Justice and Authority (within and) beyond the State*

The Mutual-dependence Account and Its Implications

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Abstract: Our lives are increasingly governed by decisions taken beyond the state—examples include ICJ verdicts, WTO rules, and EU regulations. But under what conditions are these decisions authoritative? And how do these conditions relate to substantive criteria of justice? To answer this question, I discuss three families of accounts of legitimate authority: purely procedural, purely instrumental, and mutual-dependence accounts.

Purely procedural accounts take justice and authority to be altogether separate. Purely instrumental accounts make attributions of authority entirely dependent on institutions’ efficacy in realizing justice. Mutual-dependence accounts see justice and authority as mutually defining each other. On these accounts, an institution has authority if and only if it does what it reasonably can to omnilaterally interpret and secure the demands of justice. I argue that mutual-dependence accounts are superior to their rivals, and conclude by sketching their implications for the authority of the ICJ and the WTO.

1. Introduction

Our world is home to an increasing number of international institutions, creating norms that are said to be binding on both states and their citizens. But do these institutions have the right to rule? And do their subjects—states and, indirectly, their citizens—have an obligation to obey them? In other words, do these institutions have legitimate authority?¹

To put the issue into context, consider a recent ruling of the International Court of Justice, the main judicial organ of the United Nations, concerning a jurisdictional conflict between Italy and Germany. Between 2006 and 2008, Italian judicial authorities took a number of measures against Germany, in connection with crimes against humanity perpetrated during World War II. Specifically, Italian authorities (i) declared Germany responsible for the 1944 massacre committed by Third-Reich soldiers in Civitella, a Tuscan village and, (ii) confiscated Villa Vigoni, a German property near Lake Como, by way of compensation for crimes committed by German soldiers on Greek territory during World War II (ICJ 2012; Repubblica 2012). Germany condemned Italy’s behaviour as a violation of its jurisdictional immunity, and brought the case before the International Court of Justice (ICJ). On February 3, 2012, the Court declared that Italy’s actions constituted violations of its obligations to Germany under international law.

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¹ Throughout the article by ‘authority’ I mean legitimate, as opposed to de facto, authority. Legitimate authority carries a moral entitlement to rule coupled with an obligation to obey. (This is a particularly strong notion of legitimate authority—on other accounts, legitimate authority only involves a liberty right to rule, without any obligation to obey.)
Italy and Germany accepted the Court’s verdict as authoritative—i.e., as imposing a duty of obedience on them by virtue of emanating from the Court. Yet, the Court’s decision to uphold Germany’s jurisdictional immunity in the face of crimes against humanity appears substantively unjust. Does this supposed injustice undermine the Court’s authority, from a moral perspective?

To answer this question, I consider three families of views about political authority, which differ in the role they give to considerations of justice (i.e., considerations about people’s rightfully enforceable entitlements to resources and opportunities) when establishing an institution’s right to rule. I call them, respectively, the purely procedural, purely instrumental, and mutual-dependence accounts of political authority.³ Purely procedural accounts take justice and authority to be altogether independent from each other (Section 2). Purely instrumental accounts connect them by making attributions of authority dependent on institutions’ efficacy in realizing justice (Section 3).³ Finally, mutual-dependence accounts see justice and authority as mutually defining each other (Section 4). On these accounts, there can be no justice without authority, and no authority without justice. I argue that the latter accounts successfully overcome the difficulties with their rivals, and conclude by sketching their implications for the question of international authority, specifically in relation to the ICJ and the WTO (Section 5).

Before getting started, let me make three prefatory remarks. First, my analysis will be conducted from a liberal perspective on political morality, characterized by a fundamental commitment to the moral equality of persons qua autonomous agents. Second, I set aside anarchist views holding that a commitment to persons’ autonomy is in principle incompatible with political authority (cf. Wolff 1970). I assume that political authority (whether domestic or international) is morally justifiable, and limit my inquiry to a search for the best available justification. Third, this piece begins by articulating and critiquing two relatively familiar views. This allows me to situate mutual-dependence accounts in the literature, and to show that they provide a successful response to the shortcomings of their rivals.

2. Purely Procedural Accounts
Some accounts of political authority take a purely procedural form. Underlying these accounts is the idea that, for a political authority to be consistent with its subjects’ autonomy, it must stand in the right kind of relationship vis-à-vis their wills. This condition is met when appropriate authorization procedures, linking the will of the subjects to the actions of the authority, are in place.

Different versions of the purely procedural account champion different types of procedures. Some, for instance, emphasize the ‘consent of the governed’. Others focus on rational endorsement, and deem an institution authoritative only when it ‘makes sense’ to its subjects as a legitimate ruling agency (Williams 2005). Others still single out democratic decision-making as the relevant authority-conferring procedure (Plamenatz 1968, p. 171; cf. Simmons 1976, p. 289).

These differences notwithstanding, we may characterize the family of procedural accounts as follows:

³ In this paper, I assume that justice and authority are separate. I exclude the possibility that justice is entirely constituted by the output of authoritative procedures, since this implies (implausibly) that there can be no genuine pre-procedural disagreements about justice.

³ The first two families of accounts may be broadly equated to elaborations of what F. Scharpf (1999) calls, respectively, input and output legitimacy.
Purely Procedural Account(s): An institution has authority over its subjects if (and only if) it satisfies relevant criteria of procedural legitimation.

A version of pure proceduralism is prominent in the international realm, where state consent is seen as key to the bindingness of various norms. The bindingness of the ICJ’s rulings, for instance, depends on states having previously accepted its jurisdiction. On this view, the ICJ’s verdict in the Italy-Germany case is morally binding vis-à-vis Germany and Italy precisely because both countries have accepted the Court’s authority.

Despite their intuitive appeal and elegance, purely procedural accounts are characterized by a series of fairly well-known difficulties. Some are contingent, and particularly salient in the international context; others—the most damaging ones—are inherent to purely procedural accounts independently of their context of application.

2.1 Contingent Difficulties: Background Conditions for Genuine Authorization

To play their legitimizing function, the relevant procedures—whether based on consent, rational endorsement, or democratic adjudication—need to establish a genuine connection between the will of the subjects and the will of the ruler, thereby preserving the former’s autonomy. To illustrate: a woman may agree that her husband is entitled to use violence against her (and even vote in support of a corresponding legal right), yet her endorsement of his authority hardly counts as legitimizing. In all likelihood, she has developed adaptive preferences, and her present attitudes are a by-product of the power abuses she has been subjected to (cf. Olsaretti 2004, O’Neill 2005, ch. 5).

For a procedure to play a legitimizing function, then, appropriate background conditions—e.g., the presence of acceptable alternatives to subjecting oneself to a given authority; the absence of steep, unchecked power inequalities between putative authorities and putative subjects—have to be in place. Problematically, this is rarely the case when international authority is at stake.

