysis can only be carried out at an empirical level, in which the legal rules that govern the international institution and the practical impact must be taken into account. The following example of existing international organization intends to illustrate the practical application of the account outlined above without yet stating a conclusive categorisation of the international organizations. In my view, most NGOs or the transnational regime around the International Campaign to Ban Landmines would, for example, fall into the first one. In addition, international organisations with narrow and exactly specified rule-setting competences (e.g. the International Telecommunication Union, the Food and Agriculture Organization of the United Nations or the International Labour Organization) also qualify for the first category. Other NGOs that have impact on a medium broad range of issues, certain TNCs and all IOs that satisfy the definition of global governance institutions proposed by Buchanan and Keohane (2006) would fall into the second category. Finally the EU satisfies the criteria of the third category, since its members delegated a broad range of rule setting competences to the European level and, as the European Court of Justice has pointed out in its landmark decision Van Gend en Loos, European Law has direct effect.5

2 Standards of Legitimacy

As I have argued, the concept legitimacy as the right to rule also applies to international institutions in general. However, what standards of legitimacy should be used in this context? Different standards of international legitimacy have already been discussed in the literature (Cohen and Sabel 2004; Grant and Keohane 2005; Buchanan and Keohane 2006). They all address different important aspects of the topic but are mostly restricted to a single criterion of legitimacy. I will argue for an integrated approach to legitimacy

that combines various standards in order to make the concept operational for different kinds of international institutions. The kind of legitimacy demanded of international institutions varies according to the different competences and functions of such institutions. Given that international institutions differ strongly in this respect, there cannot be one and the same standard of legitimacy appropriate to all. In line with such an argumentation, Stein (2001) notes that the degree of integration of an international institution\(^6\) can be understood to determine the demand for democracy. Stein views the relation of integration and democracy as a descriptive one, but in my opinion it should also be understood as a normative guideline. From this perspective, international organisations which have a strongly restricted purpose might be based on output legitimacy alone, while the requirement for procedural and input legitimacy increases with higher degrees of integration and more competencies.

Generally, monistic and non-monistic conceptions of political legitimacy can be distinguished (cf. Christiano 2004). Monistic accounts are either purely instrumental, arguing that the quality of output is the relevant measure of legitimacy (e.g. Raz 1986), or purely procedural, conceiving the quality of the decision-making procedure as the relevant aspect.\(^7\) I agree with Christiano (2004) that these aspects are not reducible and therefore argue for a non-monistic account of legitimacy that takes both outcome and procedural aspects into account. In the next two sections I will first discuss minimal requirements of legitimacy and then turn to procedural standards.

\subsection{2.1 Minimal Standards of Legitimacy: Consent, Output and Human Rights}

\textit{Consent} State consent is the current standard in international law for the legality international organisations. But does it also establish legitimacy? As a standard of domestic political legitimacy it goes back to the theory of Locke (1980). However, consent is problematic as it is overly demanding and, in matters of politics, not to be archived. Furthermore, consent cannot be sufficient for legitimacy as there are certain things that no government may demand of its citizens (see Buchanan 2004, 243–47 for a detailed argument). State consent as a standard of legitimacy is, however, even less satisfactory since many states are undemocratic and do not even represent most of their

\footnote{Stein (2001) distinguished between normative-institutional integration and empirical-social integration whereby the latter is defined by the impact of the measures and common interests.}

\footnote{See also Scharpf (1999) for the distinction between input and output legitimacy.}
citizens. Therefore the international legal standard of state consent is insufficient for institutions with undemocratic member states specifically, but it is also normatively irrelevant since actual consent to join an institution is in international relations hardly voluntary for all states.

**Output** An account of legitimacy that focuses only on output, on the other hand, is problematic as it assumes that there is a correct output. However, since political matters are dependent on values and not just on technical facts, it is unclear how the best output can be determined independent of the opinions of those subjected to the decision. A purely instrumental account runs the risk of paternalism and undermines equality. Yet, if an institution fails to yield benefits but produces costs or even harm compared to a non-institutional option, it cannot be legitimate. This is a problem of efficiency that might occur even if the procedures respect equality. But to what extent is output a standard of legitimacy? In my proposed understanding, output can be a minimal condition for institutional legitimacy. First, this minimal condition requires that the institution provide benefits relative to a non-institutional option. Second, output is a relevant measure not only in comparison to non-institutional but also to institutional alternatives. This is what Buchanan and Keohane (2006, 422) have called “comparative benefit”.