First, there are considerable power differentials between states; and when states negotiate the rules by which they should coexist, the powerful often succeed in imposing their will on the powerless (Christiano 2010, pp. 125-6). For example, as is often pointed out, developing countries are virtually forced to join the WTO—which rules asymmetrically favour the interests of developed nations—in order not to be excluded from vital trade opportunities (Grewal 2008). Their subjection to WTO regulations is (arguably) not voluntary, but necessitated by the lack of acceptable alternatives.

Second, even if genuine procedural legitimation between states were possible, it would have modest normative weight when involving autocratic regimes—of which there exist many in the international realm. Since, on the liberal view explored here, we are ultimately interested in individual autonomy, procedural validation of

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4 Here, and in what follows, I think of institutions that are recognizably political (ruling). Where the boundaries of ‘the political’ should be drawn is a complex matter that I cannot address in this context. I thus limit myself to adopting a common-sense understanding of what counts as political (e.g., the state is a political institution, a tennis club is not).
5 Cf. John Locke’s discussion of tacit consent, and the criticisms levelled against it by Hume. For an overview see Christiano (2012).
6 This is implicitly acknowledged by Williams (2005, pp. 6, 15), who introduces a ‘critical theory’ principle, according to which subjects’ endorsement/acceptance of authority should not be the mere product of the authority’s exercise of power.
international authority on the part of states that are internally irresponsible to their citizenry cannot be legitimizing (Buchanan and Keohane 2009, pp. 36-7, Christiano 2010, pp. 123-4).

If my admittedly brief discussion is correct, adopting a purely procedural view pushes us to conclude that there is very little, if any, legitimate international authority. Some may find this conclusion sufficiently unpalatable to abandon pure proceduralism. Others, however, might be prepared to accept it, holding that we have very good independent reasons for considering procedural legitimation key to authority. As I argue in the next section, those reasons prove rather elusive.

2.2 Non-Contingent Difficulties: Substantive Considerations

As has been repeatedly pointed out in the literature, the satisfaction of procedural criteria can hardly count as a sufficient condition for authority (see, e.g., Buchanan 2010, pp. 90-3). Meeting procedural criteria is compatible with institutions being manifestly wicked and, for that reason, not fit to generate morally binding rules (Pitkin 1965, p. 993, Simmons 1976, pp. 284-5). Imagine three states forming a supranational body with the aim of starting an imperialist conquest campaign. Even though the supranational body has been created with the explicit consent of the states involved, and subsequent decisions about its policies are taken democratically, its commands are not genuinely authoritative. They cannot be seen as generating authentic obligations to obey, because their content is morally repugnant (Dagger 2000, pp. 110-11, Stilz 2009, p. 7). Procedural considerations alone, then, are not sufficient to establish legitimate authority.

What is more, procedural considerations are not even necessary for legitimate authority. Consider, for example, the US’s refusal to ratify the treaty establishing the International Criminal Court (ICC). Many feel that, had the ICC the power to subject the US to its jurisdiction, there would be nothing illegitimate if it tried to do so, since this would be done for the sake of promoting international criminal justice. Similarly, a temporary military government established to secure human rights in a war-torn society lacks procedural legitimation, but not—most would say—authority. In sum, when ruling institutions are necessary to satisfy basic demands of justice, their lacking procedural validation does not appear to undermine their authoritativeness. This suggests that legitimate political authority, whether domestic or international, does not depend on a series of procedural criteria being met, but on the satisfaction of substantive ones, as argued by proponents of purely instrumental accounts.

3. Purely Instrumental Accounts

From the perspective of purely instrumental accounts, authority is a means to an end. The most prominent statement of this family of views is offered by Joseph Raz’s

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7 The conclusions reached in this section are also arrived at by Allen Buchanan (2010, pp. 90-3).
8 Consent theorists often acknowledge this by making procedural considerations necessary, but not sufficient, for authority.
9 Anna Stilz has pointed out to me that one may believe that the US has an obligation to join the ICC, and yet that it would be illegitimate for the ICC to impose its verdicts on the US I explicitly consider and respond to this objection later in my discussion (section 4.3).
10 One might respond that, lacking procedural validation, political institutions aiming at justice have a liberty right to rule (i.e., they are justified in coercing others), but not a claim right to rule, with a counterpart obligation to obey. The separation between right to rule and duty to obey presupposed by this response seems ill-justified. It is unclear why one should be under no duty to obey the commands of an institution, when doing so is necessary to discharge duties (of justice) that independently apply to one.
(1985, p. 19) ‘service conception of authority’, according to which A has authority over B if, on balance, accepting A’s commands makes B ‘likely’ better to comply with reasons which [independently] apply to him’, compared to his performance in a relevant counterfactual scenario—e.g., one in which he follows his own judgement.\textsuperscript{11}

Since our discussion presupposes a commitment to a liberal political morality, the range of reasons by reference to which legitimate authority may be established must be qualified accordingly. From a liberal perspective, the aim of institutions is not to promote ‘the good’, but to respect and secure the constraints of justice, within which each may pursue his/her own conception of the good. For present purposes, then, the purely instrumental family is best characterized as follows:

**Purely Instrumental Account(s):** An institution has authority over putative subjects if (and only if), on balance, they are *likely* better to comply with the demands of justice by obeying the institution’s commands than they would be in a relevant counter-factual scenario.\textsuperscript{12}

Different specifications of what justice requires, and of the relevant counter-factual baseline, will give rise to different versions of the purely instrumental account. For present purposes, I leave it up to the reader to fill out the ‘justice’ parameter and, for ease of exposition, I adopt Raz’s own baseline—i.e., a scenario in which subjects follow the demands of justice directly. My arguments also apply, *mutatis mutandis*, to versions of pure instrumentalism adopting different baselines.\textsuperscript{13}

I now illustrate the rationale behind the purely instrumental family (3.1), and then turn to its shortcomings (3.2).

### 3.1 The Rationale behind Purely Instrumental Accounts

The reasoning underlying purely instrumental accounts is helpfully brought out in Locke’s (1690/1966, ch. II, cf. Flikschuh 2008) vision of the State of Nature.\textsuperscript{14} Let us imagine a situation in which we each try to do justice to each other by interpreting our rights and duties in the absence of macro-level authorities. Under these circumstances, Locke suggests, securing justice—i.e., a structure of entitlements consistent with equal respect—by letting each person interpret and enforce their natural rights is possible, but improbable. Epistemically, each individual is unlikely to have the power to acquire all the evidence necessary to decide what the right thing to do is. Moreover, no matter how well-intentioned people are, they rarely act as impartial judges when their own interests are at stake. Although there are independently right answers to the question of who is entitled to what (answers that involve natural rights), passion and self-interest are likely to steer people away from them. Setting up a state-like authority, with the power to interpret and enforce rights, Locke concludes, makes

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\textsuperscript{11} Raz argues that this is the *normal* way of justifying authority. To say that this is the ‘normal way’, however, does not imply that instrumental considerations are always necessary, or indeed sufficient, to justifying authority. For present purposes, I will treat them as sufficient conditions for legitimate authority—something not uncommon in the literature, see e.g., Tasioulas (2010).

\textsuperscript{12} See the account of authority implicit in Arneson (2004). Needless to say, this formulation echoes Raz’s in many respects.

\textsuperscript{13} For instance, greater or lesser likelihood to comply with justice might be measured against ‘feasible alternatives’, rather than against what would happen if one followed one’s own judgement.

\textsuperscript{14} I am not making any strong exegetical claims here, but simply appealing to a picture of the State of Nature broadly inspired by Locke’s work. Note that Locke is typically regarded as a consent theorist (rather than as a proponent of the instrumentalist view). For a discussion, and a somewhat instrumentalist interpretation, of Locke, see Pitkin (1965).
people *more likely* to do justice to each other than they would were they to rely on their own judgements. Of course, for this claim to be plausible, the authority in question has to display adherence to at least a minimal set of principles of justice. Were we to look at altogether oppressive ruling agencies, neglectful of their subjects’ most fundamental (natural) rights—such as life, bodily integrity and a certain level of freedom—their authoritative view would have to be put into question even on instrumental grounds. But setting extreme cases aside, macro-level ruling agencies have authority insofar as their subjects are more likely to realize justice by complying with their directives than by acting autonomously.

By making authority instrumental to, and conditional on, the realization of an independent standard of justice, purely instrumental accounts address the shortcomings of purely procedural ones. Moreover, they also deliver intuitively plausible conclusions when applied to the Italy-Germany controversy with which I opened the paper. An instrumental perspective would allow us consistently to hold the views that (i) the ICJ’s decision was unjust—why should sovereign states’ jurisdictional immunity trump violations of *jus cogens*, of which crimes against humanity are an obvious example?—and (ii) the ICJ’s decision was authoritative. After all, the Court’s expertise and access to relevant information is (arguably) greater than states’, as is (arguably) its impartiality—judges represent the main geo-political regions of the world—in which case, following its verdicts is likely to be more conducive to justice on balance, though not always.

Despite their virtues, purely instrumental accounts fail to be fully satisfactory.

3.2 The Difficulties with Purely Instrumental Accounts: Just Autocracy

From an instrumental perspective, authority is a matter of outcomes. *Justice is normatively prior to authority*, and authority is granted only to the extent that doing so is conducive to justice independently defined. But if authority were solely a function of substantive justice, the following—admittedly counterfactual—situation should not strike us as involving a lack of authoritative ruling, when in fact it does (see Reidy 2007, p. 246; cf. Stilz 2011, sec. V, Andrew Altman and Christopher Wellman 2009, pp. 14-16).

*Social-democratic sages:* A group of social-democrats from Sweden non-violently, but contrary to citizens’ wishes, seize power in the United Kingdom. Although their rule is autocratic, they carefully consider everyone’s interests, and implement just policies.

*Ex hypothesi,* the sages’ government is just but, contrary to what purely instrumental accounts would conclude, it appears to lack legitimate authority. Why? Because there is something morally problematic in the *procedure* through which the sages come to power and govern: its unilateralism. We would probably feel differently about this

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15 I offer a more detailed account of the nature and operation for the ICJ in the final section of this paper.

16 Someone might object that a sufficiently complex version of the instrumental account could accommodate procedural considerations. After all, the ‘reasons of justice’ that apply to us could be of both procedural and substantive kinds. If this is so, contrary to the assumption made, the sages’ government of the UK would not be legitimate, because it would be sub-optimal compared to its more *procedurally* just alternative (assuming a ‘feasible alternatives’ baseline; cf. n. XX). What to respond to this objection? If a purely instrumental account were really so open-ended, it would be virtually empty. That is, it would not offer an approach to authority competing with others, but would simply
scenario were we to add that UK citizens explicitly asked the sages to take matters in their expert hands. Had the Brits ‘consented’ to the sages’ rule, had they recognized their authority through some appropriate procedure, our intuitions about the legitimacy of the new social-democratic UK government would probably change.

Similar considerations apply to structurally equivalent counterfactual scenarios involving supra-national institutions.

**US-rulled ICJ**: The United States peacefully, but contrary to the wishes of the international community, takes over the ICJ, becoming solely responsible for selecting its judges, establishing its rules of operation, and so forth. The verdicts reached by the US-rulled ICJ are as just as those of its UN-controlled predecessor.

Would this reformed ICJ have authority over those subject to it? Purely instrumental accounts would answer in the affirmative. In fact, they would have to conclude that the original ICJ and the US-governed one are equally authoritative. Many, I believe, would resist this conclusion. Why? Because of the unilateral, autocratic nature of the US rule over the ICJ. This further suggests that procedural considerations matter to legitimate authority.

Proponents of purely instrumental accounts might resist this conclusion by tracing our intuitions about the illegitimacy of ‘just autocracy’ to substantive failures of justice. After all, it is close to impossible to imagine a bunch of social democrats seizing power in the UK non-violently, as it is hard to imagine the US taking over the ICJ without this resulting in judicial verdicts skewed in favour of US-interests. The best explanation for our resisting the claim that these scenarios involve legitimate authority is our inability to imagine justice genuinely being done in them.

This is a *prima facie* plausible response. How convincing it is, however, depends on whether a better explanation for our intuitions can be found. If there are alternative accounts of authority, which avoid the difficulties with purely procedural ones, and better capture our judgements about just autocratic rule than purely instrumental views, then those are the accounts we should subscribe to. These are what I call mutual-dependence accounts.

4. **Mutual-dependence Accounts**

Mutual-dependence accounts reject the possibility, presupposed by pure instrumentalism, that justice may be in principle achievable without authoritative institutions. On these accounts, there can be no justice without authoritative institutions, and institutions cannot be authoritative unless they aim at establishing justice (Christiano 2008, cf. Habermas 1996 on co-originality).

**Mutual-dependence Account(s):** An institution has authority over its subjects if and only if it does what is reasonably within its power to *omnilaterally interpret and secure* the demands of justice in the circumstances at hand.

offer a ‘structurally consequentialistic’ framework for articulating whatever the correct substantive account of authority turns out to be. This would be problematic because (i) purely instrumentalist views of political authority are typically presented as substantive competitors of other views (e.g., procedural ones) rather than as neutral across them [on this see Hershovitz (2003), sec. VIII] and (ii) it is not clear whether every moral view is genuinely capable of being expressed in consequentialist terms [on this see Brown (2011)].
From this perspective, authoritative institutions not only contribute to securing justice (independently defined), but are also in part constitutive of its demands. This is because, while some demands of justice are non-negotiable, others are reasonably contested; and justice itself requires that competing reasonable accounts of its demands be adjudicated through appropriate—i.e., non-unilateral—institutional procedures. These procedures are therefore also constitutive of justice, and their output provides an authoritative, if temporary, resolution to the relevant substantive disputes.

Moreover, on mutual-dependence accounts, institutions need not fully realize a complete ideal of justice to qualify as authoritative. This is for two reasons. First, as I shall explain in greater detail below, people reasonably disagree about what perfect justice requires, and there is no privileged, overall ideal of justice by which institutions may be legitimately evaluated. All reasonable accounts share some elements—i.e., non-negotiable demands that fall short of a complete ideal of justice—and those provide the standard for authority-assessments.