It is important not to confuse this output condition with personal interest. If an institution produces good output it cannot be judged as illegitimate even though it might be in conflict with my personal interests. This means that only institutions producing no benefits at all, not even for one party, fail by this standard. Furthermore, there is a temporal aspect that has to be taken into account. An institution might not lead to benefits temporarily, but only over time. Or it might even make decisions with problematic consequences and still be legitimate, if these decisions can be revised and the performance improved over time. In other words, as institutions are dependent of procedures that take time, they have to be judged over an appropriate time span. Therefore, output can be regarded as an absolute minimal standard that is necessary but
often insufficient for legitimacy. It is only sufficient if the institution has a strictly technical or coordinative purpose.⁸

One option to determine if an output is good is to evaluate the output of an institution against its proclaimed purpose. This could be understood as measuring the integrity and efficiency of the institution (cf. Buchanan and Keohane 2006). However, the output question cannot be answered completely independently of substantive criteria. In order to judge if an institution generates a benefit, one must know what defines a beneficial output in the first place. Therefore, substantive and procedural standards are essential for determining the legitimacy of an institution. But what would be the appropriate legitimacy standard for international institutions?

**Human rights** While in a liberal democratic state, a legal system is an expression of democratic self-rule, Buchanan and Keohane argue that global governance institutions should require a minimal standard of legitimacy with respect to human rights. Accordingly, global governance institutions can only legitimate if they do not persistently violate the least controversial human rights (2006, 420). This is, in my opinion, a reasonable and appropriate minimal condition for the legitimacy of international institutions in general. However, I think that some international institutions also need to promote or even enforce human rights in order to be legitimate. Buchanan and Keohane (2006, 420–21) argue that the capacity of an institution to promote human rights does not make it a requirement of legitimacy, as this does not constitute a duty for the institution. However, as such an institution engages in rule-setting, refraining from the promotion of human rights amounts to a violation of human rights as the rules would provoke human rights violations. On the medium standard, for international institutions with high rule-setting competences, should almost meet the same standard as required for states, namely that they respect and protect human rights.⁹ The protection adds a level to the obligation of promotion, which requires enforcement mechanism. This constitutes an obligation of such institutions as their rules

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⁸ Buchanan and Keohane (2006) argue that the question of legitimacy only arises if there is moral disagreement (410). However, since there is always a disagreement about how exactly resources should be spent and for which goals, such a minimal standard of legitimacy is necessary even for coordinative institutions.

⁹ The obligations to respect, protect and fulfil human rights have first been set out by (Eide 1989) and the Report updating the Study on the Right to Food, UN Doc E/CN.4/Sub.2/1998/9 and later adopted by the UN organs.
have a quasi-constitutional character and are therefore aimed at the protection of individuals. However, the fulfilment of human rights cannot be expected from them as they lack the necessary resources.

2.2 Procedural Standards: Accountability, Transparency, Deliberation and Democracy

Democracy can be defined as public equality in decision-making under the circumstances that people have different understandings of justice. From a national state perspective, the standard of democracy is the best suited to reach legitimacy as it grants liberty as self-government and equality at the same time. Liberal democracy produces both social and normative legitimacy as they generate recognition of political authority through normative legitimate procedures. It is considered to be based on three different aspects of legitimacy: first, input legitimacy through the participation of citizens; second, throughput legitimacy of the procedures and third, output legitimacy through performance. Since democracy is on the national level regarded as the golden standard for legitimacy, the trends of internationalisation leads to the discussion of the democratic deficit in international organisations (Stein 2001). The legitimacy of international institutions has mainly been criticised for a lack of input democracy (e.g. Scharpf 1999; Føllesdal and Hix 2006). The input aspect of democracy is of course conceptually a very important point, but not the only one. A constitutional understanding of democracy is necessary to complete the input aspect of democracy. This specifically includes the protection of minority rights (cf. Keohane, Macedo, and Moravcsik 2009), but transparency, accountability and other forms of participation are standards that are also often evoked as for international legitimacy (e.g. Cohen and Sabel 2004; Grant and Keohane 2005; Buchanan and Keohane 2006; Pettit 2010).