Second, any particular institution (or set of institutions) may not have the capacity to realize justice in its circumstances of operation. In such cases, even institutions that strike us as considerably sub-optimal in terms of justice might still be authoritative. Attributions of authority only require that institutions be ‘good enough’, so to say.¹⁷ In what follows, I proceed to offer a fuller justification for mutual-dependence accounts (4.1), illustrate how they might help us respond to the annexation cases discussed in the previous section (4.2), and highlight how they differ from their most direct competitors in the literature (4.3).

4.1 The Rationale behind Mutual-dependence Accounts
A helpful way of illustrating the rationale underlying mutual-dependence accounts is by appeal to a construal of the State of Nature distinct from Locke’s, inspired by Kant’s (1797/1991) work.¹⁸ On the Lockean picture, as we already know, individuals may in principle act justly in the State of Nature, by discovering and correctly applying their natural rights. This is not so on the Kantian picture. Here too we begin with a commitment to a very broad principle of justice, captured by the idea of equal respect for persons qua autonomous agents.¹⁹ Persons so conceived, it is said, are each entitled to a sphere of agency within which they may pursue their ends and goals without being subjected to others’ will. However, if we follow a broadly Kantian account, it is not merely unlikely that human beings in the State of Nature will respect one another’s spheres of agency, it is impossible for them to do so.

To see this, we need to appreciate that the idea of equal respect for persons is susceptible to a plurality of reasonable interpretations, and that people in the state of nature will consequently defend different, yet reasonable, accounts of what justice demands. The claim that a commitment to equal respect may be variously interpreted

¹⁷ Cf. the view of legitimacy (based on the satisfaction of minimal demands of justice) defended by Buchanan (2004). Note that, unlike me, Buchanan takes legitimacy (the right to rule) not to imply an obligation to obey the relevant ruling agency. Moreover, my impression is that, for Buchanan, justice and legitimacy do not stand in the mutual-dependence relation I have sketched here. Although our approaches might deliver similar conclusions, their conceptual bases are different (specifically, Buchanan’s justice-based account of legitimacy is closer to the instrumental view).

¹⁸ As I mentioned in an earlier note, I am not making any ambitious exegetical claims, but simply using Kant and Locke as sources of inspiration for these alternative construals of the State of Nature. See Flikschuh (2008).

¹⁹ I am using ‘autonomy’ in the contemporary sense of being able to pursue one’s ends and goals, rather than the Kantian sense of giving the moral law to oneself.
should not be surprising to contemporary political theorists. Most of the existing controversies about justice may be seen as involving competing, but reasonable, accounts of what equal respect demands (Kymlicka 2001, p. 4).20

These differences are not (merely) a likely consequence of individuals’ moral sense being obfuscated by self-interest—as in the Lockean picture—but a necessary consequence of the limits of human reason itself (cf. Rawls 1993, specifically the notion of ‘burdens of judgement’). Even unbiased, well-intentioned individuals will disagree about each others’ rights, i.e., about the boundaries of their spheres of agency.

These different reasonable accounts of the demands of equal respect are not compatible: doing justice to each other demands adopting one in particular. However, by trying unilaterally to impose our preferred reasonable interpretation of equal respect on others (who hold different, but equally reasonable views) we would violate the very principle we are trying to honour. We would be subjecting our fellow humans to our own will, dictating the terms on which we should interact, without having the authority to do so. Indeed, ex hypothesi, nobody can establish that their interpretation of equal respect is superior to others’.

In light of this, for justice to be possible (and not merely likely) authorities speaking in the name of all, with the moral power to (i) interpret and (ii) enforce its demands, need to be artificially established among agents pressing conflicting claims on each other. On this account, institutions have authority not because they increase our likelihood to comply with justice, but because, and insofar as, they make it possible for us to do justice to one another by interpreting and enforcing its demands non-unilaterally. Establishing an omnilateral authority is therefore morally mandatory for interdependent individuals in the State of Nature; it is a necessary condition for them to fulfil the requirements of justice. In turn, those who refuse to take part in this endeavour—thereby persisting in their unilateralism—may be legitimately forced to submit to the artificially created authority: i.e., they may be forced to act on the requirements of justice.21

But when does an institution qualify as an omnilateral interpreter and enforcer of people’s rights? The notion of an omnilateral authority is notably hard to operationalize. In an effort to spell out its content more concretely, I suggest that institutions (let us take the state for the moment) meet this condition if and only if they satisfy two lexically ordered requirements: a substantive and a procedural one.22

Different versions of the mutual-dependence account, in turn, might interpret these requirements slightly differently.

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20 Indeed, A. Sen’s, J. Rawls’s, R. Dworkin’s, and G. A. Cohen’s (etc.) accounts of justice may all be plausibly re-described as competing interpretations of the demands of equal respect. See also Valentini (2013), for discussion.

21 One might argue, as Lea Ypi (2013) does, that forcing others to join a political unit is per se an unacceptable form of unilateralism. On the present account this is not the case. Justice gives rise to rightfully enforceable entitlements, and everyone is under an enforceable duty to act as justice requires. Since this duty cannot be discharged unless interdependent individuals unite under an omnilateral political authority, those who refuse to subject themselves to it may be legitimately forced to do so (on grounds of justice). Forcing others to act contrary to their wishes is morally problematic only when it involves the imposition of one’s own reasonably contested account of justice on them, not when it involves forcing them to act as justice requires.

22 For similar Kantian positions, from which I have learnt, see Stilz (2009, chs. 2 and 4, pp. 93-4), Williams Holtman (2004), and Guyer (2006, pp. 270-5). See also Valentini’s (2012) Kant-inspired analysis of the ‘political’ nature of human rights.
Requirement 1 (substantive-R1): Institutions must contribute to securing those substantive rights that are *a sine qua non* of equal respect, to the extent that this is reasonably possible in any given circumstance.\(^{23}\)

A state which could secure, but deliberately denied, rights to bodily integrity, freedom of thought and movement to part of its citizenry could not plausibly count as attempting to instantiate justice. There is no interpretation of equal respect compatible with the deliberate denial of these rights. Similar considerations hold in the case of guarantees such as equality before the law, freedom of religion, freedom of expression, and arguably rights to minimal subsistence.

Offering a list of core substantive rights that qualify as necessary implementation-conditions of equal respect goes beyond the scope of this paper. I am here operating on the assumption that, in many cases, our judgements on this matter are likely to converge. In those cases, we can agree that, if an institution is capable of securing the relevant rights, but fails to do so, its subjects are not under an obligation to obey its commands.

As I have mentioned earlier, beyond the satisfaction of certain minimal substantive demands, equal respect is susceptible to a variety of different reasonable interpretations, and no individual has the authority to impose his/her own on others, without thereby breaching her commitment to equal respect. It is precisely the existence of reasonable disagreement that necessitates the establishment of an authority speaking in the name of all. This observation leads us to the second, procedural requirement.

Requirement 2 (procedural-R2): In interpreting and enforcing justice, institutions must be responsive to their subjects, to the extent that this is reasonably possible in any given circumstance.

To solve the difficulty of unilateralism, and legitimately interpret and impose the demands of equal respect (beyond non-negotiable ones), institutions must be responsive to their subjects, so as to approximate the regulative ideal of an ‘omnilateral’ will. I say ‘approximate’ because a fully omnilateral will, one whose pronouncements enjoy the consent of all subjects, is impossible to attain in a world like ours. That said, we can still evaluate political arrangements depending on the extent to which they conform to this regulative ideal (cf. Valentini 2013).

A typical way of operationalizing the ‘Rousseauian’ requirement of a general/omnilateral will, for example, is through fair democratic decision-making (Stilz 2009). But whether democratic decision-making ought to be adopted, and in what form, will depend on the circumstances at hand. If, for instance, in circumstances C, majoritarian decision procedures lead to a given minority being persistently outvoted, other decision procedures, alternative forms of political organization (e.g., more decentralized), if not the possibility of secession, might have to be explored to satisfy the responsiveness requirement fully. Once again, while there may be disagreement at the margin, our judgements about a regime’s responsiveness or lack thereof will often converge; and this suffices for present purposes.\(^{24}\)

Crucially, an institution (e.g., a state) will be judged legitimate, if it is responsive to its subjects *to the extent made possible* by its circumstances of

\(^{23}\) Cf. Dworkin (2011, pp. 332-9) on authority and human rights.

\(^{24}\) Any complete responsiveness criterion would have to be consistent with paradigmatic cases of responsiveness, or lack thereof.
operation. An institution can thus be legitimate while also displaying little responsiveness. This might happen when setting up robust responsiveness mechanisms is either impossible or would jeopardize the fulfilment of R1 (lexically prior to R2).

By explicitly qualifying Requirements 1 and 2 in relation to institutional capacity in any given circumstance, we make judgements of legitimate authority highly context-dependent. Instead of offering a rigid list of requirements any institution must fulfil to count as legitimate, we are equipped with a framework for establishing whether, given its powers and circumstances of operation, an institution is reasonably contributing to satisfying the demands of justice.

In some cases, institutions will clearly fail this test, but in others, they will not, and yet they will appear deeply sub-optimal from the perspective of justice. This may happen when the circumstances under which an institution operates prevent it from being in a position to ‘do a good job’ at securing justice. From the perspective of mutual-dependence accounts, the appropriate response to such cases is not to deny the legitimacy of already existing institutions, but to supplement them with new ones, or to bring about conditions more conducive to their successful operation.

4.2 Mutual-dependence Accounts and Just Autocracy

Let me now illustrate how thinking of legitimate political authority in line with mutual-dependence accounts helps us make sense of the just autocracy examples offered in the previous section. The first example, recall, assumes that a group of social-democratic sages from Sweden peacefully take over the government of the United Kingdom and start to rule the country autocratically, but justly. According to pure instrumentalism, the sages’ government would be legitimate, but this seems implausible. What verdict would mutual-dependence accounts deliver?

They would challenge the very possibility that, by autocratically governing the UK, the sages’ government could be just (and authoritative). On the assumption that the sages’ intervention is not necessary to satisfy R1 (i.e., the UK is already reasonably just), their rule clearly fails to meet the responsiveness requirement, R2. The claim that, from a substantive point of view, the sages govern fully justly, would be reasonably contested in the circumstances motivating the mutual-dependence account. When there is reasonable disagreement about justice, unilaterally imposing one’s reasonably contested view of justice on others is both unjust and illegitimate. Yet this is precisely what the sages in our hypothetical scenario do.

By the same token, mutual-dependence accounts can explain our reaction to the hypothetical scenario involving the United States taking over the ICJ. On these accounts, even though the United States’ rule ex hypothesi does not result in greater injustice at the substantive level, its unilateralism in the presence of reasonable disagreement—when unilateralism is itself not necessary to satisfy R1—renders it procedurally unjust and illegitimate.

Mutual-dependence accounts, then, are capable of capturing our intuitions about just autocracy cases; intuitions that, as we have seen, are also captured by purely procedural accounts, but not by purely instrumental ones. Does this mean that mutual-dependence accounts are also susceptible to the objections raised against their procedural counterparts? It does not.

While (problematically) purely procedural accounts can never regard the unilateral imposition of non-negotiable norms of justice as legitimate, mutual-dependence accounts can (cf. Ypi 2013). To see this, suppose that country B is plagued by civil war and internal conflict. Suppose further that country A carries out a
humanitarian intervention to stop this violence, and institutes a military government to restore peace, security and protection for basic rights. B is governed by A and, ex hypothesi, its government is imposed on B’s inhabitants without procedural validation. But unlike in the social-democratic sages scenario, A’s rule over B is legitimate. This is because, in the circumstances at hand, A’s rule is necessary to ensure that core substantive rights (as per R1) are minimally fulfilled in war-torn B. Attempting to institute responsive political procedures in a deeply divided society would be self-defeating, exacerbating the conflicts A’s intervention is intended to put an end to. In this respect, then, mutual-dependence accounts agree with purely instrumental accounts, coming to what strikes me as the right conclusion.\(^{25}\)

4.3 The Distinctiveness of Mutual-dependence Accounts

I have argued that mutual-dependence accounts can deliver the right conclusions when faced with enlightened autocracy cases. Mutual-dependence accounts, however, are not the only ones to offer conclusions that tally with our intuitions. To bring out their distinctiveness, then, it might be worth comparing and contrasting them with a family of recent, prominent accounts of legitimate authority that resemble them.\(^ {26}\)


**Qualified Self-determination Account(s):** An institution has authority over its subjects if and only if it adequately respects their fundamental rights, and is consistent with their right to self-determination (where consistency is possible without jeopardizing fundamental rights).

Depending on what rights qualify as fundamental, and which groups hold a right to self-determination, qualified self-determination accounts take different forms. For example, some consider national groups with a shared culture and history the relevant holders of self-determination rights (Miller 1997). Others focus on peoples understood ‘politically’. A people, on this view, is a group of individuals with a shared history of political cooperation, though not necessarily with a shared ancestry, culture, and so forth (Stilz 2011).

These differences notwithstanding, most versions of the qualified self-determination account allow us to conclude that the social-democratic sages scenario is morally problematic, while A’s humanitarian intervention in B is not, but they do so on grounds other than those proposed by mutual-dependence accounts. Specifically, qualified self-determination accounts hold that groups aspiring to be self-determining have a right to govern themselves so long as they can do so consistently with minimal requirements of justice (i.e., respect for fundamental rights). These accounts thus presuppose a qualified right to self-determination on the part of groups, typically based on the value that group membership has for individuals (Altman and Wellman 2009, pp. 37-41). Self-determination matters, on

\(^{25}\) Whether it would be legitimate for A to ultimately annex B (and govern it democratically) would depend on the prospects for R1 and R2 to be satisfied under an enlarged A. If such prospects are greater under A than under an independent B-government, the annexation would be perfectly legitimate.