Accountability Accountability is often invoked as a standard for international institutions (e.g. Cohen and Sabel 2004; Grant and Keohane 2005). It can generally be defined as a relationship between the institution held accountable (which has to meet certain standards) and the accountability holder able to impose sanctions on the institutions. Accountability is of course strongly linked to participation rights, but they are not the same. Accountability only comes into play after decisions have been made. As Buchanan and Keohane (2006) point out, there are two problems with accountability
for international institutions. First, international institutions are often accountable, but not accountable to the ones subjected to their rules. Second, the terms of accountability are unclear against the background of moral disagreement over the role that international institutions should play in the pursuit of global justice. However, if we are concerned with the coercive impact of international institutions on autonomy, it is absolutely crucial to require that these institutions be accountable to the people they subject to some form or ruling. Therefore, I argue that the accountability standards of international institutions should be adapted according to their competencies even if the exact division of labour between these institutions is unclear. The minimal form of accountability that institutions with low competencies should meet is what Buchanan and Keohane call on-going consent of democratic states. The capacity to revers the terms of accountability, which Buchanan and Keohane (2006, 432) suggest as a criterion, is highly valuable but very difficult to verify. Therefore, the required standard for institutions with medium competencies should consist in an institutionalised contestation mechanism for individuals or groups to contest a specific action or rule-making that they are subjected to.\(^\text{10}\) This can be seen as a minimal guarantee for the process of contestation and revision of the goals and terms of accountability of an institution. For institutions with a high level of competencies, accountability should be guarantied through national and international democratic representatives in the institution.

*Transparency* Transparency is a necessary condition to make an institution open to public justification and accountability possible in the first place. Buchanan and Keohane describe these as “epistemic virtues that facilitate the ongoing critical revision of its goals, through interaction with agents and organizations outside the institution.” (2006, 406) I agree with Buchanan and Keohane that narrow transparency, consisting in accessible information at a reasonable cost for those affected by an institution, is not sufficient as a standard of legitimacy. Transparency has to be linked to some form of accountability in order to reduce the risk of an enduring invasion of autonomy for those

\(^\text{10}\) One of the main problems for the accountability of international institutions is to determine to whom they should be accountable (e.g. Grant and Keohane 2005). This standard tries to avoid this problem by leaving it open who can use the contestation mechanism. Together with the requirement of broad transparency this should guarantee accountability for the right people. However, of course requires also the reversibility of the terms of accountability.
subjected to the rules or the substantial effects of an institution. If minimal accountability is the on-going consent of democratic states, information concerning the institutions’ behaviour must be widely accessible. Therefore, broad transparency that is not only directed at the accountability holders or those subjected to them, but also to external agents is a requirement for institutional legitimacy.

**Participation**  Participation is often reduced to democratic participation; yet there are also other forms of participation that do not require full-blown democratic institutions and are therefore less feasible in the international realm. Participation denotes the existence of institutionalised opportunities to take part in the decision-making of an institution. Specifically, deliberation is an alternative form of participation. It ensures only a say in the decision-making process that is not binding for the decision taker. Therefore, deliberation rights can only guarantee that the interests of the subjected have been heard but not that they are taken into account. A minimal standard of participation rights for institutions with low competences cannot be required as it would be too demanding for technical and coordination issues. For institutions with medium level of competences there should however be deliberation rights

**Democracy** On the national level, an institution can be regarded as legitimate if it is under the equal, effective control of all members. This means democratic legitimacy is required for state institutions. However, for international institutions, it is already problematic to define who the members are. The first problem, what Pettit calls the “membership problem” (Pettit 2010, 152–5), concerns whether individuals or states are taken into account in such a democracy beyond the state. The individual approach is problematic as public discourse on the international level does not have the necessary quality to ground democratic procedures; in other words, the international civil society, if it exists, cannot exercise enough normative pressure. The lack of international media and of motivational resources is a particular problem for a functioning global democracy. Another problem, which Pettit does not mention, is that such global individual decision-making would overrule the democratic decisions of states or replace them. If the creation of a global democracy would force existing democratic states into a world state against their will, this would undermine the aim of democracy, rendering the whole enterprise illegitimate. This is a powerful objection to global democracy and a good reason to restrict the scope of democracy to voluntary associations of states.
The second possibility is to take states as the only relevant actors on the international level. This can be understood as an international approach. For example, Rawls’ *The Law of the Peoples* (1999) discusses the normative status of relations between states but does not consider specific democratic institutions outside of states. In this understanding, international institutions are generally not considered to be actually or possibly democratic (cf. Dahl 1999). From an institutional point of view, the inclusion of states seems highly plausible, as they are the most developed frameworks for democratic self-government. However, this instrumental argument does not mean that the normative requirement of representing the individuals as equals should be given up. Therefore, two problems with the state-based understanding of democracy on the international level arise. First, it creates a problem of illegitimate representation with undemocratic states which do not represent the interests of their own citizens well (cf. Buchanan and Keohane 2006; Rehfeld 2006; Christiano 2010; Pettit 2010). Second, even if all states were democratic, equal control of states does not guarantee equal representation of individuals due to the different sizes of states and the fact that the interests of individuals might exceed the national interests.