\(^{26}\) These accounts have been developed in the context of discussions about states’ territorial rights. Since a crucial dimension of these rights is ‘jurisdiction’—i.e., the right to rule the people residing within a particular territory—the views put forward in that context can be easily adapted to a broader debate on political authority.
these accounts, because group members value their membership, and see themselves as engaged in a common political-cultural project.

Instead of positing a group right to self-determination, mutual-dependence accounts establish an individual right against unilateral government. From the perspective of mutual-dependence accounts, the sages’ unilateral government of B is problematic, not because B (qua people or nation) has a right to self-determination, but rather because B’s citizens, just like A’s, have a right not to be unilaterally governed, a right stemming from a commitment to equal respect for their autonomy. This does not mean that, on mutual-dependence accounts, citizens have a right to being governed fully in line with their preferences. As mentioned earlier, this is simply impossible under real-world circumstances. Rather, citizens have a right that one’s political institutions be as responsive as possible, consistently with respecting R1. Autocratic government, when it is not necessary to satisfy R1, falls foul of this requirement.

Since mutual-dependence accounts place no moral weight on group rights to self-determination, there are many cases in which their implications for action differ from those of qualified self-determination accounts. Consider the following example.

**South Tyrol:** South Tyrol is a German-speaking region, formerly part of the Austro-Hungarian empire, and annexed by Italy in 1919. The region currently enjoys a fair amount of administrative and fiscal autonomy. Its inhabitants are duly consulted in national elections (they have the same rights and duties as all other Italian citizens), and there is no sense in which, politically speaking, they count as a permanent minority. Now let us assume that the population of South Tyrol did not identify with the Italian national/political project, and preferred to gain full independence. Let us further assume that it could do so consistently with respecting R1. I.e., post-secession, both the independent state of South Tyrol, and Italy, would continue to be reasonably just.

Mutual-dependence accounts and qualified self-determination accounts would give different responses to this scenario. From the perspective of qualified self-determination accounts, the people/nation of South Tyrol has a right to self-determination. Italy’s refusal to give South Tyrol independence, in the circumstances, would render its rule illegitimate, despite its satisfying R1 and R2.

This is not so from the perspective of mutual-dependence accounts. For these accounts, to the extent that Italy satisfies R1 and R2, its rule over the people of South Tyrol is fully legitimate. Of course, if the people of South Tyrol became uncooperative, Italy might no longer be able to satisfy R1 in the region, and be morally obligated to allow secession instead. But so long as ‘lack of identification’ with a given political project does not lead to a remediable failure to satisfy R1 and R2, on mutual-dependence accounts, legitimate authority is not undermined.

Why? Because, on codependence accounts, the moral credentials of political institutions rest entirely on their ability to secure justice, by creating a fair background within which individuals can associate and pursue their projects. This is not to deny that political institutions are also associative pursuits, but their (morally mandatory) aim, unlike that of private associations, is a universal one: the realisation of justice. Group identification, then, may have instrumental value, insofar as it makes it easier for institutions to satisfy the demands of justice, but it has no intrinsic value, from the perspective of mutual-dependence accounts.
To further mark the difference between mutual-dependence and qualified self-determination accounts, consider a second scenario, involving two societies, C and D.

*International Interdependence*: C’s proximity to D renders their members highly inter-dependent, routinely generating conflicting claims between them. In response to this situation, D’s government invites C to create a higher-order institutional mechanism for solving their disputes, possibly culminating in a fiscal, if not a political, union (think about the EU).

Under these circumstances, qualified self-determination accounts would consider it within D’s rights to accept or reject C’s offer. Refusing to establish tighter institutional links with C might be wrong, but still within D’s right to self-determination (Waldron 1981). Mutual-dependence accounts would give us a different answer. Citizens of both C and D cannot do justice to each other unless their conflicting claims are adjudicated *omnilaterally*. This, in turn, makes the creation of higher-order institutional arrangements for solving their disputes mandatory. D has a duty of justice to come to the negotiating table with C, and if D refuses to do so, A has an in-principle right to force its counterpart to participate in the dispute-resolution mechanism. While D’s unilateralism is sub-optimal but acceptable from the perspective of qualified self-determination accounts, from that of mutual-dependence accounts, it is both unjust and illegitimate (cf. the earlier example of the US and the ICC).

This highlights a difference not only between mutual-dependence accounts and qualified self-determination accounts, but also between mutual-dependence accounts and more orthodox Kantian positions. As Kant scholars have emphasized, Kant (1795/2003) himself denied the permissibility of forcing states to join supranational institutions, thereby treating the case of international authority differently from that of domestic authority (where individuals within the State of Nature may be legitimately forced to join the state). Specifically, Kant scholars have insisted on the coherence of the Kantian position, pointing out that (i) it would be contradictory for states, namely sovereign entities, to be subjected to a higher-order authority (Flikschuh 2010, pp. 479-81), and (ii) the international arena differs from the state of nature in that the former, but not the latter, is a partially rightful condition (Ypi forthcoming, pp. 19-20).

While I do not question the exegetical accuracy of these considerations, on the view I defend here, there is no in-principle difference in the relationships between individuals and those between states. So long as there exist reasonable disagreements about justice between agents setting forth competing claims, justice requires that they be solved omnilaterally. In turn, those who refuse to participate in such omnilateral solutions—by creating higher-order, responsive dispute-resolution procedures—may be in principle compelled to do so. Of course, whether such compulsion is all-things-considered justified in practice will depend on the extent to which it would be conducive, or detrimental, to the satisfaction of R1 and R2. If, say, by trying to force the USA to join the ICC we were likely to trigger the US’s aggressive reaction, thereby further undermining the prospects of future cooperation, we ought not to do so. What my argument denies is that the imposition of the ICC’s jurisdiction on the

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27 Proponents of qualified self-determination seem to agree that the externalities of state interaction ought to be regulated (see, e.g., Stilz 2009, p. 104). However, they would be reluctant to consider the states involved under an *enforceable obligation* to set up the relevant regulatory mechanisms. On this see Miller (2007, pp. 100-3).
USA would be both illegitimate and unjust even if it could achieve the desired outcome.

Let us take stock. So far, I have discussed three families of competing accounts of legitimate political authority, and their relations to justice. I have argued that mutual-dependence accounts both better tally with our intuitions than purely procedural and purely instrumental ones, and are distinct from their closest ‘cousins’ (i.e., qualified self-determination accounts). If it is indeed true that mutual-dependence accounts combine the virtues and avoid the vices of their rivals, what are their implications for the authority and justice of (international) institutions?

5. Mutual-dependence Accounts, International Justice, and Authority

I start with the familiar case of states, focusing on their internal legitimacy, and then move on to the international realm. From the perspective of mutual-dependence accounts, whether a state holds legitimate authority vis-à-vis its subjects depends on whether it reasonably secures certain substantive and procedural demands in the circumstances at hand (as per R1 and R2). That is, to assess the authority of a state vis-à-vis its citizens we need to ask whether it is making a reasonable effort towards securing justice for them (cf. Dworkin 2011, pp. 332-9, Valentini 2012).