### 2.3 Multilateral Democracy

Concluding from the arguments about international democracy, an approach of democracy beyond the state should fulfil the following requirements. First, one needs to take states into account because their democratic structure makes them normatively valuable as realms of justice. Democratic states are the expression of the political autonomy of individuals. Second, states should represent their citizens as equals. This means the states in a democracy beyond the state have to be democratic themselves. Third, the interests of individuals should be taken into account equally. Multilateral democracy as outlined by Cheneval and Nicolaïdis (e.g. Cheneval 2011; Cheneval and Schimmelfennig 2013; Nicolaïdis 2013) fulfils all of these requirements as it can, in its ideal form, be understood as a democratic, voluntary association of states. “[T]he system of democratic association makes use of the most powerful institution in the current environment, which is the state” (Christiano 2010, 136). These structural specifics allow the important challenges for democratic accounts beyond the state noted above to be overcome.
Furthermore, multilateral democracy seeks to solve the representation problem in two ways simultaneously. First, regarding its democratic membership structure, multilateral democracy includes democratic states only. These states can be expected to represent the interests of their citizens. The democratic states of normative value, as well as their peoples, are the expression of the collective autonomy of the individuals, and their political institutions guarantee them rights and welfare. Multilateral Democracy as a multilevel approach is highly dependent on the democratic quality of the national level. A democratic constitution of the member states is a precondition for the democratisation of the international level (cf. Stein 2001). According to Stein (2001), the democratisation of international organisations cannot only occur on the international level. The democratic membership structure of multilateral democracy takes this into account. The key difference in the account of multilateral democracy is that states are considered both in their instructional potential and in their legitimacy arising from democratic structures in them.

Turning to the second solution, multilateral democracy does not give up a cosmopolitan perspective in the sense that it regards individuals as the basic normative foundation for democracy beyond the nation state. It does not, however, comply with an understanding of a global democracy based on a single demos, but is rather grounded in the democratic procedures of several demoi. Even though multilateral democracy is not a democracy in the sense of a domestic democracy, it establishes channels of democratic accountability and participation. This includes equal representation of states and individuals, citizenship with recognition of rights in the whole multilateral system, and the consideration of forms of demoi representation outside of the government, such as courts and parliaments (Cheneval 2011; Cheneval and Schimmelfennig 2013). However, as I will argue in the next section, this standard of legitimacy is not required for all kinds of institutions.
3 Integrated account

Others have also argued for an account of legitimacy for international institutions that goes beyond pure output legitimacy or state consent (Buchanan and Keohane 2006; Cohen and Sabel 2004). Pursuant to Buchanan and Keohane (2006), a minimal standard for legitimacy of international institutions based on human rights, whereas democratic legitimacy is the maximum standard for states. Yet, in my opinion, the standards of legitimacy depend on the degree of integration and competencies for rule-making as outlined in the first part of this paper. As Stein notes, the problem of democracy and international organisations lies in a lack of participation and popular control (Stein 2001, 490). The standards that are relevant should not, however, be restricted to input or participation possibilities alone. As in liberal democratic states, other aspects are relevant to legitimacy. They can be categorised as first, human rights, second, accountability, and third, participation. Within each of these aspects, graduation is possible. The required standard of legitimacy for the three levels of competencies of international institutions having 1) low level of competencies with rule-setting for technical and coordination issues (but with substantial impact on the range of options available to individuals, firms or states); 2) medium level of competencies with rule-setting for a medium till broad range of issues but only indirect effect and 3) high level of competencies with rule-setting for a broad range of issues and direct effect and are shown in Table 1 below.