As I have mentioned earlier, this test is relatively flexible, but it still allows us to identify states that clearly fall within or outside the ‘legitimate’ set. Sweden, Germany, and Denmark, for instance, arguably hold legitimate authority with respect to their citizens. While they may not be doing the best possible job at securing and interpreting justice, they are doing a reasonably good job in the circumstances at hand, one that warrants their subjects’ obedience, and overall respect for the system. Dissent may of course still be expressed, but either through legal channels, or through acts, such as civil disobedience, that communicate strong disagreement but also convey an underlying confidence in the legitimacy of the system as a whole (Rawls 1999, ch. 6).

The same obligation to obey the law, however, does not hold in the case of (domestically) illegitimate systems. Plausible candidates, in the world in which we live, are China and Burma, among others. Consider China in particular. As Human Rights Watch (2013) reports, ‘[t]he Chinese government remains an authoritarian one-party system that places arbitrary curbs on freedom of expression, association, religion, prohibits independent labor unions and human rights organizations, and maintains party control over all judicial institutions.’ Citizens’ opposition to government policies is met with punishment. Even those who submit applications to hold lawful protests are fined, or forced to undergo ‘re-education through labour’ (Jacobs 2008). And despite the Chinese Constitution’s proclamation of freedom of religion, religious groups—including Christians, Buddhists and others—continue to be persecuted (Jacobs 2011, McGewon 2004, U.S. Department of State 2011).

Given its circumstances, China arguably could do better at defining and securing its citizens’ substantive and procedural rights. This being so, violating people’s rights to bodily integrity (through torture) and to freedom of religion is in clear breach of R1. Similarly, preventing people from meaningfully participating in political decision-making and expressing their dissent violates R2. This suggests that the Chinese state, in its current form, does not hold legitimate authority vis-à-vis its citizens.

Note that saying this does not mean that Chinese citizens have no duties to obey the laws of their state. There may be moral reasons other than authority to obey such laws (e.g., a subset of them may actually be just), and refrain from starting a
revolution (Simmons 2009). What this means is that there is no obligation, on the part of Chinese citizens, to obey Chinese laws *on the grounds that* these have been promulgated by an authoritative institution.

So far, I have briefly illustrated how the framework offered by mutual-dependence accounts may be employed to assess the authority of states with respect to their citizens. My main focus in this paper, though, is authority at the international/global level. Interestingly, there is an important point of connection between domestic authority and the international realm. Under circumstances of globalization, many countries that make reasonable efforts towards securing their citizens’ key rights are unlikely to succeed. The increasing interconnectedness characterizing our world makes societies unable fully to control their fate. Their ‘internal affairs’ are constantly interfered with by the effects of decisions taken far away, and by the rules laid down by international bodies. To see this, it suffices to think of the recent global financial crisis, and of the impact of IMF, WTO and EU policies on states’ economies.

These observations prompt us to turn to international/global governance institutions as additional sites of legitimate political authority, i.e., as themselves conditions for the possibility of securing justice in an increasingly interdependent world. Whether states and their citizens have duties to obey the rules set by these institutions will depend on whether the institutions themselves are making reasonable efforts towards securing justice. This means asking whether, *given their capacities and circumstances of operation*, they are acting in such a way as to facilitate states in discharging their fundamental obligations, and supplementing state capacities where these seem to be wanting.

Let us briefly consider two key international institutions: (i) the International Court of Justice (ICJ) and (ii) the World Trade Organization (WTO). Although their competences and modi operandi differ—one is a judicial institution, the other a mainly political one—very similar considerations apply to them, when thinking about international political authority.

(i) *The International Court of Justice*. As I have mentioned at the outset, the ICJ is the main judicial organ of the United Nations, with competence for disputes involving international law. Although there are multiple ways for states to recognize the Court’s jurisdiction, submission to it is always *de facto* voluntary (Alexandrov 2006). The establishment of the Court (in 1945) may be seen as part of a broader attempt to secure the rule of law at the international level. Provided the Court’s actions warrant the judgement that, in the relevant circumstances, it is making reasonable efforts towards securing justice—adjudicating disputes even-handedly, in a recognizably ‘omnilateral’ way—it should be seen as legitimate. This means that the Court can have legitimate authority without being an ‘ideal’ judicial organ, so long as it does what it *reasonably can* to adjudicate cases fairly.

The available evidence seems to support the view that the Court’s judgements are in fact authoritative. Although during its first twenty-thirty years of existence the Court appeared to be biased in favour of Western states, this trend has now ceased. In more recent times, developing countries have been the chief applicants to the Court, with more powerful states typically being respondents (Posner 2004).

Furthermore, the composition of the Court offers significant fairness guarantees. Judges are nominated by states and, to be elected, they need to obtain an absolute majority of votes in both the UN Security Council and the General Assembly (ICJ 2013). The distribution of membership in the Court follows regional lines: 3 (judges) to Africa, 3 to Asia, 2 to Latin America and the Caribbean, 5 to Western
Europe and other regions, and 2 to Eastern Europe and Russia. Interestingly, the Court operates by majority rule (Art. 55), and the permanent members of the Security Council do not have veto power in it.\(^{28}\)

The current composition of the Court confirms the lack of obvious biases in favour of one state or the other. Judges are from Japan, France, New Zealand, Morocco, Russian Federation, Brazil, Somalia, UK, U.S.A., China, Italy, Uganda, and India. As one scholar puts it, ‘[t]he rules and guidelines governing the Court evince a clear concern for its impartiality and for judicial integrity’ (Ogbodo 2012, p. 96).

Perhaps it is precisely the Court’s lack of alignment with the interests of any particular block of countries that explains what Eric Posner has described as its relative decline over the past fifteen-twenty years or so. Fewer cases are being brought before the Court, probably because none of the parties can be certain that matters will be decided in its favour. This, in turn, seems to confirm the Court’s emergent impartiality.\(^{29}\) As Posner (2004, pp. 23-4) suggests ‘[t]he problem for the ICJ is just that there are too many cleavages, and so states cannot expect the ICJ judges to take account of their interests. By contrast, the early court was a club dominated by a handful of western powers that shared powerful strategic and economic commitments.’ This problem is one of effectiveness, and urges us to reform the ICJ and/or supplement it with other, perhaps regional, courts (within which we might expect parties’ interests to be somewhat more aligned), but it is not one of legitimate authority (Posner 2004).\(^{30}\)

If my reflections so far are correct, we can (provisionally) conclude that the ICJ has legitimate authority insofar as it does what it reasonably can (not much) in the circumstances at hand, to secure respect for the international rule of law in a relatively unbiased manner (i.e., its selection procedures and composition suggest that national biases may, to some extent, ‘cancel each other out’), thereby contributing—albeit only marginally and sub-optimally—to the creation of a just international order.