Table 1: Legitimacy of International Institutions

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<th>Competencies of institution</th>
<th>Standards of legitimacy</th>
<th>Focus of legitimacy</th>
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<td></td>
<td>Human rights</td>
<td>Accountability</td>
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<tr>
<td>Direct rule making (high)</td>
<td>Enforcing human rights</td>
<td>Representational structure through democratic states</td>
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<td>Indirect Effect (medium)</td>
<td>Promoting human rights</td>
<td>Contestation rights</td>
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<tr>
<td>Coordination (low)</td>
<td>Respecting human rights</td>
<td>Democratic state consent</td>
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<td>Preconditions of legitimacy</td>
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For the standard for international institutions which have only minimal competencies such as coordination function, output legitimacy is the main requirement. In this sense, there are no strict participation requirements for coordinating institutions, but the institution still needs to meet requirements of transparency and accountability in proportion to its rule-making competencies. The purpose of the institutions also has to be regulated by minimal substantial requirements. This means that international institutions shall not violate human rights in their actions. Defining what kind of output the institutions should actually reach, democratic state consent to the goals of the institution might be the best available criterion in terms of accountability. This corresponds to the criteria that Buchanan and Keohane (2006) have defined as legitimacy standards for global governance institutions. These include first, on-going consent of democratic states; second, several substantive criteria: minimal moral acceptability (human rights), comparative benefits (output) and institutional integrity (performance and goals); and third, epistemic virtues. However, other international institutions such as NGOs or transnational networks, and not just global government institutions, should comply with these criteria if they have a significant influence on the realm of options available to firms, states and individuals in public matters.

For the standard for international institutions which have a medium level of competencies, the focus of legitimacy is on throughput, specifically on contestation and deliberation. As regards human rights, if an institution has legislative or judicial powers, it is expected to actively promote basic rights.\(^\text{11}\) Accountability should be granted to the people subjected to the significant changes in their range of options by a right to contest these changes. This is a weaker form of accountability than elections, but nevertheless requires some form of court or dispute settlement mechanism. In terms of participation not equal democratic rights but only a say in the decision-making, this means deliberation rights are necessary. For an NGO this would mean that the ones affected by their actions should be consulted.

Understood in this way, the approach of multilateral democracy is the maximal concept of normative legitimacy for international organisations. Multilateral democracy describes how international relations between democracies should be organised in

\(^{11}\) For an perceptive discussion of the relation of human rights and the WTO see (Breining-Kaufmann 2005).
order to be democratic themselves. It is constructed for international organisations such as the EU, which are characterised by a high degree of competence delegation and broad legislative powers. Multilateral democracy seeks to establish input, throughput and output legitimacy through the inclusion of peoples and citizens in its procedures.

Multilateral democracy as a normative account offers an answer to the question of legitimacy for a specific supranational setting, namely consolidated democratic relations between democratic states. It advocates a more complex view of democracy beyond the state, which is not exclusively based on an input understanding of legitimacy. Rather, multilateral democracy attaches more weight to the procedural aspect which takes into account the democratic procedures of the member states as well as those of the multilateral level. Accountability through the democratic state mechanism: not only through the government but also national parliaments and courts (Cheneval and Schimmelfennig 2013; Nicolaidis 2013). But individuals should also have rights of participation on the international level, for example through a European Parliament or Citizens Initiatives. This is required by the equality of citizens and statespeoples in the legislation. Furthermore, in terms of human rights the requirement of legitimacy for such institutions are equivalent to the ones of states. Since, it is a democratic account it has a duty to promote and enforce equal human rights including rights of political decision-making. This means the have to respect, protect, and fulfil. Specifically, enforce human rights where their member states fail to do so. Nevertheless, multilateral democracy should not be evaluated by the standards of national democracies but according to the competences it holds.

**Conclusion**

As I have argued in this paper, the different kinds of international institutions require an appropriate standard of legitimacy that is sensitive to the different competencies and functions of these institutions. The aim of this paper was to develop such an integrated account of international legitimacy. In the proposed account the degree of competences defines the required normative standards which in turn allows evaluating the institution and its design. In order to assign standards of legitimacy, I distinguish between three levels of competencies of international institutions having 1) low level of competencies with rule-setting for technical and coordination issues; 2) medium level of competencies
with rule-setting for a medium till broad range of issues but only indirect effect and 3) high level of competencies with rule-setting for a broad range of issues and direct effect.

In contrast to the mainstream argument that international legitimacy is democracy or accountability based this approach includes different requirements of legitimacy. I identify broad transparency and beneficial outputs as precondition for legitimacy. Moreover, accountability, participation and human rights each have to be treated differently for all three levels of legitimacy. For low level of competencies the main requirements are the expectation of human rights and on going democratic state consent. For the second level, the focus lies on contestation and deliberation rights as well as the promotion of human rights. Finally, for institutions with a high level of competencies and direct effect the normative account of multilateral democracy is suggested as standard of legitimacy as this degree of rule-making competencies requires a democratic account that treats individuals and statespeoples as equals so that they are not subject to external coercion.

This analysis of international legitimacy provides new insight into the normative requirement of different international institutions. On the basis of this account, systematic critical evaluations of international institutions with specific reforms suggestions should be possible without revoking the support for a institution completely.

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References