(ii) The World Trade Organization. The WTO, which succeeded the General Agreement on Tariffs and Trade (GATT) in 1995, is a body in charge of trade regulation at the international level. Its mission is to enhance prosperity through abolishing trade barriers between states. Decisions about trade rules are discussed by government representatives during ‘rounds of negotiations’, and typically adopted through consensus. Disputes between members over alleged rule-violations are adjudicated by the WTO Dispute Settlement System. If a party is found guilty of violating WTO agreements, it must provide appropriate compensation to its victims, or may otherwise be subject to penalties, e.g., trade sanctions.

Whether the WTO is legitimate or not, from the perspective of mutual-dependence accounts, rests on whether its policies may reasonably be seen as attempting to create a just international environment, one that is governed by a concern with equal respect for persons. Some of the available evidence suggests that this is not the case. At least looking at the dynamics and outputs of the Uruguay Round (1986-1994), the WTO does not approximate the ideal of an omnilateral will. Rather, it operates like a ‘club of the powerful’.

\(^{28}\) Although they do arguably still exert an excessive amount of influence on it.

\(^{29}\) I say ‘emergent’ because the impartiality is an emergent property of its structure, not a feature necessarily characterizing its members.

\(^{30}\) For a similar suggestion, but in relation to the ICC see Orrú and Ronzoni (2011). For broad proposals for reforming the ICJ with a view to making it more powerful and effective see Cassese (2012, ch. 19), Strauss (2011), and Ogbodo (2012). For a critique of these strong reform proposals (especially Cassese’s), see Scobbie (2012).
A clear illustration of this has been the decision to allow the USA and the EU to subsidize their textile and agricultural industries, thereby undermining developing countries’ ability to compete in those sectors that constitute the most sizeable portion of their economies (Oxfam 2005). Similarly, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) has been advantageous to already industrialized states, which are at the forefront of scientific innovation and research, but predictably damaging to developing ones, since it has made access to new technology (e.g., in the medical domain) more expensive for them (Valach 2005). As one scholar puts it, the agreements negotiated during the Uruguay Round, ‘are likely to lock in the position of Western countries at the top of the world hierarchy of wealth’, while depriving poorer ones of valuable development instruments (Wade 2003, p. 621). What is more, developing countries often lack the—legal and economic—resources needed to access the WTO Dispute Settlement System, and are thus particularly vulnerable to violations of trade agreements on the part of more powerful states (Horlick 2006).

The WTO’s decisions during the Uruguay Round, and their effects on developing countries, have attracted considerable criticism, leading participants in the current round of negotiations, the Doha Round (2001-present), to place more explicit emphasis on the needs of less advanced economies. And yet, despite the WTO’s (2001) promise of making ‘positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development’, the Doha Round has failed to deliver much of its hoped-for fruits. Negotiations have broken down over crucial issues such as ‘subsidies for agriculture’ and farm import rules, with parties being unable to find a mutually acceptable compromise (BBC 2008, Cho 2009/10).

This gridlock is in large part due to the greater bargaining power acquired by emerging economies—such as India, China and Brazil—which have consistently resisted requests for increased market access on the part of the EU and the US (Faizel 2012, Economist 2013). Unlike in previous rounds of negotiations, emerging economies have finally gained ‘the power to say no’. But while this has enhanced the fairness of WTO negotiations, it has also undermined their effectiveness, leading a number of commentators to call the Doha Round ‘dead’ and ‘a failure’. In a similar fashion to what was said in relation to the ICJ, then, the presence of strong diverging interests—typically fragmented along North/South and developed/developing lines—significantly compromises the functioning of global governance institutions.

To complicate matters even further, although WTO trade policies have important implications for global health, the environment, labour standards, and human-rights protection, the WTO is ill-equipped to address these complex matters (Guzman 2004, Esty 2002). It is an organization built around the promotion of free trade, not that of an overall just world. Yet, absent additional institutions with an explicit mandate to regulate these areas of global concern, the WTO finds itself increasingly under pressure to ‘take charge’, without having the capacity to do so.

To sum up, our discussion suggests that the legitimate authority of the WTO is of a borderline nature. Many of its past decisions are hard to reconcile with an overall justice-driven agenda, or with an attempt to implement it. Nevertheless, at least in its rhetoric, and partly in its actions, the WTO is showing increasing concern for the situation of the global worst off. Unfortunately, there is little chance that this concern will translate into effective action. As others have argued, the essentially intergovernmental structure of the WTO makes it hard for it to come to balanced
outcomes, or to reach any outcomes at all (Orrú and Ronzoni 2011). Moreover, its current design and competences are ill-suited to address the complex array of global problems on which its policies have an impact.

In light of these considerations, I find the case for the legitimacy of the WTO inconclusive. The WTO stands somewhere in the grey area between legitimate and illegitimate authority. This, in turn, largely depends on its bargaining-based intergovernmental structure, as well as on the lack of other international authorities constraining inter-state bargaining so as to make it consistent with (a reasonable interpretation of) the requirements of justice.

Interestingly, our admittedly brief analysis of the ICJ and the WTO shows that, in the process of assessing the legitimacy of existing institutions, a mutual-dependence perspective points in the direction of creating new ones. This should not be surprising. As we saw in our discussion concerning the move from the State of Nature to society, building authoritative institutions is necessary in order to render justice possible among interdependent agents. The situation in which we find ourselves with respect to the global realm appears to be somewhere in between a State of Nature between states (so to say, where no supra-national institutions exist despite increasing global interdependence), and a civil condition, governed by well-functioning authoritative structures.

In analysing the authority of the WTO and the ICJ, we have come to the conclusion that most of their shortcomings ought to be addressed through the creation of additional authoritative bodies, such as regional courts and supra-national arrangements in charge of creating rules concerning climate change management, labour standards, access to health care, and human-rights protection more generally (Orrú and Ronzoni 2011, Valentini 2011, ch. 8).31

How to bring about such institutions is an open question. Short of a peaceful revolution, the best we can hope for is a (not too) slow transition from where we are—e.g., through expanding the competences of existing international bodies—to a more structured and independent system of just and legitimate supra-national authorities.

6. Conclusion
In this paper, I have considered three families of accounts of legitimate political authority and their relations to justice, and argued in favour of what I have called ‘mutual-dependence accounts’. On these accounts, there can be no justice without authority, and no authority without justice. After showing how these accounts better illuminate some of our intuitive judgements about legitimate authority (especially by reference to ‘annexation’ cases), I have turned to examining their implications for the authority of international institutions. Focusing on the ICJ and the WTO in particular, I have argued that the former’s judgements are authoritative, while the latter’s authority is more dubious. Both, however, are deficient organizations which need to be reformed and supplemented through the creation of further supra-national

31 Of course, one might wonder whether instead of creating new institutions, the competences of existing ones should be expanded (for discussion see Guzman 2004). This raises questions about institutional identity. In this respect, it seems to me unlikely that the WTO would continue to remain recognizably the WTO (an intergovernmental organization mainly devoted to trade rules) if it also legislated directly on, say, the environment and human-rights protection. That said, it is quite possible that the creation of new issue-specific supra-national authorities will begin with an expansion of the competences of existing ones. For discussion see Elsig (2007).
institutions with the capacity and authority to address issues of global concern consistently with the fundamental principle of equal respect for persons.
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